

INTERNATIONAL LEGAL BASIS OF PERSONAL REHABILITATION IN CRIMINAL PROCEEDINGS

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ABSTRACT

This article examines and analyses international documents related to the rehabilitation of individuals affected by the actions (or inaction) of bodies and officials authorized to conduct criminal proceedings, as well as compensation for material and moral harm caused to these individuals, their provision by the state and the international standards outlined in these documents. In particular, declarations, conventions and international covenants adopted by the United Nations and other international organizations address issues related to the rehabilitation of individuals held in detention facilities, compensation for the harm caused to those whose rights and freedoms have been restricted or deprived unlawfully, unreasonably or unfairly. At the same time, the author makes reasonable suggestions and draws conclusions about the measures needed for implementation, in accordance with the adaptation of individuals to society, in international documents on improving criminal procedure legislation and legislation of the Republic of Uzbekistan.

Keywords: Declaration, harm, human rights, compensation, Convention, rehabilitation, international standards, international documents, international law, torture.

INTRODUCTION

Today, the institution of rehabilitation within the framework of criminal proceedings is of crucial importance in the protection of human rights and freedoms. This institution is a mechanism designed to restore the dignity, status and rights of persons who have been wrongly accused, arrested or convicted, as well as to facilitate the reintegration into society of those who have served their sentences. Its importance lies in the fact that it fully complies with the fundamental principles of justice, equality and human dignity enshrined in international and national legal instruments. This principle is supported by various international treaties, declarations and other international legal instruments that help bring the criminal justice systems of states into line with international standards.

MAIN PART

In this regard, the United Nations Standard Minimum Rules for Non-custodial Measures, known as the Tokyo Rules, were adopted in 1990¹.

If we look at the essence of this provision, it ensures fair trial in criminal proceedings, ensuring the rights and interests of people deprived of their liberty, preventing recidivism in effective rehabilitation centers, reducing violations of human dignity and rights, and respecting their dignity by focusing on their potential for positive change. We can see that it affects the rights and interests of the participants in the crime. Also, these Tokyo Rules are one of the main

¹ <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/tokyorules.pdf>

rules for ensuring human rights in criminal proceedings around the world, adopting a human and constructive approach, and supporting international legal standards for the protection of human rights.

The United Nations Standard Minimum Rules for the Administration of Justice for Juveniles², known as the “Beijing Rules”, focus on the use of non-custodial measures, such as probation, community service or counseling. It is worth noting that the ultimate goal of the “Beijing Rules”, as a core component of the reformatory approach to juvenile justice, is to rehabilitate young offenders and prepare them for constructive roles in society. This includes providing them with access to education, vocational training, mental health support, and other resources that will help them make positive life choices.

Furthermore, recognizing the influence of the family environment, juvenile justice systems (in some countries, investigative and criminal justice systems) often offer family counseling sessions to help resolve conflicts or problems that may have contributed to the youth's behavior. Community service programs, also under this rule, allow young offenders to make a positive contribution to society by volunteering in local projects. For example, countries like New Zealand implement these programs to develop responsibility and empathy in young people. This experience also helps them connect with mentors and teammates who can serve as positive role models.

In addition, one of the main documents on international legal rehabilitation issues is the Rome Statute of the International Criminal Court, adopted on July 17, 1998, the treaty establishing the ICC. It serves as the main legal document governing the International Criminal Court, defining its jurisdiction, structure, and operations.

Article 85 of the Rome Statute of the International Criminal Court³ establishes that every person who has been the victim of unlawful arrest or detention has the right to obtain effective compensation.

It is also recognized that if a person has been found guilty of a crime by a final judgment and the sentence passed against him is subsequently overturned because some new or newly discovered circumstance proves beyond a reasonable doubt that there was a miscarriage of justice, the person punished as a result of such a finding of guilt has the right to legal compensation⁴.

Some scholars believe that understanding rehabilitation not only as a process of recognizing the right to rehabilitation through the termination or acquittal of criminal cases against persons unjustly convicted, but also as a process of restoring all violated rights associated with criminal prosecution, deprivation of liberty, and unjust conviction of innocent persons, more fully reflects its essence⁵.

The rehabilitation and successful reintegration of offenders into society is one of the main objectives of the criminal justice system. This is clearly recognized not only in international human rights law, but also in the standards and norms of the United Nations. Many of them

² <https://www.ohchr.org/sites/default/files/beijingrules.pdf>

³ <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf>

⁴ [https://www.un.org/ru/documents/decl_conv/conventions/pdf/rome_statute\(r\).pdf](https://www.un.org/ru/documents/decl_conv/conventions/pdf/rome_statute(r).pdf)

⁵ А.Сатторов. “Жиноят ишлари юритувида реабилитациянинг моҳияти ва ҳуқуқий асослари таҳлили” номли мақола. 21.06.2021 й. Жамият ва инновациялар – Общество и инновации – Society and innovations Электрон манбаа: <https://inscience.uz/index.php/socinov/index>

are directly related to the rehabilitation and reintegration of offenders into society. These standards include: measures in places where a person's liberty is restricted, including education, vocational training and other programs, as well as the need for prisoners to maintain contact with the outside world; standards for the early release of prisoners; standards requiring assistance and support for offenders after release; standards aimed at involving the community in the reintegration process; and standards that encourage the use of community-based programs and the orientation of offenders to the community instead of imprisonment.

In the course of these procedural actions, we can see that harm is caused to the person as a result of non-compliance with the legislative norms on ensuring the rights and freedoms of the person, personal integrity. Therefore, one of the important tasks of law enforcement officers is to prevent these situations and eliminate their consequences. In the rehabilitation process, it is important not only to compensate for material damage, but also to restore moral damage and the person's reputation in society.

If the actual compensation of damage, the harm caused to a person in the criminal process, is a mandatory element of rehabilitation, then rehabilitation itself, at the same time, remains dependent on the will of the injured subject, who has the right to compensation for damage and can refuse to use it. The rehabilitation process is more fully reflected in both the declaration of a person as "rehabilitated" and the process of procedurally restoring all the rights and freedoms of a person, including those that have not been exercised⁶.

However, the mere declaration of the state responsibility, that is, law enforcement officers, without its implementation in practice, creates a feeling of unprotectedness among citizens and society. In particular, it leads to the understanding that there are no conditions for the exercise of one's rights and freedoms, damages the reputation of the state, and creates distrust in it. Thus, compensation for the damage caused by the state when human rights and fundamental freedoms are violated is not only theoretically achievable, but also must be ensured in practice⁷.

In particular, the 1995 Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms also states that everyone has the right to liberty and personal immunity. It is stipulated that no one may be deprived of his liberty except in cases and according to the procedure established by law⁸ including:

- a) the lawful detention of a person on conviction by a competent court;
- b) the lawful detention or arrest of a person;
- c) the lawful detention of a juvenile for the purpose of investigation, sentencing or trial.

⁶ Корчагина Л.И. "О некоторых аспектах содержания понятия «реабилитация» в отечественном законодательстве и юридической литературе" 2013 г. Электрон манбаа: О реабилитации в законодательстве. o-nekotoryh-aspektah-soderzhaniya-ponyatiya-reabilitatsiya-v-otechestvennom-zakonodatelstve-i-yuridicheskoy-literature.pdf

⁷ Постановление Европейского Суда по правам человека от 27 июня 2013 г. по делу "Абашев (Abashev) против России" (жалоба N 9096/09) // Бюллетень Европейского Суда по правам человека. 2013, № 7.

⁸ Конвенции Содружества Независимых Государств о правах и основных свободах человека (26 мая 1995 г., Минск) <https://cis.minsk.by/page/11326/konvencii-sodruzestva-nezavisimyh-gosudarstv-o-pravah-i-osnovnyh-svobodah-celoveka-26-maa-1995-g-minsk>

2. Upon arrest in accordance with Part 2 of this Article, every arrested person shall be informed of the reasons for his arrest in a language he understands.

In addition, the “Convention on Human Rights and Fundamental Freedoms”, adopted within the framework of the Commonwealth of Independent States (CIS), pays special attention to mechanisms for ensuring human rights and compensation for damage in criminal proceedings. During criminal proceedings, individuals can suffer varying degrees of harm. In this process, situations arise such as torture, wrongful imprisonment, or violation of the presumption of innocence. According to the provisions of the CIS Convention, every person has the right to compensation for damage caused by incorrect legal decisions, the state must assume responsibility for the violations committed, and the state must ensure effective rehabilitation mechanisms.

This convention ensures that all investigative actions in our country comply with the law, eliminate illegal processes, and prevent harm to human rights. The right to rehabilitation established in the convention is based on international standards and is consistent with other international documents on human rights, including the UN Universal Declaration of Human Rights, the Convention against Torture, and the European Convention on Human Rights. Within the CIS, states can work together to implement a number of additions and changes, including the development of uniform standards for compensation for victims, improving mechanisms for appealing to interstate courts, and ensuring and strengthening the enforcement of legal decisions and other additional amendments.

It is worth noting that rehabilitation in the criminal process can be considered as a cornerstone of justice. Rehabilitation is not a corrective measure, but rather a cornerstone of restorative justice. It restores the dignity of victims, ensures accountability for violations, and helps to improve society and ensure that the work of law enforcement officers is based on legal norms and prevents unlawful restrictions on the freedom of citizens. Rehabilitation in the criminal process strengthens trust in the law enforcement system by meeting the needs of victims and wrongfully accused people.

Also, according to O.V. Marakova, experienced officials whose actions (inaction) cause harm are interested in compensating for the harm they have caused⁹. In particular, it is justified that law enforcement officers should be interested not in compensating for harm, but in preventing it from occurring. In general, an analysis of law enforcement practice shows that law enforcement agencies and courts are reluctant to fulfill their obligation to recognize the right to rehabilitation, as well as to explain to a rehabilitated citizen the procedure for compensating for harm associated with criminal liability.

In particular, comprehensive rehabilitation programs enable victims and accused persons to reintegrate into society as active participants. Rehabilitation in criminal proceedings is a complex but important aspect of ensuring justice. While challenges remain, international mechanisms play a crucial role in protecting the rights and freedoms of victims of human rights violations. By strengthening these mechanisms and prioritizing victim-centered

⁹ Маракова О.В. “Правовое регулирование института реабилитации в российском уголовном процессе” Журнал российского права № 5 — 2014. Электрон манбаа: file:///C:/Users/user/Downloads/pravovoe-regulirovanie-instituta-reabilitatsii-v-rossiyskom-ugolovnom-protssesse.pdf

approaches, the global community can advance a more just world. Rehabilitation is not only about reparation and correcting mistakes, but also reaffirming the dignity and commitment to justice for all.

In turn, we know that any person whose freedom is limited by restriction of his or her liberty, detention or arrest, they have the right, in accordance with national legislation and international legal instruments, to have the case of the lawfulness of his or her detention or arrest heard by a court. The issue of compensation for damages caused to a person who has been unlawfully detained or arrested shall be considered in the first instance in accordance with national legislation. Damages may be inflicted, that is, torture towards a person in places where his or her liberty is restricted.

The Article 14 of the Convention against Torture and other cruel, inhuman or degrading treatment or punishment states that:

– Each member state shall ensure in its legal system that victims of torture have the right to compensation and to have access to fair and alternative redress, including, as far as possible, the means to achieve full recovery, supplemented by legal sanctions. If the victim dies as a result of torture, the right to compensation shall be granted to his or her dependents. This article states that nothing infringes upon the rights of the victim or other people. Also, in the event of a violation of the rights of the victim or people, any compensation available under national law is considered possible.

The Code of Principles for the Protection of All Persons Under All Forms of Detention or Imprisonment in 1988 also sets out a number of standards governing the rehabilitation institution, and Principle 6 states that no person under arrest or detention shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

It is also recognized that no circumstances can justify torture or other cruel, inhuman or degrading treatment or punishment. Principle 35 also states that damage caused by acts or omissions of a public official that violate the rights set forth in these Principles shall be redressed in accordance with the applicable liability rules under national law.

It is noted that the information to be taken into account under these principles shall be provided in accordance with the procedures presented in national legislation for use in bringing a claim for compensation for damage under this principle.

At the same time, the components of the rehabilitation institution are two separate groups of legal norms, the first of which determines the procedure and conditions for issuing an act of rehabilitation (an acquittal or a decision to terminate a criminal case or criminal prosecution on the grounds of rehabilitation), and the second determines the procedure for compensating for the damage that he has the right to expect on the basis of the act of rehabilitation and other measures of compensation. That is, the second group of legal norms that make up the rehabilitation institution is entirely related to the interests and will of the rehabilitated person, and he may not make any claims for compensation to the state¹⁰.

¹⁰ Маракова О.В. “Правовое регулирование института реабилитации в российском уголовном процессе” Журнал российского права № 5 — 2014. Электрон манбаа: file:///C:/Users/user/Downloads/pravovoe-regulirovanie-instituta-reabilitatsii-v-rossiyskom-ugolovnom-protssesse.pdf

CONCLUSION

Based on the above, we can conclude that international standards regulating the relationship between the rehabilitation of a person in criminal proceedings should be implemented into national legislation.

1. As stated in Article 2, paragraph 3, of the International Convention on Civil and Political Rights, everyone claiming a specific protection shall have access to legal protection by competent judicial, administrative or legislative authorities or by other competent bodies provided for in the system of the State and shall have the opportunity to seek judicial protection;
2. It is both the right and the obligation of the courts to review the legality and justification of detention and arrest, and the court has the right to examine the evidence;
3. In each individual case, comprehensive measures should be taken to eliminate violations, and compensation should be determined in proportion to the seriousness of the violations and the damage caused;
4. Public apology and acceptance of responsibility by the authorities to the acquitted individuals;
5. Material and non-material (moral) damage should be assessed and compensation should be provided for physical or psychological harm suffered, lost opportunities (such as loss of employment, education or social benefits), material damage and lost profits (including future profits), moral damage, and all costs associated with legal, medical, psychological and social assistance;
6. All aspects of the person's life, including full inclusion and participation in society, must be restored and guaranteed, and the victim himself must be involved in the process of creating and managing rehabilitation services and programs;
7. It is not permissible to restrict the right of a person to appeal to a court against the actions and decisions of authorized bodies and officials to terminate a criminal case (criminal prosecution) during pre-trial proceedings against him.

The above proposals and conclusions lead to the protection of the personal integrity of each person, the rights and interests of citizens. The analysis of international standards regulating relations related to the rehabilitation of a person in criminal proceedings serves as the legal basis for these proposals and recommendations.

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