

THE ROLE OF THE INSTITUTE OF REHABILITATION IN THE CRIMINAL PROCEDURE

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ANNOTATION. The article is prepared to highlight the history of the institute of rehabilitation, stages of development, definitions of the concept of rehabilitation by scientists, its legal basis and the need for improving this institution in criminal procedure legislation. The process of application of the institute of rehabilitation, its role in the life of society and the judicial system is described in the criminal procedure legislation of the Republic of Uzbekistan and the experience of foreign countries. International and national legislation, legal literature are examined in the article. A comparative analysis is given to the definitions of the concept of rehabilitation. Scientific and legal doctrinal proposals to supplement this concept in a broad sense are provided.

Keywords: Rehabilitation, person, rights and freedoms, investigation, court, illegal, recovery.

In recent years, many reforms have been carried out in the judicial and legal systems of the country. The main goal of the reforms in this sphere is to build a democratic state governed by the rule of law, to build a strong civil society, to ensure full compliance with the law, to increase the responsibility of law enforcement agencies, to prevent crime, to fight it, to investigate crimes, clear and uniform application of the law to all, thereby ensuring the rights and freedoms, legitimate interests and constitutional rights of citizens, to create conditions for a prosperous life for everyone living in the country.

In his address to the Oliy Majlis on January 24, 2020, Shavkat Mirziyoyev touched upon the activities being carried out in the judicial system. Several instructions have been given to implement the tasks, improve the access of citizens to justice, improve the quality of court proceedings and expand the mechanisms to ensure equality and adversarial nature of the parties to make fair and lawful

judicial decisions. Several laws and other normative documents on their implementation were signed.

When it comes to the violated rights and freedoms, the trampled honor and dignity, the lost reputation, it is impossible not to dwell on the institution of rehabilitation. Because this institution serves to fully ensure the rights and freedoms of citizens in practice, to recover from the state all kinds of damage caused by illegal actions, to fully restore the previous status of the individual.

The concept of “rehabilitation” has become an integral part of the judicial system and social life. This concept was first used in the normative legal acts aimed at perpetuating the memory of the victims of the repressions of 1930-1940 and restoring their honor and dignity¹.

This concept is reflected in the legal documents dedicated to the restoration of the legal and moral status of peoples and individual citizens who were forcibly relocated to remote areas of the former USSR. At present, the Plenum, the Presidium and the Judicial Board for Criminal Cases of the Supreme Court of the Republic of Uzbekistan define the concepts of “rehabilitated person”, “basics of rehabilitation”, “to be rehabilitated” in their decisions, verdicts and rulings.

As for the essence of the concept of “rehabilitation”, as this concept is not clearly defined in the current legislation, the legal literature has not yet formed a single concept for this term. In the National Encyclopedia of Uzbekistan, “rehabilitation” (lat. *rehabilitatio* – restoration) is defined by law enforcement agencies as the restoration² of the honor and dignity of a person who is unreasonably suspected or accused of committing a crime, while in some legal literature it is described as restoration.³

¹ Repressive policy of the Soviet state in Uzbekistan: causes of origin and tragic consequences. A collection of scientific articles. Tashkent, - 2012. - P. 86.

² National Encyclopedia of Uzbekistan. V.6. Editorial Board: A. Abduvokhitov, A. Azizkhoyayev, M. Aminov, T. Daminov and others. – T., 2004 - 704 p.

³ Criminal Procedure: General Part. Study guide in 2 parts. Part II / Compiled by U.A. Tukhtasheva. – T., 2007. – 513 p.; Orlova M.V. Institute for Rehabilitation in Criminal Procedure: Abstract. dis ... cand. jurid. sciences. – Moscow, 2006. – 27 p.; P.P. Rukavishnikov. Towards the concept of rehabilitation in the criminal process of Russia // Bulletin of the Saint Petersburg University of the Ministry of Internal Affairs. – 2006. – No. 3. – P.231.; A.A. Orlova. On the issue of the concept of rehabilitation in the Russian criminal process // Modern law. – 2008. – No. 5. – P.81-82.

The Uzbek explanatory dictionary defines the word “rehabilitation” as “the restoration of the clean name, honor and dignity of a person unreasonably suspected or accused of a crime by law enforcement agencies”.⁴

It is noteworthy that this concept is interpreted differently in foreign law. In particular, Article 5, paragraph 34 of the Criminal Procedure Code of the Russian Federation states that “rehabilitation – the procedure for the reinstatement of the person, who has been unlawfully or groundlessly subjected to the criminal prosecution, in his rights and freedoms, and for the compensation of the harm done to him”⁵.

According to the second part of paragraph 5 of the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan of September 18, 2015, No. 13 “On judicial practice for the application of the legislation on termination and removal of convictions”, “when a person is rehabilitated, the state recognizes that he or she was found guilty by mistake”⁶. In our opinion, this definition does not fully cover the essence of rehabilitation. The reason is that after the rehabilitation of the person, all types of violated rights will be restored, as well as the scope of future actions related to the restoration of his rights should be indicated and this should be clearly and fully reflected in the given definition.

According to U.A. Tukhtasheva, “rehabilitation” is the restoration of an innocent person’s rights violated as a result of unlawful criminal prosecution, imprisonment and other restrictions and elimination of all factors that hinder future activities”⁷. However, we cannot agree to the definition given in terms of its comprehensive coverage of the concept of rehabilitation. We know that a person is rehabilitated not only during the trial, but also during the pre-trial investigation and investigative actions, which is also reflected in our legislation. The above

⁴ Explanatory dictionary of the Uzbek language. – Tashkent: National Encyclopedia of Uzbekistan State Scientific Publishing House, – P. 364.

⁵ Criminal Procedure Code of the Russian Federation. // URL:<http://www.consultant.ru/>

⁶ Paragraph 16 of the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan of October 11, 2017, No. 35 “On judicial practice in cases of fraud”. // URL: <http://www.lex.uz>.

⁷ Tukhtasheva U.A. Criminal Procedure: General Part. Study guide in 2 parts. Part II / Author-compiler – T., 2007. – 513 p.

definition implies that rehabilitation can be applied only in cases involving the prosecution of a person, the imposition of a penalty on him.

Commenting on the concept, N.E. Shalumova noted that “procedural and organizational activities aimed at restoration of violated rights and freedoms of persons involved in criminal proceedings of law enforcement and judicial bodies based on the application of a person without grounds or in violation of the law and compensating for property and moral damage caused to them, using the guarantees provided by law”. Of course, the above definition highlights one or another aspect of the basics of rehabilitation. However, in this definition, the consideration of the issue of rehabilitation of a person whose rights have been violated by a competent official depends not on his obligation but his will, and it seems that his application can be considered only if the person applies for restoration of the violated rights. But we must not forget that an authorized person is obliged to apply it when there are sufficient grounds for rehabilitation against all persons whose rights have been violated as a result of any decision taken illegally.

In turn, B.B. Murodov defined the concept of rehabilitation based on the requirements of Criminal Procedure Law as follows “Rehabilitation is a procedural activity aimed at the acquittal of a suspect, accused, defendant and convict by a court acquittal in accordance with the procedure established by law or refusal to institute criminal proceedings against them under Article 83 of the Criminal Procedure Code or termination of the case, as well as illegal involvement in investigative actions, application of coercive procedural measures, prosecution and recovery of all types of damages caused by other illegal actions at the expense of the state and a complete restoration of the person’s previous position”⁸. Indeed, rehabilitation can be applied not only to persons found guilty by a court verdict, but also to suspects and defendants in a case with a decision to refuse to initiate or terminate a criminal case. This definition is about the convict. We know that a convicted person is a person who has been found guilty by a court and sentenced.

⁸ Murodov B.B. Improving the institute of termination of criminal proceedings: Diss. ... doctor of juridical science. – Tashkent: Academy of the Ministry of Internal Affairs, 2018 – 83 p.

Therefore, the phrase “sentencing” should be included in the definition. Because prosecution and sentencing are different in criminal procedural law. In addition, the pre-trial phase of the case is divided into pre-investigation and preliminary investigation stages. Taking into account that a person can be rehabilitated at any stage of the case, and the decision made by the official will vary depending on the stage at which the person is rehabilitated, all of the above definitions should be completed as follows: “Rehabilitation is a procedural activity aimed at declaring the suspect, accused, defendant and convict not guilty by a court acquittal in accordance with the procedure established by law, refusal to institute criminal proceedings on the grounds specified in Article 83 of the Criminal Procedure Code during the pre-trial investigation or termination of criminal proceedings in the preliminary investigation, as well as unlawful pre-trial investigation, preliminary investigation and prosecution, punishment, application of procedural coercive measures and recovery of all types of damages caused by other illegal actions at the expense of the state, and complete restoration of the person’s previous position”.

In conclusion, it can be said that if the legal purpose of rehabilitation is the restoration of violated natural, political, constitutional, economic, civil and other rights of the citizen, recovery of all types of damages caused to a citizen by authorized persons as a result of illegal actions at the expense of the state, and complete restoration of the person’s previous position, its moral purpose is to eliminate the improper stain on the life of an innocent citizen, restore his/her reputation in society. Its political function is to restore the lost trust between the citizen and the state.