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**REHABILITATION OF AN INDIVIDUAL,
BROUGHT IN AS A SUSPECT OR DEFENDANT**

Rehabilitation should be perceived as the most substantial institution of criminal procedural law, implying compensation of property and elimination of moral harm, as well as the restoration of the rights of an individual to have been unjustifiably subjected to criminal prosecution or the one to have the measures of criminal procedural coercion been unreasonably applied towards.

It is difficult to overestimate the importance of rehabilitation: an individual to have been subjected to illegitimate persecution is to get a real opportunity to recover own good name in the eyes of others and to receive compensation.

The Constitution of the Republic of Kazakhstan recognizes the state obligation to provide victims of authority abuse with the access to justice and compensation for harm inflicted, along with the guarantee of every citizen's rights realization for the compensation of the damage caused by illegal actions (inaction) of the governmental authorities and their officials. The criminal procedural legislation was brought to correspondence with these provisions of the Constitution of the Republic of Kazakhstan only after the Code of Criminal Procedure became effective, ch. 4 of which stipulates the procedural order of compensation for damage imposed by unlawful and baseless criminal prosecution and conviction.

The objective of rehabilitation in the criminal procedural understanding means the order of restoring the rights and freedoms of a person subjected unlawfully or unreasonably to a criminal prosecution, and compensating the harm brought within.

The article states that the harm inflicted to a human and citizen as a result of unlawful criminal prosecution, is to be reimbursed by the state in full, regardless of the fault committed by inquest conducting bodies, or the inquest executive officer, the prosecutor, the investigator and the court.

In order to get the right to rehabilitation emerged, the admittance of the criminal prosecution to have been conducted with violations of the order for conducting criminal justice shall be necessary and sufficient. That is, as a result of unlawful actions or inactions carried out by state authorities or their officials, where these actions or inaction could have led to an illegitimate commencement of a criminal case pre-trial investigation, unlawful detention or an unlawful criminal charges.

Key words: criminal procedural law, guarantees, rehabilitation, suspect, defendant, property damage, moral harm, criminal prosecution, legal proceedings.

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**Күдікті, айыпталушы ретінде
тартылған адамды оңалту**

Оңалту қылмыстық іс жүргізу құқығының ең маңызды мекемесі ретінде қарастырылуы керек, ол мүлікті өтеуді және моральдық зиянды жоюды, сондай-ақ ақылға сыймайтын қылмыстық іс жүргізудің негізсіз шаралары қолданылған адамның құқықтарын қалпына келтіруді көздейді. Оңалтудың маңыздылығын асып түсіру өте қиын: заңсыз қудалауға ұшыраған адам өзінің жақсы атын басқа адамдарға қайтаруға және өтемақы алуға мүмкіндік береді. Қазақстан Республикасының Конституциясы мемлекеттің әділ сотқа қолжетімділікті теріс пайдалану және

келтірілген зиянды өтеуден зардап шеккендерді қамтамасыз ету міндетін мойындайды, сондай-ақ әрбір азаматтың мемлекеттік органдардың және олардың лауазымды адамдарының заңсыз әрекеттері (әрекетсіздігі) нәтижесінде келтірілген залалды өтеуге кепілдік береді. Қылмыстық іс жүргізу заңнамасы ҚР Қылмыстық іс жүргізу кодексінің күшіне енгеннен кейін ғана Қазақстан Республикасы Конституциясының осы баптарына сәйкес жасалды, 4 тарау заңсыз және негізсіз қылмыстық қудалау мен сотталғандықтан келтірілген зиянды өтеудің іс жүргізу тәртібін реттейді.

Қылмыстық-процессуалдық тұрғыда оңалтудың мақсаты адамның құқықтары мен бостандықтарын заңсыз немесе негізсіз қылмыстық қудалауға тартылған, және оған келтірілген зиянның орнын толтыру.

Мақалада заңсыз қылмыстық қудалау салдарынан адам мен азаматқа келтірілген зиянды анықтау органы немесе тергеушінің, прокурордың және соттың кінәсінен тәуелсіз мемлекет толығымен өтеуге тиіс деп жазылған.

Оңалтуға құқықты құру мақсатында қылмыстық қудалауды, қылмыстық іс жүргізуді, жүргізу тәртібін бұзумен жүргізілгенін мойындау керек.

Яғни мемлекеттік органдардың немесе олардың лауазымды адамдарының заңсыз әрекеттері немесе кемшіліктері салдарынан бұл әрекеттер немесе әрекетсіздік қылмыстық істі алдын ала тергеуді, заңсыз ұстауды немесе заңсыз қылмыстық айыптауды заңсыз бастауға әкелуі мүмкін.

Түйінді сөздер: қылмыстық іс жүргізу құқығы, кепілдіктер, оңалту, күдікті, айыпталушы, мүліктік зиян, моральдық зиян, қылмыстық қудалау, сот ісін жүргізу.

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Реабилитация лица, привлеченного в качестве подозреваемого, обвиняемого

Под реабилитацией следует понимать важнейший институт уголовно-процессуального права, предполагающий возмещение имущественного и устранение морального вреда, а также восстановление прав лица, которого необоснованно подвергли уголовному преследованию или к которому были необоснованно применены меры уголовно-процессуального принуждения. Значимость реабилитации сложно переоценить: лицо, которое подвергли незаконному преследованию, получает реальную возможность восстановить свое доброе имя в глазах окружающих и получить компенсацию. Конституция Республики Казахстан признает обязанностью государства обеспечение потерпевшим от злоупотреблений властью доступа к правосудию и компенсацию причиненного ущерба, а также гарантирует реализацию права каждого гражданина на возмещение вреда, причиненного незаконными действиями (бездействием) органов государственной власти и их должностных лиц. Уголовно-процессуальное законодательство было приведено в соответствии с этими положениями Конституции РК только после вступления в силу УПК, гл. 4 которого регламентирует процессуальный порядок возмещения вреда, причиненного незаконным и необоснованным уголовным преследованием и осуждением.

Целью реабилитации в уголовно-процессуальном смысле является порядок восстановления прав и свобод лица, незаконно или необоснованно подвергнутого уголовному преследованию, и возмещения причиненного ему вреда.

В статье указывается, что вред, который был причинен человеку и гражданину в результате осуществления неправомерного уголовного преследования, должен быть возмещен государством в полном объеме, вне зависимости от вины органов, проводивших дознание, или самого дознавателя, прокурора, следователя и суда.

Для того, чтобы возникло право на реабилитацию, необходимо и достаточно всего лишь признания того, что неправомерное уголовное преследование проводилось с нарушениями порядка осуществления уголовного судопроизводства. То есть по причине незаконных действий или бездействия, осуществленных органами государственной власти или же их должностными лицами, и эти действия или бездействие могли приводить к незаконному началу досудебного расследования уголовного дела, незаконному задержанию или незаконному обвинению в совершении преступлений уголовного характера.

Ключевые слова: уголовно-процессуальный закон, гарантии, реабилитация, подозреваемый, обвиняемый, имущественный вред, моральный вред, уголовное преследование, судопроизводство.

Introduction

The Constitution of the Republic of Kazakhstan determines that a human, freedoms and rights of which are the highest value of our society and the obligation of the State is to observe, recognize and protect the freedoms and rights of human and citizen (https://online.zakon.kz/Document/?doc_id=1005029).

The Constitution of the Republic of Kazakhstan guarantees the rights and freedoms of a human and a citizen in accordance with generally recognized principles and norms of International Law (Part 1 of Article 12 of the Constitution of the Republic of Kazakhstan). One of the most important principles and norms of international law are recognized to be the rights to privacy, personal and family secrecy, one's honor and dignity defense (Article 18 of the Constitution of the Republic of Kazakhstan), and the right to domicile inviolability (Article 25 of the Constitution of the Republic of Kazakhstan).

Observing principles inherent to constitutional state necessitates the permanent enhancement of rights guarantees, freedoms and legitimate interests of the citizens. The criminal process, as one of the most important state institutions, including the entire range of relationship between the state and the individual, due to its specific nature, associated with the freedom restraint and personality inviolability, intrusion to citizens' privacy, the deployment of various procedural coercive measures, requires specific attention in terms of respecting fundamental democratic principles. Unfounded or unlawful criminal prosecution, and especially, the conviction of a citizen, inevitably induces a range of negative moral experiences, material deprivation, and other consequences.

Main part

At times when civil servants and other officials would not want to recognize, respect, protect the freedoms and rights of a human and citizen, the state accepted responsibility burden for their unlawful actions. Pursuant to this, the Republic of Kazakhstan provides the rehabilitation procedure stipulated in the law. The process of rehabilitation determines the order and form of compensation for tangible and moral harm, restoration of a good name, housing, labor, pension and other rights.

All general principles of rehabilitation are stipulated and are comprised in the Constitution of the Republic of Kazakhstan.

Thus, for instance, the state determines that every human and citizen has the right to compensation for the damage incurred at the expense of the state, which had been caused due to illegal actions or inactions committed by state authorities or their officials (Electronic resource // ww.zakon.kz, 2018). Elimination of consequences, prevention of potential violations of the rights of individuals, being involved in the criminal process are the tasks solution of which should invariably reinforce the guarantees of the rights of individuals who have mistakenly faced the process. The Rehabilitation Institution, established in the Criminal Procedural Code of the Republic of Kazakhstan, depicts another stage in the implementation of the principles of justice and legitimacy, both in the field of criminal procedural relations between the state and the individual, and in the general legal framework of a democratic society.

Based on the heterogeneous and controversial development path of the state, it can be concluded, also regarding the ambiguous fate of the rehabilitation institution within the criminal process (Boytsova L.V., 1990: 27), since those historical processes and phenomenon that had taken place in history are undoubtedly influenced the current state of the rehabilitation institute. (Voytenko O.N., 2001: 32).

The definition «rehabilitation» comes from the English word «rehabilitation», meaning return to a former state, recovery. «Rehabilitation» is a procedure for restoring the rights and freedoms of an individual who has been illegally and unreasonably subjected to criminal prosecution and compensation for the concomitant harm caused to him (Kalinovsky K.B., 2014: 366).

Rehabilitation (from late lat. Rehabilitatio – restoration): in the law – restoration of rights. By law, the rehabilitation of a person who was brought in as a defendant, or was found guilty by a court sentence, or was subject to administrative penalties, is considered to be an acquittal sentence issuance at the case reconsideration, the court statement (court ruling) to cease processing of the criminal case in the absence of a crime event, in the absence of corpus delicti or due to the lack of evidence of crime committing participation, as well as the court statement to dismiss an administrative offense case (Sukharev A.Y., 2002: 516).

In a legal sense, the definition «rehabilitation» means the restoration of rights. Rehabilitation is the comprehensive and absolute rights restoration by the state referring to a person who had

suspect, accused person, defendant, in court ruling, determination, sentence.

The Criminal Procedural Law does not require a separate decision on the recognition of the right to rehabilitation; this should be indicated in the resolution part of the statement issued by the inquirer, investigator, prosecutor on the cessation of criminal prosecution, within the sentence, statement, court ruling.

For sake of the realization of the right of a citizen to rehabilitation and compensation for harm, it is important that, in addition to recognizing the right to rehabilitation, the citizen is explained the procedure for restoring his violated rights and compensation for harm caused by criminal prosecution.

Clarification of the right and procedure for compensation for harm is required to be carried out by the court that issued the acquittal verdict, and upon cessation of the case in cassation, the court that resolved the case at first instance. Thus, according to the article 400 of the Code of Criminal Procedure of the Republic of Kazakhstan, the operative part of the acquittal sentence must contain an explanation of the procedure for compensation for the harm associated with the criminal prosecution. At the stage of pre-trial proceedings, the obligation to taking measures for the rehabilitation of a person is entrusted to those who have terminated a criminal case or a criminal prosecution – the inquiry officer, investigator or prosecutor.

A special notification is to be sent to the rehabilitated, in which the aforementioned right is clarified, to the relevant authorities to which he can apply for compensation for harm and restoration of other rights should be also referred to, as well as the terms of the exercise of this right.

As a general rule, a notification is sent to the rehabilitated. However, in the event of his death, a notice explaining the procedure for compensation for harm caused to the rehabilitated, is sent to the heirs, close relatives, relatives and dependents of the rehabilitated.

Sending a notification along with the decision on rehabilitation serves as a guarantee of the timely realization of the person's right to compensation for damage caused by criminal prosecution. The exception to this rule serves the absence of information about the place of residence of the heirs, close relatives, relatives or dependents of the deceased, the notification is to be sent to them no later than five days from the day of their application to the inquiry bodies, the preliminary investigation bodies or the court.

Rehabilitation includes compensation of tangible damage, compensation for moral harm, restoration of other rights of the person to be rehabilitated.

According to Article 40 of the Code of Criminal Procedure of the Republic of Kazakhstan, the compensation of tangible damage includes the compensation of several components:

- 1) salary, pension, allowances, other means and incomes which have been lost;
- 2) property illegally confiscated or turned into state income on the basis of a verdict or other court decision;
- 3) fines exacted according to an unlawful court sentence; legal costs and other amounts paid by the person in connection with unlawful actions;
- 4) amounts paid by a person for the provision of legal support;
- 5) other expenses incurred in relation to such criminal prosecution.

Based on the principle of compensation for damage caused as a result of criminal prosecution, not only expenses that the person whose right has been violated, made or is to make in order to get the violated right restored, loss or damage to his property (real damage), but also the lost income that this person would have received under normal conditions of civilian turnover if his right had not been violated (loss of profit).

Moral damage is determined by the Civil Code of the Republic of Kazakhstan as physical or moral suffering. These are moral or physical suffering caused by actions (inaction) infringing intangible benefits at the possession of a citizen from birth or by law (life, health, personal dignity, business reputation, privacy, personal and family secrets, etc.) or violating his personal non-property rights (the right to use his name, the right of authorship and other non-property rights in accordance with the laws on the protection of rights to the results of intellectual activity) or violating property rights of the citizen.

In addition to that, the moral harm caused as a result of criminal prosecution may consist in the so-called social losses: diminishing the honor, dignity, reputation of a person, in changing of the public opinion towards him, etc.

Thus, moral damage resulting from illegal or unjustified criminal prosecution may consist in physical suffering (negative feelings), moral suffering (negative experiences), social losses caused by unlawful actions and decisions.

Compensation for moral harm is carried out in two forms: intangible and monetary.

As the intangible form of compensation for moral damage serves the official apologies brought by the public prosecutor on behalf of the state for the harm inflicted. The assignment of this duty to the prosecutor is due the prosecutor performs the criminal prosecution on behalf of the state, as well as supervision of the procedural activities of the bodies of inquiry and preliminary investigation (Article 41 of the Code of Criminal Procedure of the Republic of Kazakhstan).

Compensation of moral harm in the form of money is carried out within civil proceedings. The exact amount of compensation is determined by the court with regards to the nature of the physical and moral suffering caused to the person, taking into account the reasonableness of the requirements and justice; the factual circumstances in which moral damage was inflicted, and the individual characteristics of the victim.

Exceptions are cases expressively provided by law, for example, when a harm was brought to a citizen as a result of his unlawful conviction, application of holding in custody as a preventive measure, home arrest, imposing an administrative penalty in the form of arrest or corrective labor.

In addition to compensation for property and moral damage, the rehabilitated person is reinstated in other rights: labor, pension, housing. According to Art. 41 of the Code of Criminal Procedure of the Republic of Kazakhstan, this list is deemed open, therefore any other rights affected by the criminal prosecution must also be restored.

All queries with regards to the restoration of labor, pension, housing and other rights are considered solely by the judge in the order prescribed for the resolution of issues related to the execution of the sentence (Art. 390, 391 of the Code of Criminal Procedure of the Republic of Kazakhstan).

Thus, individuals in respect of which the criminal punishment measures or criminal procedural coercion were wrongly applied for should have guarantees of restoring their former rights, guarantees of compensation for the material and moral damage caused, which is also necessary for the prestige of the rule of law and constitutional state. It is possible to eliminate the negative consequences of judicial and investigative errors by rehabilitating persons who have been unlawfully or unreasonably prosecuted.

Compensation of harm caused by illegal or unjustified criminal prosecution has to be

included in the definition of rehabilitation, which is to reflect its essence.

Considering the above, rehabilitation in criminal proceedings must be understood as the process of restoring the rights and freedoms of a person who happened to become a subject to criminal prosecution, but found, in accordance with the law, not guilty of committing a crime, and ensuring actual compensation for the harm caused, while the realization of such right by the person being rehabilitated to a such compensation.

Conclusion

Thus, the definition of rehabilitation in criminal process includes three main elements:

- 1) recognition of innocence of the accused (suspect), the defendant, convicted according with the order prescribed by law;
- 2) restoration for the rehabilitated of the ability to exercise previously limited rights and bear responsibilities;
- 3) guarantees of real compensation for the harm inflicted by illegal or unjustified criminal prosecution in the event of the expressed desire to exercise the right to compensation for such harm.

The fact of the individual that was found innocent while court proceedings, having the right to only compensation for harm does not contribute to the recognition of him being rehabilitated. This person continues to be in the rehabilitation process and is being rehabilitated, since the rehabilitation process is deemed completed, and the person is recognized as rehabilitated from the very moment when the issue of harm compensation related to illegal or unjustified criminal prosecution or conviction is resolved completely, i.e. with real compensation for such harm while exercising of this right, or without compensation due the unwillingness to exercise it in the term established by law. The rehabilitated is a person whom the right to rehabilitation is recognized after, in respect of which a complex of measures established for the criminal procedural law is exercised, aiming at rehabilitation, including measures emerging from the right to compensation for the harm caused (<http://www.dissercat.com/content/institut-reabilitatsii-v-ugolovnom-protsesse-teoriya-i-praktika-realizatsii-po-materialam-re>).

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