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Procedural Order And Consequences Of Application Of The Institute Of Rehabilitation By The Court

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ABSTRACT

The article explores some matters in the field of the citizen protection from illegal criminal prosecution and accusation, restriction of their rights and freedoms.

Also examined a mechanism of compensation for harm caused by unlawful or unjustified criminal charges. Proposals for improving legislation are justified.

KEYWORDS

Illegal Actions, Rehabilitation, Reparation, Restoration Of Rights, Criminal Proceedings.

INTRODUCTION

It should be noted that the priority task of the court, such as the protection of human rights, has to do with the task of recognizing the innocence of an individual and restoring his violated rights, and therefore rehabilitation is one of the main directions of justice. That is, regardless of the specialization of the court, whether the issue of rehabilitation is considered by the criminal court or the civil court, the court performs its constitutional function, ie to guarantee human rights, to

restore violated rights. Pursuant to Article 405¹⁰ of the CPC, a criminal case may be terminated on the grounds of rehabilitation upon the conclusion of the initial trial.

Any violations of the law committed during the inquiry and preliminary investigation may be remedied by the court in the appointment of the case for trial or in the course of the trial. As the sole public body that administers justice, the court must identify and remedy any

deficiencies, inaccurate facts, deficiencies in the inquiry and preliminary investigation.

Pursuant to Article 405¹⁰ of the CPC, the court shall terminate the criminal case in the presence of the circumstances provided for in Article 83, paragraph 1 of Article 84 of the CPC.

The court ruling shall specify the grounds for termination of the criminal case, resolve the issue of revocation of precautionary measures, as well as measures to secure a civil suit, and resolve the issue of material evidence.

However, in practice, there are very few cases of termination on the grounds of rehabilitation at the stage of appointment of a criminal case because the grounds of rehabilitation can be determined mainly on the basis of a petition filed by the party.

Rehabilitation, that is, finding a person who has not committed a crime or being involved in a crime committed, acquitting him or terminating the criminal case, is a primary issue. However, this decision only initiates the rehabilitation process.

It should be noted that the scope of rights set forth in Article 310 of the CPC is not final, as the exact rights of a person as a result of criminal proceedings will depend on the specific circumstances of the case.

For this reason, we support the opinion of some scholars that the rehabilitation mechanism consists of procedural and non-procedural parts. The reason is the procedural part of rehabilitation:

- 1) Recognition of the fact of illegal criminal prosecution or unjustified application of

coercive procedural measures by acquittal and decision to terminate the criminal case;

- 2) Recognition of the right of the rehabilitated person to compensation for property damage caused to him;
- 3) Notify the rehabilitated person of the decision, explain the procedure for appealing, as well as the procedure for compensation for property damage and the restoration of other rights;
- 4) The rehabilitated person applies to the court, prosecutor, investigation or inquiry body that issued the decision on rehabilitation;
- 5) No later than one month from the date of receipt of the application by the court, prosecutor, investigation or inquiry body that issued the decision on rehabilitation, take measures prescribed by law to determine the amount of damage and restore the right to request the necessary documents;
- 6) Making a decision on making monetary payments for damages, elimination of the consequences of moral damage and restoration of other rights;
- 7) The stages of appealing to the court against the decision of the inquiry officer, investigator, prosecutor on the payment of money.

After this stage, the non-procedural stage of rehabilitation, ie the part regulated by other branches of law, begins.

In practice, the courts consider this issue in accordance with Article 542, as the procedure for determining the amount of damage to the rehabilitated person and taking the necessary measures to restore the right to request the necessary documents, the procedure for

payment of damages is not clearly defined in the CPC.

Section 2 of Article 306 provides that the court that issued the decision on rehabilitation shall determine the amount of damages. On the one hand, it makes sense to establish such a procedure, because the court that issued the decision on rehabilitation must fully restore the rights. However, if the person does not live in the area where the court ruled, he or she will be inconvenienced, as he or she will be required to collect information on the amount of damages, submit it to the court, and then set a trial date and participate in the trial. Therefore, based on the experience of foreign countries, it is up to the applicant to determine the jurisdiction, ie the payment of damages to the rehabilitated person, compensation for non-pecuniary damage and the restoration of other rights.) shall be decided by a judge of the court.

Pursuant to Article 311 of the CPC, if a person's claim for employment, pension and housing, as well as the return of property or payment of its value is not satisfied or the person does not agree with the decision, he may sue provided that he has the right to appeal.

This raises the question of how a decision made in criminal procedure is considered in civil proceedings, not in appellate or cassation proceedings.

It is also worth noting that today's practice in this regard does not meet the requirements of the CPC. The reason is that in most of the criminal cases investigated, the criminal courts are limited to explaining to the civil court that they have only considered the issue of compensation for property damage. The

reason is that the issue of restoration of rights is considered in a civil court, which leads to the restriction of the rights of the rehabilitated person.

First, a person rehabilitated in civil proceedings has no privilege, he is not released from the obligation to prove. Each party must prove the circumstances on which it bases its claims and objections (Article 72 of the CPC).

The peculiarity of the rehabilitation relationship between the state and the citizen is that the causal link between illegal criminal prosecution and compensation for damages is of a normative nature. It does not need to be proved and is considered determined by the decision of the relevant law enforcement agency recognizing the innocence of the citizen.

In the CPC, the court, prosecutor, investigator or inquiry officer who issued the decision to rehabilitate is required to determine the amount of damage and, if necessary, to demand from the financial authorities and departments of the Extrabudgetary Pension Fund under the Ministry of Finance of the Republic of Uzbekistan.

Second, the fact that the CPC imposes an obligation on a body or court directly to prosecute and convict an individual, restoring his rights, is of prophylactic importance and serves to ensure the legitimacy of future activities;

Third, in order to participate in the civil process, the citizen has to hire a lawyer again, gather additional information and pay the procedural costs, waiting for the decision to take effect after the decision is made.

That is, a person who has suffered both property and moral damage as a result of illegal or unjustified criminal prosecution must apply to the court twice for compensation. However, the damage (both property and moral) was caused as a result of an illegal or unjustified criminal prosecution.

That is, the main goal should be to apply the most optimal and simple mechanism for the restoration of the rights of a person who has been illegally prosecuted and convicted.

It is advisable to establish such a procedural order that the legally rehabilitated person does not have to prove the amount of the right and amount violated as a result of criminal prosecution, and that the submission of documents is sufficient to restore the rights and receive appropriate payments.

However, according to Article 8 of the Law of the Republic of Uzbekistan "On State Duties", in civil courts the plaintiffs are exempted from paying state duties only in disputes related to illegal convictions, criminal prosecution, administrative penalties that is, only those who have been fully rehabilitated are expected to be released. Article 303 of the CPC does not provide for exemption of the plaintiff from state duty on the grounds of partial rehabilitation.

In addition, Article 312 of the CPC stipulates that the period for claiming compensation for property damage may be two years, and the restoration of other rights may be within one year from the date of receipt of the notification explaining the procedure for restoration of the rehabilitated person's rights. However, in the Russian Federation, the period of limitation for the restoration of rights is set within the time

limits established by the Civil Code. In other words, if the source of damages is the state budget, it is not in accordance with the rule of Article 19 of the Constitution on the equality of citizens and the state and the relationship between the rights and duties of citizens and the state.

Pursuant to Article 311 of the CPC, if a person's claim for employment, pension and housing, as well as the return of property or payment of its value is not satisfied or the person does not agree with the decision, he shall file a lawsuit. have the right to appeal. However, in the course of the proceedings, the person was not released from the obligation to prove the grounds and amount of property damage.

It should be noted that civil procedure can be a subsidiary (in relation to criminal procedure) or a basic method of protecting the rights of a person who has been rehabilitated or is seeking damages as a result of criminal prosecution.

However, the CPC stipulates that if a person's claim is not satisfied or the person does not agree with the decision, he has the right to appeal to the court with the relevant claim, ie the civil procedure is only subsidiary.

Of course, an individual's right to appeal to a court in the manner prescribed by the CPC is not directly restricted, but civil courts may return a complaint on the grounds that a separate procedure has been established in the CPC.

However, in some cases, the civil procedure for the restoration of rights may be the main, criminal procedure may not be provided:

- a) If the rehabilitated person is unable to recover in criminal procedure or claims a dispute (damage to business activities, lost profits);
- b) If the rehabilitated person claims for compensation for moral damage caused as a result of illegal criminal prosecution or conviction;

That is, due to the fact that the violated rights of rehabilitated persons belong to different branches of law, it is impossible to regulate the issue of restoration of rights with only one branch of law, including criminal procedure law. However, since rehabilitation stems from criminal procedure, other branches of law in this matter must be harmonized with the norms of criminal procedural law, which prevents conflicts in the restoration of the right, and ultimately the confusion of the person whose rights have already been violated between different bodies. The reason is that for the rehabilitated person, it does not matter which law or legal framework resolves the issue, for him the rights are restored quickly, efficiently and completely.

Although the grounds for denial of the right to rehabilitation are not clearly defined in the CPC, they should be denied only in the following cases:

- 1) Due to the expiration of the term of liability;

Article 64 of the Criminal Code provides for the release of a person from liability for a crime due to the expiration of the term of imprisonment, the significance of which is that even if a person has committed a crime, the state waives the right to prosecute him. The Criminal Code, based on its humanitarian principles,

sets deadlines for prosecuting a person who has committed a crime. The establishment of these periods in law saves a person from the worry of living under the threat of criminal prosecution for the rest of his life. On the other hand, failure to set such time limits would have preserved the purpose of revenge for the crime and the purpose of the punishment in the second part of Article 42 of the CC would have lost its relevance.

- 2) The application of an amnesty act or pardon;

According to Article 68 of the Criminal Code, a person who has committed a crime may be released from liability under an amnesty act. An amnesty act is a pardon or release from punishment of a certain category of persons or a person who has committed a certain category of crime without repealing the norms of the criminal law establishing criminal liability for certain crimes. .

In accordance with the Regulation "On the procedure for pardoning in the Republic of Uzbekistan", approved by the Decree of the President of the Republic of Uzbekistan dated May 8, 2018 No. PF-5439, pardon is carried out individually for a particular convict .

It is natural that the application of amnesty or pardon does not mean that a person is innocent of a crime, but that such persons are not rehabilitated solely from the point of view of release from criminal liability or punishment from a humanitarian point of view;

- 1) Death of the accused, defendant;
- 2) The adoption of a law abolishing the criminality of the act.

It is known that according to Article 13 of the Criminal Code, a law repealing a crime, mitigating punishment or otherwise improving a person's condition has retroactive effect, ie it applies to persons who have committed a relevant crime before the law enters into force, including those who are serving or have already served. , if they are still considered convicted.

According to Article 3 of the CPC, criminal proceedings, inquiries, preliminary investigations and trials are conducted in accordance with the legislation in force at the time. That is, there is a conflict between the Criminal Code and the Code of Criminal Procedure on this issue.

Decriminalization does not mean that the state is to blame for the fact that in a particular historical period, social relations are protected by criminal law.

However, there are two different approaches to this issue. For example, OA Korneev expressed the opinion that citizens who have suffered as a result of excessive criminalization of acts by the state without the basis of legal principles can be rehabilitated after the promulgation of a law decriminalizing the act and decriminalization of punishment. .

N.E. Shumilo, while considering the expansion of the basis of rehabilitation, stressed that a person has the right to rehabilitation if the criminal case is not terminated in time after the expiration of the term of criminal liability or the entry into force of the law repealing the criminality of the act.

The Plenum of the Supreme Court of the Russian Federation gave a similar explanation.

- 1) According to Article 37 of the Criminal Procedure Code of Kazakhstan, the adoption of a law abolishing criminal liability for an act committed on other grounds is set as a basis for rehabilitation.
- 2) However, in our view, there is no basis for recognizing and rehabilitating a person as an unjustified criminal prosecution because the criminal law in force at the time the person was prosecuted and convicted was the basis, and all the elements of the crime were present at the time of the decision.
- 3) However, once a law repealing the criminality of an act has entered into force, the prosecution and conviction of a person will automatically reveal his or her right to rehabilitation.
- 4) the person has not reached the age when he / she can be prosecuted at the time of committing a socially dangerous act (due to lag in menstrual development).

It is known that a juvenile cannot be a subject of a crime and must be found not guilty under Article 83 § 2 of the CPC. However, in such a case, no criminal case will be instituted against him and he will not be prosecuted. This issue concerns minors whose mental development is retarded as a result of psychological and psychiatric examination, even though they have reached the age of majority, and they may be subject to procedural coercive measures and be prosecuted until the expert opinion is obtained.

For example, a juvenile intentionally killed a person, but was prosecuted under Article 83 § 2 of the CPC because he was mentally retarded

or had not reached the age of criminal responsibility. It is natural that a juvenile may not be the subject of a crime because he or she is not yet fully accountable for his or her actions, or because he or she has committed an act prohibited by criminal law, but it does not make sense to rehabilitate him or her. Otherwise, he will have to use all the rights of the rehabilitated person to compensate for the property damage. Therefore, recognizing him as a rehabilitated person contradicts the general principles of justice.

An apology from the state to an eleven-year-old or seventeen-year-old murderer, or a thirteen-year-old robber, and compensation for the damage done to him goes beyond the formula of justice and runs counter to common sense.

However, I. Petrukhin's opinion on the recognition of the juvenile's right to compensation for the damage caused to him as a result of the application of coercive procedural measures (detention, arrest) was applied only in cases where the investigating authority applied procedural coercive measures knowing that he was a minor can be found to be reasonable without .

- 5) Exemption from liability in connection with the act or loss of social danger of the person.
- 6) Some scholars have argued that in cases of private prosecution, the private procurator should compensate for the material and other damage caused in the rehabilitation procedure. However, if a private prosecutor knowingly gives false information about a crime, he will be prosecuted under Article 237 of the Criminal Code,

and if he knowingly gives false testimony, he will be prosecuted under Article 238 of the Criminal Code, in which case the victim may be compensated. Giving the victim the right to support a private accusation does not make the person a responsible official with the authority to prosecute, convict, and impose a sentence on behalf of the state, so the state must be held accountable for the violation of a person's rights even if the accusation is supported by a private accuser.

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