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Institute of Rehabilitation and its role in protecting the rights and legitimate interests of the suspect and accused

The article deals with theoretical aspects of rehabilitation and the role of rehabilitation in protecting the rights and legitimate interests of the suspect and the accused. The conclusion is made about rehabilitation, as one of the defining directions of the procedural activity of the criminal process. In the article some questions of application of institute of rehabilitation in the criminal trial are investigated. The reasons for the rehabilitation of the person are considered. The problems of determining the amount of compensation for damage during rehabilitation, including from the position of civil legislation, are touched upon. The questions of return of confiscated property to rehabilitated persons were also analyzed. One of the tasks of the state in the law enforcement sphere is the fight against crime. Therefore, it is important not only to protect the constitutional rights and freedoms of citizens from criminal encroachments, to expose and punish those who committed the crime, but also to prevent violations of constitutional rights and freedoms by those state executive bodies that protect them. The aim is to develop a systematic theory of the rehabilitation of innocent, suspects and accused in criminal cases, based on theoretical and practical knowledge already accumulated in this field, as well as the norms of the current CCP, on the basis of which to develop proposals for improving criminal procedural legislation and law enforcement practice. The relevance of the research topic is due to the fact that the rights of the individual, the individual and the citizen are the object of increased attention and the most important factor of the transformations in various areas of public and state activity. This also applies to the sphere of the criminal process, where they need the most effective and reliable protection. On the basis of analysis, the author reveals the actual problem to date about the role of rehabilitation in protecting the rights and legitimate interests of the suspect and the accused. And he gives an analysis of the international norms of dealing with suspects and accused.

Key words: suspect, accused, rehabilitation institute, criminal procedure, compensation.

Бұл мақалада қылмыстық процесте ақтаудың теориялық аспектілері және күдікті мен айыпталушының құқықтары мен заңды мүдделерін қорғауда ақтаудың рөлі қарастырылады. Қылмыстық процестің процессуалдық қызметінің анықталған бағыттарының бірі ретінде ақтау туралы қорытынды жасалады. Бұл мақалада қылмыстық істер бойынша ақтау институтын қолданудың кейбір мәселелері зерттеледі. Адамды ақтаудың себептері қарастырылады. Ақтау барысында, оның ішінде азаматтық заңнаманың ережелерінен келтірілген зиян үшін өтемақы мөлшерін анықтау мәселелері қозғалады. Сондай-ақ, тәркіленген мүлікті ақталған адамдарға қайтару мәселелері талданады. Құқық қорғау саласында мемлекеттің міндеттерінің бірі – қылмысқа қарсы күрес. Сондықтан, азаматтардың конституциялық құқықтары мен бостандықтарын қылмыстық қол сұғушылықтан қорғау, қылмыстарды ашу және оны жасаған тұлғаны жазалау ғана емес, оларды қорғайтын мемлекеттік атқарушы органдардың конституциялық құқықтары мен бостандықтарын бұзуға жол бермеу маңызды. Мақаланың мақсаты – осы саладағы жинақталған теориялық және тәжірибелік білімге, сондай-ақ қазіргі ҚПК нормаларына сәйкес, қылмыстық істер бойынша қылмыстық іс жүргізу заңдарын және құқық қолдану тәжірибесін жетілдіру жөнінде ұсыныстар әзірлеу үшін кінәсіз, күдіктілер мен айыпталушыларды ақтаудың жүйелік теориясын әзірлеу. Зерттеу тақырыбының өзектілігі адамның, жеке тұлғаның және азаматтың құқықтары қоғамдық және мемлекеттік қызметтің түрлі салаларындағы өзгерістердің маңызды факторы болып табылатындығымен айқындалады. Бұл қылмыстық процестің саласына да қатысты, онда олар ең тиімді және сенімді қорғауды қажет етеді. Талдау негізінде автор күдіктінің және айыпталушының құқықтары мен заңды мүдделерін қорғауда ақтаудың рөлі туралы өзекті мәселені анықтайды және күдіктілер мен айыпталушыларға қатысты халықаралық нормаларға талдау жасалады.

Түйін сөздер: күдікті, айыпталушы, ақтау институты, қылмыстық процесс, өтемақы.

В статье рассматриваются теоретические аспекты реабилитации в уголовном процессе и роль реабилитации в защите прав и законных интересов подозреваемого и обвиняемого. Делается вывод о реабилитации, как об одном из определяющих направлений процессуальной деятельности уголовного процесса. В статье исследованы некоторые вопросы применения института реабилитации в уголовном судопроизводстве. Рассмотрены главные основания для реабилитации лица. Затронуты проблемы определения размера компенсации вреда при реабилитации, в том числе с позиции гражданского законодательства. Также подверглись анализу вопросы возврата реабилитированным лицам конфискованного имущества. Одна из задач государства в правоохранительной сфере – борьба с преступностью. Поэтому важны не только защита конституционных прав и свобод граждан от преступных посягательств, изобличение и наказание совершивших преступление, но и недопущение нарушений конституционных прав и свобод теми государственными исполнительными органами, которые осуществляют их защиту. Цель этой статьи заключается в том, чтобы, опираясь на теоретические и практические знания, уже накопленные в данной области, а также нормы действующего УПК, разработать системную теорию реабилитации невиновных, подозреваемых и обвиняемых по уголовным делам, на основе которой выработать предложения о совершенствовании уголовно-процессуального законодательства и правоприменительной практики. Актуальность темы исследования обусловлена тем, что права личности, человека и гражданина являются объектом повышенного внимания и важнейшим фактором преобразований в различных областях общественной и государственной деятельности. Это относится и к сфере уголовного процесса, где они нуждаются в наиболее действенной и надежной защите. На основании анализа, автор раскрывает актуальную на сегодняшний день проблему о роли реабилитации в защите прав и законных интересов подозреваемого и обвиняемого. И дает анализ международных норм обращения с подозреваемыми и обвиняемыми.

Ключевые слова: подозреваемый, обвиняемый, институт реабилитации, уголовный процесс, компенсация.

I. Introduction

Rehabilitation is the most important institution of the criminal process, which involves compensation for property and moral harm, as well as restoring the various rights of a person who was unreasonably subjected to criminal prosecution or to which the measures of criminal procedural coercion were unreasonably applied (Ozhegov, 1953: 335). The importance of rehabilitation is difficult to overestimate: a person who has been subjected to unlawful persecution receives a real opportunity to restore his good name in the eyes of others and receive compensation. Rehabilitation is one of the defining areas of procedural activity, serves as an appointment, task (goal) of criminal proceedings. However, the tasks of the criminal process can be realized in the conditions of the organization of criminal procedural activity on a democratic basis, i.e. by observing and implementing the principles of criminal justice, thereby rehabilitating is realized within the framework of the principles of the process, inextricably linked with them. The idea of rehabilitation is most important in criminal procedural activity in view of the fact that rehabilitation is the purpose of the process. However, the norm determining the appointment of criminal proceedings by the legislator is included in the chapter on the principles of judicial proceedings, in view of the fact that this rule is based and follows from the general guidelines of the criminal process. The legislator thus points to

their inextricable link, to the interconnectedness of the result of procedural activity and the paths leading to it (Tomin, 1969: 68).

The initial impetus for the implementation of the appointment of criminal proceedings is criminal prosecution, which is due to the existence of criminal violations of the law and the need to detect and punish the perpetrators. But it is worth the process to arise, as soon as another problem arises: to prevent the innocent from being prosecuted, not to subject him to illegal criminal prosecution and punishment. The legislator identifies two directions of criminal procedural activity, which emphasize not only the punitive but also the human rights essence of this activity and notes that the criminal prosecution and the appointment of guilty to just punishment are just as responsible for the appointment of criminal proceedings as the refusal to prosecute the innocent, their release from punishment, rehabilitation of everyone who was unreasonably subjected to criminal prosecution (Criminal Procedure Code of the Republic of Kazakhstan, 2014a: art.8). At the same time, not all researchers have positively assessed the humanistic orientation of the activity with regard to illegally subjected to criminal prosecution and punishment. Investigation and judicial proceedings should not create competition between the victim and the accused. It should be about the objective nature of the decisions made and the protection of the interests of the individual. The criminal process has as its task an equivalent protection of the interests of any party with an objective assessment of evidence. In the legal

literature it is rightly noted that the protection of human rights is a priority in the hierarchy of procedural goals (Klimova, 2005: 147-148).

Fundament in the rehabilitation of the criminal process is the list of persons who have the right to rehabilitation. This list has exhaustive character. The following persons have the right to rehabilitation: 1) the defendant, against whom an acquittal has been handed down, i.e., the verdict handed down by the court in cases where the event of a crime is not established, the defendant is not involved in the commission of the crime, the offense of the defendant is absent or The defendant of the jury has a verdict of acquittal; 2) the defendant, whose criminal prosecution was terminated due to the public prosecutor's refusal to accuse; 3) the suspect or the accused, the criminal prosecution in respect of which was terminated on the grounds that it is customary to call "rehabilitating" in science and practice, i.e., in connection with the absence of an event of a crime; absence of an offense in the act; absence of the victim's application, if the criminal case can be initiated only on his application; absence of the court's conclusion that there are signs of a crime in the actions of one of the persons, or lack of consent. Also in this row are the suspects or accused, against whom the criminal prosecution is terminated, in connection with the non-participation of the suspect or the accused in committing the crime; if there is a verdict on the same charge against the suspect or accused, or the court's ruling or the judge's decision to terminate the criminal case on the same charge; if there is an unresolved decision of the body of inquiry, an investigator about the termination of the criminal case on the same charge or about the refusal to open a criminal case against a suspect or accused (Khimicheva, 2002: 52).

According to part 2 of Article 38 of the current Criminal Procedure Code of the Republic of Kazakhstan, the right to compensation for harm caused as a result of the relevant illegal actions of the body leading the criminal process is:

1) the persons specified in the first part of Article 37 of the Code of Criminal Procedure of the Republic of Kazakhstan;

2) persons whose criminal proceedings were subject to termination on the grounds provided for in paragraph 5) of the first part of Article 35 of the Criminal Procedure Code of the Republic of Kazakhstan, if, in spite of the absence of circumstances stipulated in part 4 of Article 32 of the Criminal Procedure Code of Kazakhstan, pre-criminal prosecution;

3) the persons whose criminal case was to be terminated on the grounds provided for in clauses 3) and 4) of the first part of Article 35 of the Criminal Procedure Code of the Republic of Kazakhstan, but has not been terminated since the discovery of circumstances excluding the criminal prosecution and the criminal prosecution has continued unlawfully despite consent of such persons to the termination of criminal proceedings;

4) sentenced to arrest, deprivation of liberty, detained or held in custody in cases of a change in the qualification of an offense punishable by an article of the Criminal Code of the Republic of Kazakhstan, providing for responsibility for a less serious criminal offense, if suspected or accused of committing this Code, detention or detention, or the appointment under this article of a new, more lenient punishment or the exclusion from the verdict of the part of the prosecution and the reduction of the punishment in this connection, as well as in the case tea cancellation of unlawful judicial decision on the application of compulsory medical measures or compulsory educational measures. In fact, the term of arrest or deprivation of liberty that has been served is considered to be served illegally insofar as it exceeds the maximum amount of punishment in the form of arrest or imprisonment envisaged by the article of the Criminal Code of the Republic of Kazakhstan, according to which the act committed again by the culprit is qualified;

5) a person held in custody beyond the due time without a legal basis, as well as unlawfully subjected to any other measures of procedural coercion during the proceedings in the criminal case;

6) the person in respect of whom the secret investigative actions were conducted, subsequently recognized as unlawful in the judicial procedure (Criminal Procedure Code of the Republic of Kazakhstan, 2014b: art. 38).

They do not relate to the grounds that give the right to rehabilitation, the issuance of an amnesty act, the expiry of the statute of limitations, the age of criminal responsibility, the adoption of a law that eliminates crime and the punishability of the act (decriminalizing), criminal responsibility, unable to fully understand the actual nature and social danger of their actions (Trunov, 2004: 11).

II. Main part

Institute of Rehabilitation in Criminal Procedure

The construction of the rule of law implies the strengthening of guarantees of the rights, freedoms and legitimate interests of citizens. In the field of criminal justice this provision is of particular

importance, since the investigation and consideration of criminal cases involves the restriction of freedom and inviolability of the person, the invasion of the private life of citizens, the use of procedural coercion measures. Unjustified or unlawful criminal prosecution and conviction, as a rule, involve for the victims with mental agony, moral experiences, material deprivation. The task is to minimize such errors to the minimum, and if in the particular case the mistake is made, it is necessary to consider it as an emergency, to publicly acknowledge the error and immediately take all measures to rehabilitate the innocent, and in the course of its implementation to compensate for the harm caused by the illegal or unreasonable criminal prosecution or conviction (Birzhan, 2012).

The undoubted merit of the Criminal Procedure Code of the Republic of Kazakhstan is the elevation of the principle of the provision that criminal proceedings in the Republic of Kazakhstan have as their purpose not only the protection of the rights and legitimate interests of individuals and organizations that have suffered from crimes but also protect the individual from unlawful and unfounded accusation, condemnation, restriction of her rights and freedoms. In the Criminal Procedure Code of the Republic of Kazakhstan for the first time, the Institute of Rehabilitation of Victims of Unlawful or Unreasonable Attraction to Criminal Responsibility (Chapter 4 of the Criminal Procedure Code of the Republic of Kazakhstan) has been developed.

Having made a decision on full or partial rehabilitation of a person, the body leading the criminal process must acknowledge the right to compensation for harm. A copy of an acquittal or an order to terminate a criminal case, to revoke or change other unlawful decisions is handed over or sent to the interested person by mail. At the same time, a notification is sent to him explaining the order of compensation for harm (Narizhny, 2001: 39).

Under full rehabilitation, a person should be understood as making an acquittal in respect of him by the court or issuing by the body of inquiry, investigation, or by the procurator of a decision to terminate a criminal case for lack of an event of a crime, for lack of corpus delicti or for lack of evidence of a person's participation in the commission of a crime.

Partial rehabilitation of a person consists in recognizing him as innocent for certain episodes of the charge, for retraining his actions for an article of the criminal law that provides for responsibility for a less serious crime, for the abolition of unlawfully applied compulsory measures of a medical nature or

for compulsory educational measures (Bezlepkin, 2004: 76).

The right to file a claim for compensation for damage caused by illegal actions of bodies conducting criminal proceedings is vested in both physical and legal persons. Pursuant to Part 3 of Article 40 of the Code of Criminal Procedure, the persons listed in Part 2 of Article 38 of the Code of Criminal Procedure and their legal representatives can apply for compensation for property damage.

In the case of the death of a rehabilitated person, the right to compensation for property damage passes to his heirs, close relatives, relatives or dependents of the deceased; to these persons, the investigator, investigator, prosecutor or court, who made a decision on recognition of the right to rehabilitation, must send a copy of the relevant resolution and a notice explaining the procedure for compensation for harm.

In the absence of information on the place of residence of the heirs, relatives or dependents of the deceased person who has the right to compensation for damage, the notification shall be sent to them no later than five days from the date of their appeal to the authority conducting the criminal proceedings.

The harm caused to a person as a result of illegal detention, arrest, house arrest, temporary removal from duty, placement in a special medical organization, conviction, use of compulsory medical measures is reimbursed from the republican budget in full, regardless of the fault of the body leading the criminal process CCP RK, 2014c: art. 40).

Claims for compensation for property damage are resolved by the judge in the manner prescribed by part 2 of Article 390 of the Criminal Procedure Code of the Republic of Kazakhstan for resolving issues related to the resolution of the sentence. A copy of the decision, certified by the stamp, shall be served or sent to the person for presentation to the authorities obligated to pay. The procedure for payment is determined by law. Compensation for non-pecuniary damage is also of significant importance to persons subject to rehabilitation (Tolstoy, 2006: 30).

Rehabilitation methods

Rehabilitation in criminal proceedings is carried out by compensating the injured person for property and moral harm, as well as the restoration of labor, pension, housing and other rights that have been violated by unlawful or unreasonable criminal prosecution or coercive measures (Boytsova, 1993: 5-6).

Reimbursement of rehabilitated property damage. Reimbursement to a person of property

damage during rehabilitation includes compensation of wages, pensions, allowances, other funds, which the person was deprived of as a result of criminal prosecution; return of property or compensation for damage caused by confiscation or transfer of property to the state's income on the basis of a verdict or a court decision; compensation of fines and procedural costs collected from him in execution of the court verdict; reimbursement of amounts paid to them for providing legal assistance to defenders, and other expenses incurred by the rehabilitated as a result of unlawful or unreasonable criminal prosecution, documented or otherwise proven (Lebedev, 2014a: 404).

Unpaid wages, pensions, allowances, other funds, which the rehabilitated person lost as a result of criminal prosecution, are calculated from the moment of termination of their payment. When determining the size of the amounts to be recovered in favor of the rehabilitated for providing legal assistance, it should be borne in mind that the provisions do not limit the number of defenders who can protect one accused, defendant or convict. The amount of compensation for harm for the provision of legal assistance is determined by the confirmed case materials actually incurred costs directly related to its implementation (Bezdelkin, 2017: 121).

The criminal procedure law does not limit the list of reimbursable expenses that have been incurred by the rehabilitated person both directly in the course of criminal prosecution and incurred by him for the purpose of eliminating the consequences of unlawful or unreasonable criminal prosecution, including the costs of reimbursement of expenses related to the consideration of rehabilitation, health restoration issues and others.

The amount of payments to be reimbursed for the rehabilitated is determined by the court, taking into account the consumer price index at the place of work or residence rehabilitated at the time of the commencement of the criminal prosecution (Rokhlin, 2007: 117).

Reimbursement of rehabilitated moral damage. Moral harm is understood as moral and physical suffering caused by acts that encroach upon personal non-property rights or other intangible goods belonging to a citizen, and in cases specifically provided for by law (Lebedev, 2014b: 405).

Elimination of the consequences of moral harm, is carried out: 1) the prosecutor brought a rehabilitated official apology on behalf of the state for the harm done to him; 2) posting in the mass media information on rehabilitation, if information

about the application of criminal prosecution measures against the rehabilitated was disseminated in the media; 3) by sending written reports on decisions taken, justifying the citizen, at the place of his work, study or at the place of residence. A formal apology on behalf of the state should be made, as it appears on public and private-public prosecution charges by the prosecutor in oral form and in an official setting. If the prosecutor submits the question of apology to a rehabilitated person before the court, the court assigns such a duty to a prosecutor of the appropriate level, as indicated in the resolution (Veretennikova, 2003: 38).

Restoration of other rights of rehabilitated. The restoration of labor, pension, housing and other rehabilitated rights shall be effected by a court decision rendered in accordance with the procedure established to resolve issues related to the enforcement of the sentence.

A citizen who has been released from work due to unlawful conviction, the use of compulsory medical measures or dismissed from office due to unlawful criminal prosecution, must be given the previous work. The entry entered in the workbook in connection with the dismissal is recognized as invalid. The administration of the enterprise, institution, organization gives him a duplicate of the work record without entering into it a record that has been declared invalid (Lebedev, 2014c: 406)

The legal status of the rehabilitated and the guarantee of its security

The processes of formation of the rule of law particularly affect such important political and legal relationships as the state and the individual. The content of the basis of the legal status of the individual primarily consists of the relationship between the individual and society, the citizen and the state in their different understanding and legally recognized designation. The traditional primacy of the state in these relations put the person in a dependent position on the state mechanism, infringing upon its rights, constrained the initiative and legal activity of citizens. Naturally, the abnormality of the situation required reorientation to a personal emphasis, quality content of the contents of the legal status of the individual. "The rights of the state can not be higher than human rights".

For the modern legal status of the personality, features such as its extreme instability, weak social and legal security, the lack of reliable guarantee mechanisms, the inability of the state to effectively ensure the interests of the citizen, his rights and freedom are characteristic. The legal status of the individual bears the stamp of a profound socio-

economic, political, spiritual crisis. The unity and stability of the legal status are undermined by the processes of sovereignization, interethnic and regional conflicts. There were significant groups of people (refugees, migrants, displaced persons) without a clear legal status at all (Freeman, 2011: 57).

The legal status of the individual is significantly destabilized as a result of negative phenomena occurring in society: social tension, political confrontation, complex criminal situation, environmental and man-made disasters, shock methods of reform, etc. Legal and moral factors are also affected by the loss of social orientations and priorities, spiritual support, and lack of adaptation to new conditions (Malko, 2001: 119).

To clarify this issue, it is necessary to recall that in international legal practice, it is customary to distinguish three groups of human and citizen rights and freedoms. The first group includes personal rights and freedoms: the right to life, the protection of the dignity of the person by the state, the right to personal inviolability, the protection of one's honor and dignity.

The second group consists of political rights and freedoms: hold meetings, processions, pickets, demonstrations; the right to freedom of thought and speech, to create various alliances to protect their interests, etc.

The third group consists of socio-economic rights and freedoms of man and citizen: the right of private property, choice of profession, health protection, etc. (Rakhmetullin, 2001: 12-15).

Rehabilitation of citizens in the criminal process should be attributed, in our opinion, to the first group. And depending on the state of affairs in this area, to a certain extent it is possible to judge the priority of human rights in this or that state. It is not by chance that the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) establishes the right of everyone who has become a "victim of arrest or detention", in violation of the provisions of this Convention, to compensation that is enforceable. Article 50 of the Convention provides that compensation for damage caused should be fair. Article 3 of Protocol 7 to the European Convention on the Protection of Human Rights and Fundamental Freedoms includes among the subjects that have this right not only illegally arrested at pre-trial stages of criminal proceedings, but also victims of judicial errors that are compensated according to the law or practice of the state concerned (European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950).

In the Republic of Kazakhstan, the procedure for rehabilitation, including compensation for harm

caused by the unlawful action of the body leading the criminal process, is regulated by the rules of the criminal procedure law. According to the Criminal Procedure Code of the Republic of Kazakhstan, compensation is caused to harm caused to the person who is rehabilitated as a result of unlawful detention, arrest, house arrest, temporary removal from office, placement in a special medical institution, conviction, use of compulsory medical measures.

Errors in the administration of justice are costly both for individuals and for society as a whole. Violation of justice in the sphere where it should be in the first place, negatively affects a person's state of mind, causes disrespect for the law and officials, often creates the feeling that he does not live in his state (Goodall, 2012: 142).

Even the short stay of a person in custody in places of detention, in addition to negative moral experiences, is almost always accompanied by physical suffering resulting from conditions of detention in pretrial detention facilities that do not conform to international standards (Standard Minimum Rules for the Treatment of Prisoners, 1957). It is well known that for many years in the pre-trial detention centers of the Ministry of Internal Affairs of the Republic of Kazakhstan, the necessary standard of living was not provided to maintain the health of the majority of the contingent. The number of people detained in the cells, and among them many who later need to be rehabilitated, is usually several times higher than the sanitary standards, making the prisoners forced to sleep in turns, on the floor, often without bed staff.

How to measure and how to compensate an innocent person for the moral and physical injuries suffered by him under such conditions? Of course, nothing. Nevertheless, monetary compensation in these cases, in our opinion, is justified.

The conducted sociological studies found that rehabilitated citizens harm is compensated only in 20-30% of cases. One of the reasons for this state of affairs is ("On the practice of applying legislation to compensate for harm caused by the illegal actions of the bodies leading the criminal process", 1999) that when deciding on rehabilitation, as well as another decision, compensation of harm, the courts in the procedural documents did not indicate the recognition of such a right for them and did not explain the order of removal of harm. A similar practice in the work of the judiciary continues in the current conditions. To see in these cases violations of the rights justified, provided for by Part 3 of Art. 402 of the Criminal Procedure Code of the Republic of Kazakhstan, is not difficult.

Of course, in the case of an acquittal, mistakes made during the investigation or other significant violations of the rights of the participants in the proceedings are considered at the collegia of the respective prosecutor's offices. Sometimes disciplinary measures are taken against prosecutors at the lower level and the investigator who conducted the investigation. It should be noted that this does not make it easier for a rehabilitated person, since he is forced to seat the thresholds of the courts to satisfy his claims and to argue with the investigator, the prosecutor, without relying on justice and success in the case, or to leave without demanding compensation caused to him harm. The damage to the prestige of state bodies, including the prosecutor's office, in these cases is obvious (Tynyshtykuly, 2001: 25).

The main reason for this situation is ignorance or poor knowledge of stakeholders, including practitioners of the current legislation in this part. In addition, the established procedure for compensation of harm, in our opinion, takes a lot of time in connection with the presentation of a suit in court, its due registration, etc. and actual consideration. There is also the psychological side of the case, which consists in the fact that after the competent authorities take the appropriate decision on rehabilitation, it is necessary to relive, as it were, what happened to him, to prove his case in court, by bringing a suit.

III Conclusion

Thus, the said institution, provided for by the Criminal Procedure Code of the Republic of Kazakhstan, still contains a lot of inaccuracies and contradictions. Despite the fact that the importance given by the legislator to restoring the rights and freedoms of individuals who have been unlawfully and unreasonably prosecuted, it is clear that these discrepancies often make it impossible to use the declared norms. During a short period of the Criminal Procedure Code, numerous changes were made to it. Elimination of the above-mentioned deficiencies, we believe, will make it possible to

fully use this institution in order to compensate for the harm caused by the illegal actions of law enforcement agencies and officials.

In the article the author comes to the conclusion that the institution of rehabilitation is a set of legal norms regulating legal relations in connection with the issuance of the act on rehabilitation (acquittal and the decision to terminate the criminal case on rehabilitating grounds) and the implementation of compensation and restorative measures aimed at compensating the rehabilitated. The constituent parts of the rehabilitation institute, based on this formulation, are two separate groups of norms, the first of which determines the procedure and conditions for issuing an act on rehabilitation and is criminal procedure in its sectoral affiliation, and the second is the procedure for compensation for harm and other compensation and recovery measures that he is entitled to receive on the basis of the act on rehabilitation, and is of an intersectoral nature. The last group of norms can be realized only in the case of his will and in the presence of his petition.

Ambiguously the legislator solved the issue of the grounds for rehabilitation. In the author's opinion, only persons who have been subjected to criminal prosecution in the total absence of a socially dangerous act incriminated to them or their guilt in a crime, which caused harm to them unfairly, should be rehabilitated. It is this situation that is associated with the category of innocence of the suspect or the accused, and in the procedural aspect is expressed in three bases for rehabilitation: the absence of an offense, the absence of a crime and the non-participation of an accused suspected of committing a crime.

The issue of rehabilitation subjects also causes a large number of disputes. The legislator has determined that the subject may be a suspect, accused, defendant and convicted person, or other persons. However, subjects of rehabilitation can only be persons who have been prosecuted, and the latter do not apply to such persons.

References:

- Bezdelkin B.T. Handbook of the judge in criminal proceedings.- M.: Prospekt, 2017.- P.121.
 Bezlepkin B.T. Ugolovnyy protsess Rossii: Uchebnyk.- M., 2004.- S. 76.
 Boytsova V. V., Boytsova L. V. Reabilitatsiya neobosnovanno osuzhdennykh grazhdan v sovremennykh pravovykh sistemakh.- Tver', 1993.- S. 5-6.
 Birjan T. Nezakonnoe oswjdenie i reabilitaciya.- 2012 g. // <https://www.zakon.kz/4529480-nezakonnoe-osuzhdenie-i-reabilitacija.html>
 European Convention for the Protection of Human Rights and Fundamental Freedoms. It was signed in 1950 and entered into force on September 3, 1953 // http://www.echr.coe.int/Documents/Convention_ENG.pdf

- Kay Goodall, Margaret S., Bill Munro, William G., Munro Building. «Justice in Post-transition Europe: Processes of Criminalisation».- 2012.- P. 142.
- Khimicheva G.P., Khimicheva O.V. UPK RF o naznachenii ugovnogo sudoproizvodstva // *Zakon i pravo*. – 2002.- №10. – S. 52.
- Klimova G. 3., Senyakin I. N. Reabilitatsiya kak pravovoy institut (voprosy teorii i praktiki).- Saratov, 2005.- S. 147–148.
- Lebedev V.M. Ugolovno-protsessual'noye pravo.- M: «Yurayt», 2014.- S. 404.
- Mal'ko A. V. Teoriya gosudarstva i prava v voprosakh i otvetakh: Uchebno-metodicheskoye posobiye. 3-ye izd., pererab. i dop.- M., 2001.- S. 119.
- Michael Freeman. Human Rights (Polity Key Concepts in the Social Sciences series).- 2011.- P. 57.
- Narizhniy S.V. Kompensatsiya moral'nogo vreda v ugovnom sudoproizvodstve Rossii.- SPb, 2001.- S. 39.
- Ozhegov S.I. Slovar' russkogo yazyka. – M.: Gos. izdatel'stvo inostrannykh i natsional'nykh slovarey, 1953 g. – S. 335.
- Postanovleniye plenuma Verkhovnogo suda RK ot 9 iyulya 1999 g. № 7 “O praktike primeneniya zakonodatel'stva po vozmeshcheniyu vreda, prichinennogo nezakonnymi deystviyami organov, vedushchikh ugovnnyy protsess” // <http://sud.gov.kz/rus/kategoriya/normativnye-postanovleniya-verhovnogo-suda-respubliki-kazahstan>
- Rakhmetullin E. The only task is to ensure observance of the constitutional rights of citizens // *Zakon i vremia*.-2001.- № 2.- P. 12-15.
- Rokhlina V.I. Institut reabilitatsii v Rossiyskom zakonodatel'stve.- SPb: «Yuridicheskiy tsentr Press», 2007.- S. 117.
- Standard Minimum Rules for the Treatment of Prisoners. Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977 // https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf
- Tolstoy A.V. Correlation of institutes of criminal prosecution and rehabilitation // *Criminal justice*.- 2006.- № 2.- P. 30.
- Tomin V.T. Ponyatiye i tseli sovetskogo ugovnogo protsessa // *Pravovedeniye*. – 1969. – № 4. – S. 68.
- Trunov I.L. Problems of legislative regulation of rehabilitation in criminal procedure // *Advokatskaya praktika*.- 2004.- № 12. – P.11.
- Tynyshtykuly Zh. “The role of prosecutorial supervision in the criminal procedure for the rehabilitation of citizens” // “Pravovaya reforma v Kazakhstane” – 2001.- №2.- P. 25.
- Ugolovno-protsessual'nyy kodeks Respubliki Kazakhstan ot 4 iyulya 2014 goda № 231-V (s izmeneniyami i dopolneniyami).- Almaty: Yurist, 340 s.
- Veretennikova E. Compensation for moral damage caused by unlawful acts of law enforcement officers // *Zakonnost'*.- 2003.- № 11.- P. 38.