ACQUITTAL AS THE EXISTING RIGHT IN THE CRIMINAL PROCESS OF FOREIGN COUNTRIES: COMPARATIVE CHARACTERISTIC

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Abstract. The paper deals with general theoretical questions of justification for the suspect and the stability of the acquittal and farther rehabilitation for justified. Justification is a legal category and the institution of criminal procedure law and criminal law known to many countries of the world. It is enshrined in law and considered being an important theoretical and practical issue for many years. There are several terms that sound similar to the justification, but are different: excuse, absolution, acquit (in the sense of "release, forgive" and as an antonym to convict – "plead guilty"); discharge, exculpation, rehabilitation in the sense of "justification, rehabilitation". Seeking justification for a crime "in pillation (of a crime)" – is used to refer to the very process of acquittal during a trial. Justified by the court – "acquitted after a trial". Scientists argue that courts in their practice pay less and less attention to the distinction between "justification" and "excuse". Most times the courts perceive the two terms as synonymous. Though, "excuses" and "apologies" are actually different phenomena. The justification exists and operates in different stages of criminal procedure and sometimes in civil law. In the common law, justification is seen as a declaration of innocence of the accused and as the defendant's right to use all procedural means (including making statements of innocence) for recognition and the proclamation of his innocence in court. We should note that the concept of "justification defenses" is similar to our grounds, which exclude crime and liability for them (Articles 36-43 of the Criminal Code of Ukraine). To protect a person's right to justification, exist a whole system of principles and safeguards in the common law, the most important of which is «repeated risk» (in common law it is known as "double jeopardy" and in

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continental law states as "ne bis in idem"), the principle of the finality of a judgment ("res judicata"), the principle of the finality of an acquittal, by which the process is fully completed in the case of acquittal. The justification is seen as a defense strategy in response to the charge that is different from a procedural in civil law (procedure of rehabilitating). That is why the main purpose of this research is to study, compare and develop the theoretical concepts and approaches to the justification and the rehabilitation institutes in the modern science of criminal procedure.

1. Introduction

The justification as a legal category and institute of criminal procedural and criminal (substantive) law is known in many countries of the world. It is enshrined in legislation and is an important theoretical issue.

Considerable attention has been paid to the justification in the theoretical development and practice of common law scholars, in particular, American and English. In Common (Anglo-American) law, justification is an independent institution that exists at the break of criminal law and criminal procedural law.

Therefore, the theoretical basis of the article is the work of foreign scientists, in particular, J.C. Thomas (G.C. Thomas) (USA); M.G. Arye (Canada); Peter J.P. Tak (The Netherlands) and others.

Although the justification have been the subject of scientific works, but acquittal, relationship of justification to rehabilitation, as well as some aspects of rehabilitation need successive investigation.

Despite the considerable attention paid to the justification as an important part of procedural law, many issues related to justification remain debatable and need scientific consideration.

For a better understanding of the terminology used by English and American researchers, we will translate and treat the concept of "excuse" as "apology" and "justification" as law "justification".

The term "justified" is commonly used to refer to the person committing the crime, but committing it in the presence of so-called excuses grounds.

These grounds are a prerequisite for existing the defendant's right to acquittal. The excuse is possible in circumstances that come from the properties or nature of the action and an apology is possible in circumstances that come from the properties or nature of the person [1, p. 387].

The excuses and justification in the form of grounds can be found not only in the common law but also in the law of the countries of the Romano-Germanic family.

The notion of "justification defenses", that is, the grounds for justification, in Common law is similar to our circumstances, which exclude crime and liability for them (Articles 36-43 of the Criminal Code of Ukraine).

All the variety of the grounds for excuse recognized by the common law is placed within the limits of the sole exculpatory ground provided for by the CPC of Ukraine – "established the absence of a criminal offense" (paragraph 2 of Part 1 of Article 284 of the CPC). This seriously narrows the limits of justification in our law.

2. When it is the justification and when the excuse

The first works on the theory of justification and excuse were published in 1986 [2, p. 215–235], but these concepts have been known in English law since the 13th century. In particular, it was enshrined in the Gloucester Charter of 1278 "Justified murder" in self-defense [3, p. 109–126].

Miriam Gur Arye, arguing for a distinction between justification grounds and the grounds for an excuse, proves that the Anglo-American system logically connected to the Romano-German family law [2, p. 215–235].

In particular, the Criminal Code of the Netherlands of 1886 (referred to as the Criminal Code of the Netherlands) set out the following grounds for acquittal (in the code they are characterized as circumstances excluding crime): 1) legitimate grounds for justification: necessity, self-defense, public duty, execution of an order (Articles 40-42 of the Criminal Code of the Netherlands); 2) legitimate grounds for excuse: recklessness, coercion, exceeding the limits of self-defense and execution of an order received from an unauthorized person (Articles 39, 40, 41 (2), 43 (2) of the Criminal Code of the Netherlands [4].

In common law jurisprudence, justifications are also seen as a defense strategy in response to allegations, which is different from a procedural acquittal in the continental system of law (the adoption of an acquittal or the decision to close proceedings on rehabilitative grounds).

3. Two models of protection

There are two models of protection that exist in English-American courts in court proceedings: the justification and the excuse model.

The justification (justification model of protection) denies wrongfulness of action, it is possible in the presence of such justifying grounds as the activities of law enforcement, self-defense and less evil [3, p. 109–126]. The excuse, in turn, only denies the guilt of the activist (accused) in the presence of special conditions (excuses), for example, if the act was committed under physical or mental pressure [2, p. 215–235; 3, p. 109–126; 1, p. 387].

A peculiarity of the common law doctrine of acquittal is the broad approach to acquittal, in particular G. Conner Thomas [5, p. 349] consider the acquittal, as a testimony to the innocence of the accused (suspect) not only in the acquittal of the court, but also in other procedural decisions stating the innocence of the person.

In the common law tradition, acquittal is a procedural notion, it officially certifies the innocence of the accused and releases the person from the prosecution. There is justification in the form of a judge's acquittal, a jury verdict, a judge's decision to close the proceedings if there is no "no case to answer", and a prosecutor's decision to close the proceedings ("stopping the case" / "nolle prosequi").

In England, the proceedings are being closed by the Crown Prosecution Service [6] after preliminary investigation by the police. Suspect proceedings are closed if the police have collected insufficient evidence to indict the person, if the act is not publicly dangerous (not in the public interest, and therefore not subject to public prosecution) [6].

In the United States, the function of public prosecution rests with the attorney, a federal prosecutor (Rule 1, paragraph b, of the 2010 Federal Rules of Criminal Procedure), which is the one who is empowered to close the criminal proceedings alone [7].

In addition, the proceedings may be closed by a decision of the magistrate court during a pre-trial hearing, which is part of the pre-trial investigation. If there is insufficient reason to bring a person in as a defendant (no crime event, no proven crime), the judge orders discharging the defendant and close the proceedings (Rule 5.1, clause 5.1 of the Federal Rules of Criminal Procedure) 2010) [7]. Judge William J. Chambliss closes the closing of the proceedings as part of the justification [8].

The acquittal of a person at the pre-trial stage is enshrined in the law of the continental law. In particular, in France, following a pre-trial investiga-

tion, the investigating judge issues a ruling stating, among other things, the reasons on which the accusation is found to be unjustified.

In Germany, the prosecutor may, with the consent of the court, refuse to file a public prosecution (Part 1 § 153b of the German CPC), and if the charge has been brought, the court may close the proceedings before the trial begins with the consent of the prosecutor and the accused (Part 2 § 2). 153b of the CPC of Germany) [9].

Thus, the person's right to acquittal arises already at the stage of pre-trial investigation and exists in the form of the decision of the pre-trial investigation body to close the criminal proceedings.

4. The impact of the acquittal on criminal proceedings

The impact of the acquittal on criminal proceedings does not depend on whether it is a jury verdict or the outcome of the work of a judicial authority. However, the justification of the sentence is justified if the law provides for several formulas.

For example, there are two types of acquittal in Scotland's criminal case: "not guilty" and "not proven" [10]. Verdict "Not guilty" shall be taken if the accused is found not guilty, "Not proven" – in case of convincing evidence of guilt. One verdict declares official innocence, the other – insufficient evidence.

Italy has adopted a "five-tier" scheme with five possible justifications since 1989 [10]. Samuel Bray suggested introducing a similar system in American justice, which would act if the jury had doubts about the defendant's guilt. At present, the acquittal covers the gray area between the conviction of the innocence of the accused and the requirement to prove the guilty beyond reasonable doubt [10].

The urgency and feasibility of implementing such a "third sentence" in the Ukrainian judicial system seems rather dubious. In fact, sentences passed as a result of the judge's reasonable doubt will contradict the presumption of innocence, leaving him justified on suspicion even after his formal acquittal.

The peculiarities and, in general, the possibility of appealing to the higher authorities of the higher instance court of acquittal is another issue characterizing the justification as a procedural phenomenon. The specifics of appealing the acquittal in the countries of Anglo-American and continental law are different.

5. The right of appeal

The right of appeal is treated as the "active" right of the accused, which cannot be restricted [11].

An appeal in the United Kingdom depends on the form of the proceedings – in summary or indictment. Magistrates' courts are vested with limited jurisdiction, mainly dealing with summary criminal cases, without jury, on average about 2 million cases per year, which is 95% of all criminal cases [12]. The number of acquittals in the Crown Court was 58% [12].

An appeal may be filed for a final decision by a court of first instance. If the proceedings were summarized, the defense party shall automatically have the right to appeal the indictment of the magistrate to the Crown Court, together with the "not guilty" motion. If the Court of Appeal complies with the appeal against the indictment, it must publicly admit the mistake of the trial court. However, if the court of first instance upheld the acquittal as a result of an error, the acquittal remains valid even after the appeal proceedings [11].

The Crown Court of Appeal may be appealed to the High Court of Appeal, but only on the legal basis of the sentence (on law) [13] and from there it may be referred to the Supreme Court (UK Supreme Court effective 1 October 2009) Having completely replaced the Appeals Committee of the House of Lords, it was based on Article 3 of the Constitutional Reform Act 2005).

An appeal against a jury's verdict, if the case is before the Crown Court, is referred to the Criminal Division of the Court of Appeal (known as Her Majesty's Court of Appeal). As a result of consideration of the appeal, the Court of Appeal makes one of the following decisions: 1) dismiss the appeal; 2) make an alternative verdict, that is, instead of a verdict of culpability in one crime, admit sufficient evidence of culpability in another crime; 3) issue an order for a new trial if new evidence is received; 4) to issue an order for reconsideration of the case if the court of first instance made serious errors during the proceedings; 5) to revoke the verdict of guilty and to issue the so-called special verdict of acquittal due to incapacity and to order the transfer of the defendant to the hospital.

The Attorney-General may, in certain cases, appeal against a decision in the Court of Appeal which he or she considers to be an incorrect sentence. However, as a rule, the Court of Appeal publicly denounces the error of the trial court, but the justification that results from it remains valid.

It should be noted that only the Court of Appeal has the right to review the case in order to appeal the «de novo» case. Such authority has been conferred on the court to correct the errors of first instance.

In the United States, the acquittal cannot be challenged by the prosecution under the constitutional prohibition on "repeated risk". Only the convicted person and his / her defense counsel, as well as the prosecutor who participated in the proceedings, have the right to appeal, and the prosecutor has the right to appeal only when the accused pleads guilty [14].

Modern French doctrine offers several options for classifying ways of appealing and revising a sentence. First, they are divided into ordinary [14], when the case is reviewed on any grounds (both factual and legal), and extraordinary (exceptional), which are possible only after the ordinary means of appeal have been exhausted, and can take place only on the grounds expressly stated in the law. Secondly, there are de retraction methods when the case is reviewed by the same court that ruled [14].

Appeal is a regular retraction method. As a result of consideration of the appeal, the court of appeal upholds the acquittal or revokes it and upholds the indictment. The Court of Appeal is empowered to make its own acquittal, as it has the right to collect and investigate new evidence during the trial [14].

In addition to appeal, there are two other types of judicial review in general and continental law – cassation and review. A revision (pourvoi en revision) is the latest way to review an enforceable sentence. In England, in particular, the request for a review is an exception to the rules of res judicata.

Revision is possible if there is new evidence to prove the innocence of the accused, if the witness is accused of false testimony and if there are different conclusions based on the same evidence [11].

In France, the cassation appeal is regulated by Art. 567-67 of the CCP of France in 1958 and is an extraordinary way of appealing against decisions that have not yet entered into force. In France's criminal trial, there are two types of cassation: in the interests of the parties and in the interests of the law. The law eliminates the cassation appeal of the acquittal of the court of Assisi (Article 572 of the CPC) [15]. The Court of Cassation is bound by a cassation appeal, however, if the cassation review reveals violations of the law relating to public order (orde public), the Court of Cassation has the right to quash the sentence on its own initiative.

In cassation, decisions are reviewed and corrected only when they are related to the misapplication of substantive and procedural laws (errors of law). Therefore, there is another extraordinary way of revising the sentence (it is also considered a type of appeal [11] revision (Art. 622-626 of the CPC) [15]. However, France's criminal proceedings only allow for the revision of the convicted person (in favorem), is the revision of the acquittal in that order (by mistake of fact) is not allowed. This institute is very similar in value to the review of a judgment on newly discovered circumstances in the criminal process of Ukraine (Chapter 34 of the CPC of Ukraine).

Referring to the German criminal proceedings, a revision is allowed here in the case of the adoption of a sentence by an illegal court, violation of jurisdiction, consideration of the case in the absence of obligatory persons, violation of publicity, restriction of the right to defense. An appeal is filed against both the indictment and the acquittal within a week of the verdict being pronounced before the court against which it is appealed [14]. The result of a review of the case may be an acquittal or closure of the case.

Therefore, despite the exceptional stability and special provision of the acquittals, this does not mean that such procedural decisions cannot be reviewed and the proceedings reverted to further investigation.

Unfortunately, for a long time, the Ukrainian courts have used the legislative possibility of remand to avoid acquittal, as evidenced by statistics.

The new changes to the Criminal Procedure Code made it impossible to return the proceedings for further investigation, which in the long run should increase the number of acquittals or rulings to close the proceedings.

We agree with N. Akhtyrskaya's observation that, while there is a court, both convictions and acquittals must be made, since a guilty verdict is a legitimate and legitimate function of justice [16, p. 48–50].

It is possible to guarantee the stability of the acquittal not only by setting a limited period for appeal, but also by establishing a clearly defined list of offenses against which, for example, murder cases and a number of serious and particularly serious crimes may be appealed (Art. 5 Art. 12 of the Criminal Code of Ukraine). Upon acquittal, the acquittal acquires the right to compensation for the damage caused to him during criminal proceedings.

6. Right for rehabilitation

Almost all countries of the world have the right to guaranteed compensation for victims of legal error.

For example, in England, the Criminal Justice Act 1988 introduced a rule established by the government in all cases, while in France a special commission deals with the issue of compensation for damages, and in Italy the matter is decided by the criminal court, which is authorized to set the size of damage [11].

Rehabilitation is a common law different from that known in most European countries. In England, Art. 133 of the Criminal Justice Act 1988, the right to compensation for damages is provided for the person first found guilty and then as a result of the re-examination of the charge (literally "excused") in the case of finding new evidence proving a mistake. The justification results in the public restoration of the goodwill of the justified person [11].

In the United States of America, a convicted person has the right to petition for a renewal of his rights in which he was restricted by conviction. If this request is upheld by a state court, he receives "Rehabilitation Certificate" approved by the state governor.

According to statistics in the US at the end of the twentieth century more than 300 convicts were rehabilitated after long-term imprisonment for serious crimes [17]. Thus, the percentage of acquitted (and rehabilitated innocent after conviction) is 17.0–25.0%; in Europe this percentage is 25.0-50.0%; in Japan, less than 1.0% [17].

In France, at the request of a person, the acquittal or sentence adopted as a result of a review of the proceedings is placed in the city where the acquittal was convicted, in the commune where the crime was committed, or in the last place of residence (if justified). These documents may be published in the Journal and fully or partially published in five newspapers at the discretion of the judicial authority which adopted the decision.

In Germany, at the request of the applicant, the decision to revoke the sentence must be published in the Federal Journal and published in another adequate form by court order.

In Japan, after the acquittal has been rendered (in the case of acquittal after conviction, as well as after serving a sentence on the guilty verdict), the prosecutor files a petition for evacuation to the area, family or court,

whose jurisdiction extends to the territory of the habitual residence of the acquitted, or the same places where the person was sent to serve his sentence (Part 1 of Article 349 of the CPC of Japan in 1948).

In the China Republic, the right to compensation and the procedure for compensation are laid down in a separate legislative act.

The 1994 Law on State Compensation of China (hereinafter referred to as the 1994 Act) stipulates that, after the proceedings have been closed and the person found guilty, he or she is entitled to compensation. Responsible for compensation is the authority that made the decision to arrest (Article 21 of the 1994 Act) or the body that made the indictment in case of its revision.

After compensation for damage, the responsible authority must recover the amount of compensation in whole or in part from the functionaries involved in causing the damage. The possibility of a state recourse to the actual perpetrators of the harm caused to the accused is an interesting, but debatable question, since it is difficult to determine when and at what stage of the proceedings the mistake was made.

The necessity of legislative introduction of state recourse in the person of local financial bodies to the actual perpetrators of the harm caused by the accused by unlawful or unjustified procedural actions (in particular, unjustified criminal liability) is obvious, although it is difficult to determine who is to blame for the mistake made, and imposing responsibility on the state makes it easier for citizens to pay compensation.

Right for rehabilitation has been reflected in various international documents, in particular the European Convention on Human Rights and Fundamental Freedoms [1, p. 18], the International Covenant on Civil and Political Rights [19], the Convention against Torture and Other Cruel, Inhuman or Degrading types of treatment and punishment [20, p. 49], the Declaration of principles of Justice for Victims of Crime and Abuse of Power, the Rome Statute of the International Criminal Court.

Mentioned international documents provide a basis for compensation to victims of unlawful acts in criminal proceedings, as well as caused establishment of the institution in the Ukrainian criminal rehabilitation process.

As such, rehabilitation is a comprehensive institution that is based on international and constitutional legal norms and standards of the various branches of law: civil, labor, housing, pensions, criminal procedure and

civil procedure that govern the direction of a person who is unlawfully subjected to prosecution, as well as governmental action after an acquittal or the cessation of a criminal case or criminal prosecution towards him, in order to restore the rights and legitimate interests of the rehabilitated.

In law, the term "rehabilitation" (restoration of rights) means:

– The decision on closing the case with respect to a citizen or guilty verdict due to lack of crime in his actions, lack of evidence of his involvement in the commission of the crime (§ 1 and 2 of Part 1 of Art. 6, paragraph 2 of Art. 213, Part 4 of Art. 327 Code of Criminal Procedure);

– Type of the responsibility of the state towards its citizens;

– Process (procedure), being implemented by appropriate state bodies regarding the compensation;

– Legal institution.

Rehabilitation should be viewed in the latter sense, because exactly through regulations in the legal institution are regulated the grounds and procedure for making rehabilitation decisions, procedures for redress and legal status after his recovery. Criminal proceedings are committed to not only expose and punish the perpetrator of the crime, but to free the innocent from unjust accusations, restore his good name, honor, and to repair the damage caused by authorities illegally. Consequently, the Rehabilitation Institute in criminal proceedings acts as the legal mean by which the given objective is completed.

For a long time the science of criminal rehabilitation process reduced only to acquittal or termination of the criminal case on rehabilitating grounds.

In fact, the right for rehabilitation includes the right to compensation for property damage, the elimination of moral injury and recovery in labor, pension, housing and other rights.

Note that the concept of "right to rehabilitation", the grounds for its occurrence and the subjective composition of the rehabilitation relationship are different from the "right to compensation for harm." For example, in the US, exoneration rights are only unfairly condemned to have been justified and found not guilty in the course of judicial review [21, p. 6–7].

Turning to statistics, it turns out that in the period from January 1989 to February 2012, only 873 people were rehabilitated in the United States [21, p. 7]. This number is easy to explain – the fact is that rehabilitation in the United States means only the process of restoring the rights of an

"unjustly convicted" after reviewing a judgment on newly found grounds and reviewing a jury trial [21, p. 10].

In Ukrainian law, the term "damages" is used in the sense of compensation for losses and damages caused by the victim of a criminal act. Thus, rehabilitation is in fact combined with the Institute for Compensation, a concept that has a wide range of meanings in legal science.

The current situation is unacceptable and must be remedied by an official definition of rehabilitation in the CCP.

Rehabilitation Institute is aimed at protecting the rights and interests of the individual. Through this legal concept works the restoration of honor, dignity and reputation of illegally prosecuted, is compensated caused economic and moral damage, restored housing, pension, labor rights of such persons who have been violated as a result of implementation with respect to his unlawful criminal prosecution or conviction.

The grounds for the right to rehabilitation in the criminal proceedings are illegal actions of the preliminary investigation, the prosecutor or the court in connection with exposing the suspect, accused of committing a crime, his conviction, and with the use against him compulsory medical measures.

The Criminal Procedure Code of Russian Federation contains an art. 133, "The grounds for the right for rehabilitation". In regard to this, it is appropriate to make some changes in the Code of Criminal Procedure of Ukraine focusing on the following points. In particular:

– Renaming art. 133, stating its name as following: “Art. 133. Individuals entitled for rehabilitation”;

– Supplement the code with article 133.1. Worded as follows: Article 133.1. Grounds for the right for rehabilitation”.

The grounds of the right for rehabilitation are recognized:

a) The implementation of unlawful criminal prosecution;

b) The unlawful conviction;

c) The unlawful use of measures of criminal procedure of coercion;

d) The illegal use of compulsory medical treatment [22].

Rehabilitation may be complete or partial. At the same time, the legislator, referring to this division, however, does not define a partial rehabilitation.

In case of damage due to the unlawful decisions, actions or omissions of public authorities, local governments, and their officials, citizen (foreigner person without citizenship) is entitled to compensation by the state or local

authorities for material and moral damages (Art. 56). Position fixed in Article 56 of the Constitution was further developed in the norms of the Law of Ukraine "On the order of damages caused to citizens by the unlawful actions of the operative-investigative activity of the pre-trial investigation, prosecution and trial" on December 1, 1994 (hereinafter Law N 266/94-VR). The Law N 266/94-VR reflected recovery basis by the state of property damage, and the elimination of moral injury and recovery in housing, labor, pension and other rights of persons who have suffered from unlawful prosecution.

Order on the implementation of the Law received the Ministry of Justice, the General Prosecutor's Office and the Ministry of Finance of Ukraine 04.03.96 "On approval of the application of the Law of Ukraine "On the Procedure for compensation caused to citizens by the unlawful actions of the investigating agencies, prosecutors and courts"" N 6 / 05.03.41. In addition to the issue of civil law damages devoted to the provisions of Articles 1173, 1174, 1175 and 1176 of the Civil Code of Ukraine of 16.01.2003 № 435-IV (on GC) [23]. Article 1176 Civil Code is about compensation for damage caused by unlawful decisions, actions or omissions of the pre-trial investigation, prosecution or trial.

However, the current Criminal Procedure Code of Ukraine from 13.04.2012 № 4651-VI (on the CPC) [24] contains a single article on compensation for damage caused by unlawful decisions, actions and omissions (Article 130 CCP). In this sense, the allocation for the rehabilitation of the Criminal Procedure Code of the Russian Federation (hereinafter the Code) [22], of a separate chapter 18 is correct. It is advisable to select all the provisions regarding the rehabilitation of the CPC on the example of the CPC of the Russian Federation in a separate chapter titled "Rehabilitation".

By positioning the state as legal, procedural law provided some ways to correct errors made by state agencies through reimbursement of all the harm caused by such.

However, the jurisprudence indicates a gap in law enforcement as an institution of justification and institution of rehabilitation. In 2010 164.7 thousand sentences were enacted by the courts of Ukraine in criminal cases, including acquittals, legal validity – 315, and 231 defendants were acquitted for private prosecution, 84 people – for public prosecution. Thus, the percentage of acquittals makes up 0.2% of the total number of individuals [25, p. 19–24].

For comparison, according to the Judicial Department of the Supreme Court of the Russian Federation annually illegally are prosecuted approximately 2.3% of people. [26].

Right for rehabilitation and the fundamental provisions of the institution attached to the constitutional level, Article 62 of the Constitution: "In the case of cancellation of the verdict as unjust, the state reimburses the material and moral damage caused by the groundless conviction", and the above-mentioned Article 56, which also provides the right of everyone for compensation for damage caused by unlawful decisions, actions or inaction of public authorities.

Thus, the basis of the positions of institution is already defined by the Constitution and exactly it gives a legal ground for the further development of rehabilitation in the criminal proceedings and the decision of gaps and inconsistencies in the law to improve the rehabilitation process, and the procedure of its implementation.

For a long time the science of criminal rehabilitation process reduced only to acquittal or termination of the criminal case on rehabilitating grounds.

Cause of confusion in terms of rehabilitation and justification is the lack of proper terminology in the Criminal Procedure Law. Therefore it is necessary to legally consolidate the concept of "justification" and "rehabilitation" in Art. 3 CPC. Justification is an independent basis for the creation of the right to rehabilitation. However, the mere fact of justification of a person does not cause mandatory and automatic implementation of the right for rehabilitation, as rehabilitated, may not present the proper claim. Therefore, rehabilitation is possible not only as a result of justification by the court, but also in connection with the termination of the criminal prosecution on rehabilitating grounds.

That is why the procedural activity to justify and rehabilitate are partly combined – through the will of acquitted individuals who seek compensation for the criminal prosecution of harm. However, justification and rehabilitation should be treated as separate institutions.

In fact, the right for rehabilitation includes the right to compensation for property damage, the elimination of moral injury and recovery in labor, pension, housing and other rights.

The damage caused to persons is compensated for unlawful acts or omissions of the operational-search activity, pre-trial investigation, prose-

cution and trial. The term "illegal", which is used in the criminal procedural law, needs to be clarified.

The word "legal" is derived from the word "law." Legality is a constitutional principle which is exactly steady execution of the laws and other legal acts by all subjects of the law. Thus, illegal is a criminal prosecution if it is unreasonable. The proposal is based on the text of the constitutional and legal provisions of Art. 56 of the Constitution, according to which the state guarantees the right of citizens to state compensation for the harm caused namely by the unlawful actions of state authorities or their officials. In the text of this provision make no mention on the invalidity of such acts.

In connection with the above, it appears that rehabilitation is carried out on a person who was illegally prosecuted, restoration procedure of its violated rights and interests, good name and reputation and the compensation for such actions (or inaction) of damage.

As such, rehabilitation is a comprehensive institution that is based on international and constitutional legal norms and standards of the various branches of law: civil, labor, housing, pensions, criminal procedure and civil procedure that govern the direction of a person who is unlawfully subjected to prosecution, as well as governmental action after an acquittal or the cessation of a criminal case or criminal prosecution towards him, in order to restore the rights and legitimate interests of the rehabilitated.

Rehabilitation involves compensation for material and non-material damage. In accordance with Art. 3 of Law № 266/94-VR, citizen be compensated:

1) the wages and other labor income, which he lost as a result of illegal acts;

2) the property (including cash, deposits and interest thereon, capital issues and interest thereon, the share in the share capital of any company, to which a citizen was part of and the profits he did not get part of), confiscated or turned in favor of the state court, seized by bodies of preliminary investigation of the operative-search activity, as well as property which is under arrest;

3) fines levied in pursuance of a court judgment, court costs and other expenses paid by the citizen;

4) the amounts paid by the citizen in presenting him with legal assistance;

5) the moral damage.

7. Conclusions

In common law, there is a whole mechanism of statutory prohibitions and principles designed to guarantee the stability of a judgment of acquittal, which is an integral part of a person's right to justification. An example of such a guarantee is the prohibition of "re-risk" (in Anglo-American law it is known as "double jeopardy" and in continental law states as "ne bis in idem"), the principle of the finality of a judgment ("res judicata"), which is directly and logically related to the principle of the finality of the acquittal, by which the process is completely completed in the case of acquittal.

The finality of the acquittal is directly linked to the presumption of innocence and the principle of rightfulness, as it guarantees the protection of the individual against re-prosecution and re-prosecution.

In addition to the principle of non bis in idem and res judicata for the protection of exculpatory sentences, there is a general system of common law consisting of the following doctrinal provisions: inadmissibility of an issue already resolved (issue estoppel), the Sembezive rule (the rule in Sambasivam), the rule against collateral attack and the duty of a judge to prevent the injustice of the accused (the court's duty to prevent unfairness to the defendant). These provisions are considered as an integral part of the res judicata principle [27].

From the point of view of procedural law, compensation for damages in criminal proceedings should be considered as the activity of the subjects of criminal proceedings for the provision and implementation of the forms of compensation provided for by law.

All of the above makes it possible to define compensation for damages in the criminal process as the activity of the subjects of the criminal process for ensuring and realization of restoration of material goods and losses to the victims of crime, compensation for their expenses and non-pecuniary damage.

In Art. 2 of the Law "On the Procedure for Compensation for Damage Caused by a Citizen by Illegal Actions of the Bodies of Investigation, Pre-trial Investigation, Prosecutor's Office and the Court" of 1994 and in paragraph 24 of the Regulations of March 4, 1996, under the decision rehabilitating a citizen, the acquittal is also understood, and the decision to close the criminal proceedings in the absence of a criminal offense, the absence of a criminal offense or the failure to establish sufficient evidence to prove the guilt of the person in court and exhausted opportunities to obtain them.

As noted above, it is appropriate to consider justification as a condition for the right to rehabilitation. However, the mere fact of acquittal does not lead to a mandatory and automatic exercise of the right to rehabilitation, since the rehabilitated person may not make a proper claim for rehabilitation. Rehabilitation may not only be the result of a court justification, but also the closure of criminal proceedings on rehabilitation grounds.

Rehabilitation in the criminal process is a system of statutory social and legal measures to recover fully prior rights of persons illegally brought to criminal liability or convicted and reimbursement of the harm caused.

Rehabilitation in the criminal trial assumes the ability to protect the violated rights and interests as with means of criminal law and procedure, and through civil proceedings.

There is a need to make some changes and additions into the current criminal procedural law of Ukraine on rehabilitation of persons subjected to illegal prosecution to improve the protection of the rights of these individuals.

Thus, rehabilitation in criminal proceedings is a mechanism of protection of rights, consisting of a system of interrelated criminal procedural rules and intended to regulate legal relations for compensation of harm and restoration of violated rights of a person, which was found innocent in accordance with the procedure established by law.

Neither justification nor rehabilitation can be equated with such a procedural phenomenon as the release from criminal responsibility, they differ in grounds, purpose and order of execution. Rehabilitation is only possible where the person has not committed a crime and has been subjected to unjustified criminal prosecution as a result of a mistake by a pre-trial investigation or court.

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