



Analysis of the bases for rehabilitation of innocent persons in the criminal process

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ABSTRACT

This article reveals the application of the basics of rehabilitation in the criminal procedure, the correct interpretation of their essence by practical staff and, most importantly, the differences between these bases by revealing the essence of the basics of rehabilitation based on the analysis of existing regulations and judicial-investigation activities, as well as developed proposals and recommendations to improve the procedural order of acquittal of innocent persons and restoration of their violated rights are made.

The article also focuses on finding solutions, taking into account that judicial-investigation staff make various mistakes in distinguishing and applying the basics of rehabilitation in their activities, and that the theory of criminal procedural law is still controversial issue in this regard.

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Жиноят процессида айбсиз шахсларни реабилитация этиш асосларининг таҳлили

АННОТАЦИЯ

Мақолада амалдаги норматив-ҳуқуқий ҳужжатлар ва суд-тергов фаолиятининг таҳлили асосида реабилитация асосларининг моҳиятини очиқ бериш йўли билан жиноят-процессуал муносабатларда реабилитация этиш асосларининг қўлланилиши, амалиёт ходимлари томонидан уларнинг моҳиятини тўғри талқин этилиши ва

Калит сўзлар:

Реабилитация
Айбсиз шахс
Жиноят ишини тугатиш
Айблов
Жиноий ҳодисаси
Жиноят таркиби.

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энг муҳими мазкур асосларнинг бир-биридан фарқи томонлари чуқур тадқиқ этилиб, айбсиз шахсларни оқлаш ва уларнинг бузилган ҳуқуқларини қайта тиклашнинг процессуал тартибини такомиллаштириш бўйича таклиф ва тавсияларни ишлаб чиқилган.

Шунингдек, суд-тергов органлари ходимлари ўз фаолиятида реабилитация қилиш асосларини бир-биридан фарқлаш ва қўллашда турли хатоликларга йўл қўяётганлиги, қолаверса ушбу масалада жиноят-процессуал ҳуқуқи назариясида ҳамон тортишувлар давом этаётганлигини ҳисобга олиб, мақолада асосий эътибор уларнинг ечимини топишга қаратилган.

Анализ основ реабилитации невиновных лиц в уголовном процессе

Ключевые слова:

Реабилитация
Невиновный Прекращение
уголовного дела
Обвинительное
заключение
Уголовный инцидент,
Состав преступления.

АННОТАЦИЯ

В статье исследуется применение оснований реабилитации в уголовном процессе, правильное её толкование практикующими специалистами и, самое главное, различия между этими основаниями, раскрывается сущность оснований реабилитации через призму анализа действующих нормативных актов и судебной деятельности. Разработаны предложения и рекомендации по совершенствованию процессуального порядка оправдания невиновных лиц и восстановления их нарушенных прав.

Кроме того, акцентируется внимание на поиске решений, с учетом того, что судебные исполнители допускают различные виды ошибок при дифференциации и применении оснований реабилитации в своей работе, и соответственно современная теория уголовного процесса вызывает некоторые противоречия в данной сфере.

INTRODUCTION

The institution of criminal termination has played an important role in the rapid and complete detection of crimes in the world, as well as in investigation of the criminal who committed crime, the compensation of property damage to the victim and the prosecution and rehabilitation of the innocent. At the same time, the analysis of the activities of judicial-investigation organ reveals the acquittal of defendants involved in criminal procedure, the acquittal of those who have gone astray and those who have repented of their crimes, and the torture of persons in judicial procedure has become an objective necessity for the termination of the practice of discriminatory, cruelty, inhumanity or degradation treatment.

Article 11 of the Universal Declaration of Human Rights states that: "Everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense"[25]. No one shall be held guilty of any penal offense on account of any act

or omission which did not constitute a penal offense, in accordance with the national or international law, at the time when it was committed.

It is also guaranteed that not any serious punishment may be imposed than the punishment that may be used at the time of the crime committing. Ensuring the non-prosecution of innocent persons in the criminal-procedural terms serves to improve the legal mechanisms for compensation of damages to legal and physical persons (individuals) as a result of crime, the accurate and timely application of the basics of rehabilitation and the complete provision of abovementioned guarantees.

RESULTS AND ITS DISCUSSION

Article 83 of the Criminal Procedural Code of the Republic of Uzbekistan sets out the grounds for rehabilitation, which serve to restore the violated rights of innocent persons in the criminal procedure. It should be noted that, in contrast to other countries, the criminal procedural legislation of the Republic of Uzbekistan separates the basics for rehabilitation from other grounds for termination of a criminal case and sets out a separate norm [1].

It should be highlighted that in the last three years special attention is paid to rehabilitation of person as a result of the extensive sustainable reforms in the sphere of judicial-law in our country [2]. For instance, the abolition of the institution of additional investigation by the court [3] served to increase dramatically to reach the verdict of acquittal and termination of the criminal procedure by implementation of completing mechanisms of incompleteness of the investigation in the process of Court discussion in the current CPC.

In particular, 7 people were released on parole in 2012-2016, [4], and this amount was 1989 in 2017-2018, and by 2019, the number of released persons is decreased to 859 [5]. Such an indicator can also be seen with the example of cases terminated under Article 83 of the CPC. However, in 2016, the decision to dismiss a criminal case on the grounds of acquittal or rehabilitation, or acquittal, was a very rare occurrence in the activities of the judiciary-investigation organs.

However, the analysis of judiciary and investigation activities shows that there is no single practice for the correct interpretation of the essence of the basics of rehabilitation mentioned in the Article 83 of the CPC and their differentiation.

Chapter 37 of the CPC, entitled “Fundamentals and consequences of rehabilitation” and the Plenum of the Supreme Court “On Judicial practice in the application of the Law on compensation for property damage as a result of crime” are closely connected to this issue [6]. However, these normative legal acts do not completely illustrate the essence of the basics of rehabilitation, the issues of their proper application, and the different aspects of the grounds for “termination of a criminal case” and “termination of an prosecution” and their differentiation.

It is noteworthy that the research carried out in our country on this topical issue also focuses on the restoration of violated rights of innocent persons and the compensation for damages, thus they do not reveal the essence of the basics of rehabilitation and their modifications [7,8,9,10]. This, in turn, makes a series of misunderstandings in the application of the principles of rehabilitation in the activities of judiciary-investigation authorities.

Particularly, the analysis of the judiciary-investigation practice shows that the circumstances in case of termination of prosecution thoroughly terminate the criminal case or the application of second paragraph of the Article 83 of the CPC instead of the first paragraph of this article.

To our viewpoint, the occurrence of such misapplication of the law can only be attributed to the fact that the grounds for rehabilitation, such as «no criminal offense», «no criminal act» and «no involvement in the crime», are reflected in the Article 83 of the CPC. This can be explained by the fact that it is not sufficiently covered in the theory of criminal-procedural law, but also in the current normative legal acts. Based on the analysis of the existing views in the criminal-procedural theory, it is possible to refuse or terminate the initiation of the criminal process in accordance with the paragraph 1 of the Article 83 of the CPC (in case of absence of criminal case):

the objective absence of the criminal case that led to the initiation of the criminal procedure, namely, the absence of the incident at all [11] (for example, the allegedly stolen item of the victim has been found from his own house, namely, the crime has not been committed in practice, etc.);

the incident has been occurred but did not occur as a result of the person's criminal conduct [12, 13] (for example, a fire caused by a natural disaster burns the organization's warehouse and causes extensive property damage. It can also be seen in other types of natural disasters);

the accident has been occurred but it was caused by the victim himself / herself [14, 15] (for example, suicide, traffic accidents involving the victim's death due to carelessness of the victim, etc.)

The above-mentioned circumstances are also reflected in the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan «On the verdict of the courts». According to it, the verdict of acquittal is reached in the absence of defendant (Article 83 paragraph 1 of the CPC) regardless of whether the act allegedly committed by the suspect not to be committed by him or by the victim or whose will, to be removed if it occurs as a result of the force of nature [16].

The decision of the Plenum of the Supreme Court also states that the act may be acquitted in the following cases:

if there are signs of an act that is considered a crime, but is not socially dangerous due to its insignificance (Article 36 of the CC);

if the act is committed in case of necessary defence or last resort (Articles 37, 38 of the CC);

if the act is committed by the defendant, but is not regarded as a crime under criminal law: or the damage is caused at the time of arrest of the person who committed socially dangerous act (Article 39 of the CC), execution of an order or other duty (Article 40 of the CC), professional or economic activity reasonable risk (Article 41 of the CC);

if the person is voluntarily returned from the crime (Article 26 of the CC), [16].

In addition, not only the local but also foreign scholars note that when an exception is found in a crime, the criminal case should be terminated on the grounds that there is no criminal element in the act [17].

Also, paragraph 6 of the 23rd Resolution of the Plenum of the Supreme Court dated on December 12, 2008 "On the application of compulsory medical measures against persons with mental illness" mentions that: "..... medical coercion against a person who has

committed a socially dangerous act in a state of insanity... when measures are imposed, the criminal case is terminated due to the absence of an element that is part of the criminal record – the subject (Article 83, paragraph 2 of the CPC) [18].

In our opinion, the views of the above scholars and their explanations with the decisions of the Plenum of the Supreme Court on the circumstances in which the criminal case should be terminated in accordance with the paragraph 2 of the Article 83 of the CPC are inconsistent. This is because there is practically no “criminal case” in a socially dangerous act committed by a person with mental illness, nor in cases that exclude the criminality of the act specified in the Article 35 of the Criminal Code.

In order to terminate the criminal case, according to the second paragraph of the Article 83 of the CPC, it is demanded that the crime is committed, however there is not any criminal elements in involved person`s act. Therefore, the legislative norm clearly stated in the second paragraph of the Article 83 that “in case of the absence of criminal elements in his act”.

In addition, paragraph 18 of the decision of the Plenum of the Supreme Court “On the application of compulsory medical measures against persons with mental illness” states that “if the law provides that criminal liability arises after the imposition of an administrative penalty, medical coercive measures shall not be applied unless the person found has previously been held administratively liable for the same act. Such a case must be terminated as there is no criminal record [16].

This is in accordance with Article 83 paragraph 1 of the CPC, which excludes the commission of a socially dangerous act committed by a person with mental illness and the criminality of the act specified in Article 35 of the Criminal Code. It indicates that the most appropriate way is to refuse to prosecute or to decide to terminate the case.

In order to clarify the issue, we were interested in how practitioners know the difference between paragraphs 1 and 2 of the Article 83 of the CPC and how accurately and precisely they can apply these principles in their activity. In the questionnaire, they were asked the following question: “According to the Article 173 of the Criminal Code (intentional destruction or damage to property), a criminal case was initiated on the fact that the house of a person named S. (conventionally chosen name, subject) was set on fire and a large amount of damage was caused to him. Citizen T. (conventionally chosen name, subject) threatened to burn down S.`s house, also involved as a suspect in accordance with the testimony of witnesses. However, during the investigation, it is investigated that the fire was caused by the negligence of S.`s wife R. (conventionally chosen name, subject) and this led to the burning of the house. In this case, the investigator terminated the criminal case on the basis of the paragraph 1, Article 83 of the CPC, namely, on the grounds that no criminal act had been committed. However, the prosecutor considered these actions to be incorrect and stressed that in this case the case should be terminated due to the absence of Article 83 paragraph 2 of the CPC, i.e. no criminal content. Who is right, in this case - the investigator or the prosecutor? Thirty-three percent of those surveyed said the investigator`s decision was correct, while 62 percent said the prosecutor`s decision was correct. It turns out that law enforcement officers have different approaches to the issue.

In our opinion, in order to realize the difference between the grounds provided for in paragraphs 1 and 2 of the Article 83 of the CPC, we must first understand the essence of the grounds “criminal incident” and “absence of criminal content in the act”.

“Event” is a philosophical category in which the appearance of an object in some way is a form of external existence. “Incident” is a much broader concept than the criminal accident. An event can occur as a result of both natural forces (e.g., natural disasters) and human action at the same time. Hence, “incident” also includes the concept of “criminal accident”. Action, on the other hand, is one of the ways in which an event occurs and is directly related to a person’s actions.

It turns out that the crime scene is somewhat broader in its content than the crime scene. That is, it is impossible for a crime to exist on its own if the crime had not occurred. As noted above, the legislature in this case was referring not only to the incident, but to the crime itself. This means that in any case where an incident has taken place but no signs of a crime have been identified, the criminal case must be terminated on the grounds that “no criminal incident has taken place”. This is because the ground set forth in the second paragraph of Article 83 of the CPC provided that there was no “criminal content in the act of a person” and not in the incident.

This requires a proper assessment of the terms “incident” and “act” in order to correctly distinguish between the grounds “if no criminal act has taken place” and “if the act of the person has no criminal content”.

Due to the lack of criminal content, termination of a criminal case is one of the most common grounds used by investigative organs, and in 2019, cases terminated on this basis accounted for almost 80% of cases terminated under Article 83 of the CPC [21].

The grounds for the absence of criminal elements in the actions of a person apply in the action that the incident led to the initiation of criminal proceedings occurred in practice, but it was considered that the actions of the person involved did not show signs of a crime [22]. We know from the science of criminal law that in order to find an act as a crime, it is necessary to have all the elements of the crime - the object, the objective side, the subject and the subjective side. The absence of any of the elements listed in the act of the person involved in the criminal case indicates that the act should not constitute a crime [23].

Although the content is repetitive, we will try to express our opinion more clearly by the following example: if there is no signs of a crime in the incident, we must terminate the criminal case on the grounds that “no criminal incident has occurred”. We can see this in two cases: first, if the incident that led to the criminal case was not committed at all; the second is that the incident took place, but there are no signs of a crime. This may include any act that is not recognized as a crime under criminal law. For example: cases that exclude a crime, voluntary return, commission of a socially dangerous act by a mentally ill person, etc.

Indeed, in such situation a natural question arises, in which case is it possible to terminate a criminal case on the grounds that “the act of the person does not constitute a crime”? In our opinion, the basis of “if the act of a person does not contain a criminal element” should serve as a basis for the termination of the criminal case (part of the criminal case) only in the context of the criminal case, and not in its content.

It should be noted that in this case, the legislator did not mean the whole incident, but the actions of the person involved in the case. For example, it was found that the actions of two of the three persons suspected of committing the crime of theft (criminal incident) did not constitute a crime. In this case, we will be able to terminate the criminal case not

in full, but only in the part of the person whose actions (deeds) do not contain the content of the crime.

In our opinion, it is very likely that most procedural scholars and staff with many years of rich practical experience will not agree with our interpretation on the basis that “there is no criminal element in an individual’s actions”. This is because the examples we have given to explain the essence of the grounds provided for in the Article 83, paragraph 2 of the CPC are considered by them to be based on the grounds that the termination of a criminal case is “not related to the crime committed”.

Taking into account these factors, let’s have a closer sight at the content of the principle “a person is not involved in a crime”.

To date, the work completed on this basis in Uzbekistan accounts for an average of 2% of the total work completed on the basis of rehabilitation [21]. Given the very low performance of the framework under research, we conducted a questionnaire survey among scientists and practitioners in order to identify the factors that hinder the application of this framework [19]. According to the analysis of the survey results, the practitioner expressed a negative attitude towards the staff on the grounds that “the person is not involved in the crime”. According to them, this situation is almost non-existent in judicial practice, and if it is established that a person involved in a criminal case is not involved in the crime, the case can be terminated on the grounds that “the person’s actions do not constitute a crime”. This is because paragraph 2 of the Article 83 of the CPC also covers the cases specified in paragraph 3 of this article.

Paragraph 9 of the decision of the Plenum of the Supreme Court “On the verdict” states that if the fact and consequences of a socially dangerous act are established, but the evidence presented and examined at the trial denies that it was committed by the defendant or does not find its confirmation, in this case it is determined that he should acquit because he is not involved. [16]

The requirements of Article 464 of the CPC also apply to the fact that the evidence gathered in the case is not considered evidence due to insufficiency or illegal acquisition, or that the crime was committed by another person. It serves as a basis for termination of a criminal case or acquittal on the grounds of absence [1].

In our opinion, in order to apply the principle of paragraph 3 of the Article 83 of the CPC, that is, “if it is irrelevant to the crime committed” the person must not have any involvement in the crime. If a person is involved in a crime, but no sufficient evidence has been gathered to prove that there is a criminal element in his act, it is appropriate to terminate the case against him on the basis of the Article 83, paragraph 2, namely, “his act does not constitute a crime”. We will try to elaborate on our point using the following example. For example, in most cases, a victim who has received bodily injuries as a result of an altercation states in his or her application that a group of individuals joined together to inflict bodily injuries on him or her. But during the investigation, a group of individuals notes that they are brothers and that he saw his brother fighting with a stranger and only tried to separate them. The evidence gathered during the criminal proceedings reveals that in this case, in fact, his brother tried to end the quarrel only by separating the parties. In this case, it is correct to terminate the criminal case against the defendant’s brother on the grounds that “his actions do not constitute a crime”. In turn, if during the quarrel, evidence (alibi) confirming that the brother was elsewhere is found, the criminal case should be terminated on the grounds that “he was not involved in the crime committed”.

It should be noted that today there are some drawbacks in the interpretation of the essence of the principles set out in the Article 83 of the CPC, not only by practitioners, but also by the organs that coordinate their activities. An example of this is the Joint Instruction of the Supreme Court No. KTB-68-13, adopted on March 5, 2013, to ensure the implementation of the Law of the Republic of Uzbekistan dated December 29, 2012 “On amendments and additions to some legislative acts of the Republic of Uzbekistan”. Paragraph 1 of the third part of this instruction stipulates that interrogation, preliminary investigation organs and court proceedings on non-criminal acts shall be terminated in accordance with the Article 83 of the CPC due to the change in the value of the amounts in Section 8 of the Criminal Code. This demand cannot be said to be justified.

Indeed, the grounds under the Article 83 of the CPC are currently the grounds for rehabilitation, and it would be logically incorrect to declare the perpetrator innocent and apply acquittal measures against him as the act is no longer criminal due to changes in the relevant amounts prescribed by law. In this case, the act committed as a result of the change in the situation loses its socially dangerous character. This requires to terminate the criminal case on the basis of the fifth part, paragraph 1, Article 84 of the CPC, denotes “at the time of the investigation or trial, the act has lost its socially dangerous nature or the person is no longer socially dangerous due to changes in circumstances”.

A natural question arises in each of us that what is the significance of such in-depth coverage of the differences between the basics of rehabilitation and their correct application in judicial practice? Article 283 of the current CPC and the decisions of the Plenum of the Supreme Court state that “in the case of acquittal on the grounds that no criminal act has been committed or the person has not been involved in the crime, the court shall refuse to satisfy the civil suit. When an acquittal is rendered on the grounds that the act committed by the defendant did not constitute a crime, the court shall, in whole or in part, satisfy or refuse to satisfy the claim, taking into account the degree and extent of the evidence” [16]. This suggests that the legal consequences arising from the application of the fundamentals of rehabilitation to the restoration of the violated rights of innocent persons are varied.

Conclusions

It is expedient to formulate the results of this research, which is devoted to a comprehensive study and in-depth analysis of the theoretical and practical aspects of the application of the basics of rehabilitation in criminal procedure:

1. An in-depth analysis of the current CPC norms with the definitions of the concept of “rehabilitation” in the theory of criminal procedure allowed the development of the following new definition: «Rehabilitation is a procedural activity aimed at recovering at the expense of the state all types of damages caused by the application, as a result of prosecution and other illegal actions, involving them in illegal investigative actions, procedural coercive measures, an acquittal should be reached or refusal to initiate criminal procedure against them under the Article 83 of the CPC, as well as the full restoration of the person’s previous position to suspects, accused, defendants and prisoners in accordance with the law.

2. It is substantiated that the institution of termination of a criminal case should be divided into rehabilitative and non-rehabilitative grounds in order to ensure the correct application of the rules of criminal procedural law and the impunity of innocent persons.

3. It is scientifically and theoretically justified to terminate a criminal case on the grounds that “a criminal case has been instituted and no criminal case has been initiated in the case under investigation or trial” in the case of exceptional circumstances on the basis of the Article 83, paragraph 1.

4. In contrast to other cases which exclude the criminality of the act, the illegal and guilty features of the crime shall be retained in the lesser act. This shows that it is not logically correct to acquit a person who has committed a “minor act” and to restore his violated rights. On the basis of these factors, we believe that it is necessary to study in depth and continue scientific research in this regard, not to exclude the criminality of the act as a “minor act”, but as a basis for exemption from liability.

5. In accordance with the Article 26 of the Constitution of the Republic of Uzbekistan and the first part of the Article 23 of the CPC, a person is presumed innocent until proven guilty by a court verdict that is come into effect. This shows that the main requirement of the principle of the presumption of innocence is that every person should not only be released from liability or punishment by a court ruling or judgment, but that no innocent person should be unjustifiably prosecuted. All of this suggests that the termination of criminal proceedings and the exemption from liability of institutions are commensurate with the principle of the presumption of innocence.

6. The essence of the grounds for rehabilitation set forth in the Article 83 of the CPC and the differences in their application are explained in detail: “no criminal case has been instituted in the case in which the case was initiated and the investigation or trial”, “his act has no criminal content” and “he is not involved in the crime”;

7. If a person involved in a criminal case is found to be involved in a crime, but his actions do not contain all the elements of a crime, this case should be terminated on the basis of the Article 83, paragraph 2 of the CPC.

In order to apply the principle of “irrelevant to the crime committed” provided for in paragraph 3 of the Article 83, it is required that the person has no connection with the crime, that is, the person`s actions do neither have subjective nor objective features of the crime. This suggests that a decision should be made to dismiss the criminal case in its entirety, but only in part, on the grounds that “it is not related to the crime committed” and that measures should be taken to expose the perpetrator.

In addition, the regular publication of training manuals on the analysis of the criminal cases and the organization of special training seminars for judicial authorities serve to fully ensure the protection of the rights and freedoms of the individual and address the problematic situations related to the application of the principles set out in the Article 83 of the CPC.

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24. “The results of a survey of more than 1,000 preliminary interrogators and investigators on the telegram channel “CC and CPC: theory and practice”. <https://t.me/joinchat/BYpMqk8UwT6lA9wgo1PGoA>.

25. Retrieved August 15, 2020, from <http://constitution.uz/uz/pages/humanrights>