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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, мүлкітік 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 причинён человеку и гражданину в результате осуществления неправомерного уголовного преследования, должен быть возмещён государством в полном объёме, 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, осуществлённых 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](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](http://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

undergone prosecution, being innocent. The right to rehabilitation comprises the right to compensation for property (tangible) damage, elimination of the effects of moral harm and restoration of other (labor, pension, etc.) rights.

The provisions of the Constitution of the Republic of Kazakhstan and the Criminal Procedural Code of the Republic of Kazakhstan are based on the generally recognized principles and norms of international law formulated within a range of the most important international documents, among which a special impact to the domestic legislation has been provided by such international legal acts as the UN Charter; Universal Declaration of Human Rights 1948; Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (<http://www.echr.ru/documents/doc/2540800/2540800.htm>); International Covenant on Civil and Political Rights of 1966. ([http://www.un.org/ru/documents/decl\\_conv/conventions/pactpol.shtml](http://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml)); International Covenant on Economic, Social and Cultural Rights, 1966; The Helsinki Final Act of 1978 and other international legal acts of paramount importance for the establishment and development of democratic legal statehood (<http://hrlibrary.umn.edu/russian/instree/Rlist.html>).

A similar provision is presented in international legal acts (Article 9 of the International Covenant on Civil and Political Rights, Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms) (<https://legalquest.ru/ugolovnyj-process/reabilitaciya-osnovaniya-i-processualnyj-poryadok.html>).

As of today, the term «rehabilitation» itself still and within the majority of treatises is most often correlated and equated not with the restoration of legal status, lost rights or legal relationship, but with a change of status of an individual convicted during Soviet rule while mass political repression. Notwithstanding the above, today a democratic society is gradually developing and the protection of the rights of citizens, especially in such a significant sphere of society's life as the criminal law and process, is of crucial importance.

The conducted analysis of the provisions of the criminal legislation as well as the existing judicial practice (Kapinus N.I., 2001: 31) reveals the necessity and the extreme importance of the institute of rehabilitation further improvement, with a purpose of creation of an optimal procedural regime for the effective solution of the objectives of criminal justice.

Unacceptable from the supremacy of human rights standpoint is being the persistent situation

– the actions of public authorities associated with unjustified criminal prosecution or conviction are of a gross infringement on human dignity. Moreover, an individual twice becomes an object for arbitrariness – first with the harm done to him, and then during the impeding to his compensation under the recognized right to rehabilitation. An important point is the volitional nature of the appeal of the victim for compensation for harm, which shows that the only party concerned for compensation for harm caused as a result of illegal or unjustified utilization of coercive measures is the victim. The state in its turn provides the right to apply for the compensation (Sinelschikov Yu., 2002: 6). From constitutional state and civil society standpoint, this would obviously be wrong, an extremely small number of people do apply for compensation, because they perceive the claim for harm inflicted as another struggle with the state that has just illegally and unreasonably intruded into the sphere of constitutional human rights. The legal substance of the relationship associated with damages compensation caused during criminal proceedings is heterogeneous. Therefore, legal scholars are still making proposals for attributing the institution of rehabilitation to the realm of civil law regulation (Bezlepkin B.T., 1981: 19). It is extremely crucial for the definition of moral harm in both civil and criminal spheres of law to be equal and not having different interpretations (Boytsova L.V., 1994: 46). Thus, the criminal procedural law emphasizes that the harm caused to a person as a result of criminal prosecution is to be fully compensated by the state regardless of the fault of the officials, the pretrial investigation, or the court.

Prior the Code of Criminal Procedure of the Republic of Kazakhstan adoption, there were two concepts in determining the sectoral affiliation of the norms being under consideration: civil law (Yaroshenko K.B., 1982: 137) and criminal procedure (Bozh'ev, V.P., 1998: 531).

We're not going to go in detail too much with it, it's worth noting that the Criminal Procedural Code of the Republic of Kazakhstan has finally eliminated the continuously persisted issue of the sectoral affiliation of legal relations arising from compensation for harm caused by criminal prosecution. Thus, in accordance with the Code of Criminal Procedure of the Republic of Kazakhstan resolution of the issue of compensation of tangible damage to a rehabilitated person is allowed in compliance with Art. 40 of the Code of Criminal Procedure, i.e. within the criminal procedural order being fundamentally different from the civil



proceedings inherent in the resolution of property disputes. Compensation of moral harm, on the contrary, is allowed along the civil procedure.

This article, in particular, states that the harm that was caused to a human and a citizen as a result of unlawful criminal prosecution should 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.

So, nowadays rehabilitation is built on a public basis and represents a link in the overall chain of enforcement proceedings within the case, finalized in a decision on the innocence of a citizen.

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 lead to an illegitimate commencement of a criminal case pre-trial investigation, unlawful detention or an unlawful criminal charges.

Together with that, considering all the relevance of this institution, the legislator while developing the Code of Criminal Procedure of the Republic of Kazakhstan, as it was mentioned above, failed to avoid some legal errors and contradictions.

The further development of constitutional provisions is reflected in chapter 4 of art. 37 of the Criminal Procedure Code of the Republic of Kazakhstan, which defines the basis on which the rights to rehabilitation shall arise ([https://online.zakon.kz/Document/?doc\\_id=31575852](https://online.zakon.kz/Document/?doc_id=31575852)).

The law states that apart from individuals subjected to criminal prosecution, any other person to have illegally been subjected to measures of procedural coercion during criminal proceedings is also entitled to compensation for harm. Thus, it is determined that not only the accused, the suspect, the convicted person, the defendant, but also any person illegally subjected to measures of criminal procedural coercion in the course of criminal investigations can claim for the right to compensation.

However, the law does not specify exactly in respect of whom and what kind of illegal or unreasonable measures should entail rehabilitation. For example, would the right to compensation for damage emerge for a relative of the accused who endured a search in an own domicile, during which some possessions took some damage, citizens who were subjected to a forced examination, search,

forensic examination, seizure? Apparently, no: these cases are not related to the category of innocence, and, consequently, to the institution of rehabilitation in the criminal process (Kovalenko A.G., 2003: 251).

And it would seem that all the necessary legal conditions for rehabilitation have been created. But in fact, and as confirmed by the judicial-investigative practice, this is completely insufficient. Within such circumstances the norms and principles of international law should be taken into account

The research on judicial practice has shown that the facts of unfounded condemnation of citizens were still present in courts activities. In some cases, the courts issued verdicts for conviction in defiance to the presence of the circumstances provided for by law, eliminating further criminal prosecution.

So in accordance with the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan dated July 9, 1999 No. 7 «On the practice of applying the legislation on compensation for harm caused by illegal actions of the bodies conducting the criminal process» (amended up to 31.03.2017) stated that when making a decision on rehabilitation, as well as another decision, entailing the right to compensation for harm, the courts in the procedural documents would not proclaim the recognition of such a right to them and would not explain the procedure for compensation harm.

When considering claims and lawsuits for compensation for harm, the courts did not always correctly apply the norms of criminal procedure law, establishing the grounds and procedure for compensation of harm caused as a result of illegal actions of the bodies conducting the criminal process.

«Judicial control at the stage of preliminary investigation over the legality and validity of decisions and actions of the criminal prosecution bodies that restricting the constitutional rights and freedoms of citizens has as its substance the prevention of possible mistakes of the preliminary investigation bodies and the correction of violations already committed (unreasonable accusation and conviction from unlawful restriction of rights and freedoms of a human and a citizen, in cases of unlawful accusation or conviction of an innocent person – immediate and full rehabilitation)» (<https://articlekz.com/article/14783>).

Thus, this is to draw the attention of the criminal prosecution authorities and the courts to the fact of unreasonable criminal prosecution, unlawful use of measures of procedural coercion, unfounded conviction are gross violations of the lawfulness,

resulting in serious damage to the legal rights and interests of a human and citizen, legal entities, tangible damage and moral damage is being done to them and the state itself.

This is to make it plain that as the illegal actions of the bodies leading the criminal process should be recognized:

– conducting of criminal prosecution in the absence of a complaint from a private prosecutor in cases for criminal offenses listed in the second and third parts of Article 32 of the Criminal Procedure Code of the Republic of Kazakhstan, except for the cases specified in part four of this article;

– exercising the criminal prosecution if there is in the case a non-waived ruling of the criminal prosecution authorities to dismiss the criminal case, as well as a valid sentence on the same charge against the same person or a court ruling establishing the impossibility of criminal prosecution.

The status of individuals detained as suspects and placed in isolation, to the extent of restrictions applied to them, infringement undergone, in this connection, and according to their legal regime, is considered to be identical to the status of individuals to have been selected custody for as a preventive measure.

Hence, the damage that was brought by the illegal actions of prosecutors, the preliminary investigation, the court and the bodies of inquiry should be reimbursed at the expense of the state to the fullest extent and regardless of the guilt of these officers and not only in the cases that are directly listed in Civil Code of the Republic of Kazakhstan, but also in cases where the harm was caused to a person as a result of the unlawful application of detention as a measure of procedural coercion.

Therefore, the Civil Code of the Republic of Kazakhstan, in its constitutional and legal meaning, it is said that the harm inflicted on a citizen not only as a result of the unlawful use of house arrest, taking into custody, unlawful persecution, unlawful conviction, unlawful imposition of an administrative penalty in the form of correctional work, as a preventive measure, but also as a result of the unlawful detainment under suspicion, is refundable at State full expense to exhaustive level and volume, regardless of the guilt of the staff of the court, pre-trial investigation and prosecution.

Judicial practice says that particular difficulties with the realization of the right to rehabilitation happen when the criminal case was discontinued due the fact a new law was adopted, which was aimed at eliminating crime itself or the punishability of the act.

Analyzing the work of the current legislation, as well as the practice of its utilization when dealing with issues related to rehabilitation, we can attest to the fact that the order followed by the procedure for compensation for moral harm, reflected in the Code of Criminal Procedure of the Republic of Kazakhstan, requires changes and amendments. In cases when the damage that was caused to a person (citizen) as a result of illegal actions of the prosecutor, investigator, court or inquirer, guided by the Civil Code of the Republic of Kazakhstan ([https://online.zakon.kz/Document/?doc\\_id=1006061](https://online.zakon.kz/Document/?doc_id=1006061)), this damage must be compensated in full at the expense of the state. And this compensation must be exercised regardless of the fault of the officials. And since, according to the provisions, the investigator and the investigator are entitled to determine the amount of tangible damage inflicted and produce a ruling act on making payments of compensation for this harm, then it would be legitimate to legally establish the amount of moral harm payments in monetary terms.

At the same time, a claim for compensation for inflicted moral damage presented in monetary terms, filed in civil proceedings, cannot be considered as an act of restoring the dignity of the individual, since the lawsuit, by its legal sense, implies a legal dispute between the defendant and the plaintiff. In the case we are considering, the dispute should not be the case, since the party acting as the defendant, and it is the state, by issuing an acquittal sentence (ruling, decision) by officials, already officially admits that as a result of unreasonable and illegal decisions and actions, the person ( citizen) was brought harm to and, in connection with this, such individual has the right to rehabilitation, including actions to eliminate the consequences of causing moral harm.

Apart from that, a person (citizen) who has received the right to rehabilitation should be sent a notice to, in which he/she should be explained the procedure for compensation for the damage caused resulted due unlawful criminal prosecution. All this, in the framework of rehabilitation, eliminates the need for litigation on claims related to compensation for moral damage.

The elements of the rehabilitation mechanism should be, on the one hand, the abolition of an unlawful and unreasonable decision and recognition of the right to rehabilitation, and on the other, the elimination of the consequences caused by an unlawful decision. Compensation must be comprehensive and concern property, moral harm, other violated rights and legitimate interests of a person.

Legal relationship attributed to the realization of the right to rehabilitation are also regulated by the Civil Code of the Republic of Kazakhstan, as well as other normative acts.

A person having, in accordance with the Code of Criminal Procedure, the right to compensation for harm caused to him in connection with unlawful or unreasonable criminal prosecution is considered to be rehabilitated. Such right is given to: the acquitted – in all cases; the suspect, the accused, the defendant, the convicted person, as well as the person to whom coercive measures of a medical treatment have been applied.

According to Art. 37 of the Code of Criminal Procedure, the basis for the right to rehabilitation to emerge is the conduction of illegal or unjustified criminal prosecution.

Based on the definition of criminal prosecution, the basis for the right to rehabilitation, including compensation is deemed to be any actions and decisions taken by the prosecution side aimed at exposing the offense of the person put in the procedural position of the suspect and the accused (that is, the prosecutor, the investigator, the head of the investigative department, the inquirer, the private prosecutor, the victim and his representative, the plaintiff and his representative).

The basis for the right to rehabilitation is the unlawful or unjustified conviction or use of coercive medical measures.

The basis for the emergence of the right to compensation (but not the right to rehabilitation) is also the unlawful use of measures of procedural coercion against any person (detention of the suspect, preventive measures, other measures of procedural coercion) during the entire criminal proceedings.

An important element of the mechanism of rehabilitation of a victim of criminal prosecution is the official recognition of his right to rehabilitation, which is carried out if there are grounds and conditions contained in the sentence, court ruling, court order or in the decision of the prosecutor, investigator, investigator.

In accordance with the Code of Criminal Procedure of the Republic of Kazakhstan, the right to compensation for damage caused as a result of the relevant illegal actions of the body conducting the criminal process have:

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

2) individuals, whose criminal case was to be terminated on the basis provided for in paragraph 5) of Part One of Article 35 of the Code of Criminal

Procedure of the Republic of Kazakhstan, if despite the absence of circumstances provided in paragraph four of Article 32 of Code of Criminal Procedure of the Republic of Kazakhstan, the pre-trial investigation was not terminated from the moment of revealing of the circumstances eliminating the criminal prosecution;

3) persons whose criminal proceedings were to be terminated on the grounds provided for in paragraphs 3) and 4) of the first part of Article 35 of the Code of Criminal Procedure of the Republic of Kazakhstan, but were not terminated from the moment the circumstances precluding criminal prosecution were identified, and the criminal prosecution continued unlawfully despite the consent of such persons to the termination of the criminal case;

4) convicted to arrest, deprivation of freedom, detained or held in custody in cases of the offense qualification change by the article of the Criminal Code of the Republic of Kazakhstan, providing for responsibility for a less serious criminal offense, during the stages of suspecting or accusing under the Code provisions it is not applicable to detain or holding in custody or the new, milder punishment is imposed, or exclusion from the sentence of a part of the criminal charges and a reduction of the punishment as a result, as well as in the case of cancellation of unlawful judicial decision for the application of coercive medical measures or compulsory educational measures. The actually served term of arrest or deprivation of freedom is considered to be served illegally in that part in which it exceeds the maximum term of punishment in the form of arrest or freedom deprivation, provided for by the article of the Criminal Code of the Republic of Kazakhstan, according to which the offense was newly qualified;

5) a person to have been detained in excess of the prescribed term without a legal basis, as well as illegally subjected to any other measures of procedural coercion in the course of criminal proceedings;

6) a person in respect of whom the secret investigative actions were carried out, subsequently recognized as unlawful in court.

Recognition of the right to rehabilitation has the official essence and is one of the fundamental beginning of criminal proceedings – the publicity of the criminal process. Recognition of the right to rehabilitation is the state obligation, exercised by authorized officials, which is carried out in a procedural document that completes the pre-trial investigation or trial in respect of a certain

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 expressly 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 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-protseste-teoriya-i-praktika-realizatsii-po-materialam-re>).

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