DUTY TO REHABILITATE

ASSESSING REPARATIONS OF FORMER POLITICAL PRISONERS IN KAZAKHSTAN AND UZBEKISTAN
ABOUT FREEDOM NOW

Freedom Now is a non-partisan non-governmental organization whose mission is to protect individuals and communities from government repression and to defend human rights through direct legal support, targeted high-leverage advocacy, and capacity building analysis.

Since 2001, Freedom Now has worked to free individual prisoners of conscience and address systemic arbitrary detention worldwide through legal, political, and public relations advocacy efforts. The organization supports individuals who are detained as a consequence for peacefully exercising their fundamental rights, such as expression, association and assembly, religion and belief, and the right to participate in government. Working across institutions and mobilizing international partners, Freedom Now looks to makes a substantial effect in people’s lives, marshalling resources to address human rights violations, and improving human rights for all.

ACKNOWLEDGMENTS

Freedom Now would like to thank Kazakhstan International Bureau for Human Rights, Kadyr-kassiyet ('Dignity'), Adil Soz, Bakhytzhan Tereguzhina, and Human Rights House for their support and expertise. Freedom Now would also like to thank Tatiana Chernobyl for providing research and fact-checking support on this project. Lastly, Freedom Now would like to thank Dechert LLP for providing copy editing support on this report.

Above all, we would like to extend our deepest gratitude the former prisoners of conscience from Kazakhstan and Uzbekistan who courageously agreed to be interviewed for this report and without whom this report would not be possible.

This work is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License.

Quotation, reproduction, or transmission of this manual is authorized, provided the source is credited. Queries regarding this report or its contents may be directed to Freedom Now.

Published March 2023.

Freedom Now
7th Floor
1750 K Street
Washington, D.C. 20006
Phone: +1 (202) 223-3733
Email: info@freedom-now.org

www.freedom-now.org
# Executive Summary

This document discusses the rights to rehabilitation and reparations under international human rights law, focusing on Kazakhstan and Uzbekistan. It outlines the status quo of rehabilitation rights in both countries, identifies gaps, and proposes reform strategies.

## International Human Rights Standards

- Kazakhstan’s & Uzbekistan’s Responsibility to Protect Human Rights
- The Right to Reparations under International Human Rights Law
- Types of Reparation

## Rehabilitation Of Former Prisoners Of Conscience In Kazakhstan

### The Right to Rehabilitation under Kazakhstan Law
- Scope of Rehabilitation under Current Kazakhstan Law
- The Right to Rehabilitation in Practice in Kazakhstan
- Needs Assessment of Former Kazakhstan Prisoners of Conscience

## Rehabilitation Of Former Prisoners Of Conscience In Uzbekistan

### The Right to Rehabilitation under Uzbekistan Law
- Scope of Rehabilitation under Current Uzbekistan Law
- The Right to Rehabilitation in Practice in Uzbekistan
- Needs Assessment of Former Uzbekistan Prisoners of Conscience

## Proposal For A Future Rehabilitation Framework

- Substantive Reform Proposals
- Procedural Reform Proposals
- Systemic Reform Proposals
The number of people who were once prisoners of conscience but have since been released from detention is growing. This growth is particularly evident in countries that have undergone recent political transitions, such as Kazakhstan and Uzbekistan. The present report assesses whether these two countries, Kazakhstan and Uzbekistan, are currently meeting their international obligations to provide rehabilitation (also called “reparations” under international law) to former prisoners of conscience, and if they are not, in what ways are these two countries failing, and how can domestic rehabilitation frameworks be adapted to ensure these governments bring their practices in line with their international obligations.

The present report finds that the current rehabilitation frameworks in Kazakhstan and Uzbekistan both fail to meet the governments’ respective international obligations. Our analysis of their domestic legal frameworks combined with interviews of former prisoners of conscience in both countries reveals that both governments are exhibiting deficiencies in law and practice that directly violate the right to reparations for former prisoners of conscience.

Kazakhstan and Uzbekistan are both parties to international human rights treaties that impose obligations to provide full reparations for violations of international human rights law. International practice shows that the obligation to provide full reparations includes the requirement to issue compensation, restitution, rehabilitation, satisfaction, and guarantees of non-repetition. Accordingly, in the event of politically motivated detention that amounts to a violation of international human rights law, the governments of Kazakhstan and Uzbekistan maintain an obligation to repair the injury to the victim by providing, where appropriate, compensation to repair monetary injuries, restitution of any deprived rights, rehabilitation through the provision of medical or social services, satisfaction by way of symbolic acknowledgements of wrongdoing on behalf of the government, and guarantees that similar violations will not occur.

In Kazakhstan, the legal framework granting a right to rehabilitation for wrongful detention systematically excludes most former prisoners of conscience, as they often fail to meet the rehabilitation eligibility requirements outlined in Kazakhstan law. Because many former prisoners of conscience are released after serving the term of their sentence, and they continue to be considered guilty of committing a crime under Kazakhstan law, the Kazakhstan legislation categorically excludes them from rehabilitation. In the rare event that one qualifies for rehabilitation, the amount that the government pays in compensation is often far less than the amount of the damage done. For example, in one notable case of torture, the victim was awarded less than 0.1% of the monetary damages he requested as compensation for his injuries. Given the limited scope of the rehabilitation categories and the immense procedural barriers to initiating the legal process, many prisoners of conscience are categorically excluded from eligibility for rehabilitation under current Kazakhstan law. Even though Kazakhstan maintains post-release prisoner support services that are meant to provide medical, housing, and other forms of social support to all newly released prisoners, former prisoners of conscience report that these state services can be difficult, if not impossible, to obtain.
Interviews of eleven former Kazakhstan prisoners of conscience conducted in the course of research for this report reveal that former prisoners of conscience have many rehabilitation-related needs that are currently unmet by Kazakhstan’s rehabilitation framework. Interviewees report that imprisonment has caused significant monetary damages from lost employment, lost businesses, seized property, damaged property, torture and ill-treatment, medical costs, legal fees and court costs, and the costs of prison visits. Moreover, access to re-employment was an issue for all but one of the interviewees upon release, and ten of the interviewees report ongoing issues securing employment. The overwhelming majority of Kazakhstan interviewees also report needing ongoing medical or psychological treatment due to their imprisonment. However, no interviewee, including the interviewee legally entitled to receive reparations, reported being able to access any government medical or psychological support after release. Several interviewees attempted to seek medical services under the state provided post-sentence reintegration program, but no interviewee reported being able to access medical care from these programs.

In Uzbekistan, a similar picture emerges. The legal framework for rehabilitation in Uzbekistan also categorically excludes many former prisoners of conscience. This is because former prisoners of conscience often continue to be considered guilty of committing a crime under Uzbekistan law after release. However, in Uzbekistan, more former prisoners of conscience have been recognized as entitled to rehabilitation for wrongful detention than in Kazakhstan. Still, those who qualify have not received the full amount of compensation requested for material damages resulting from detention. Furthermore, Uzbekistan also purports to provide post-release support services, including medical, housing, and other forms of social support to all newly released prisoners. However, like in Kazakhstan, many former prisoners of conscience report that these state services can be difficult, if not impossible, to obtain.

Interviews of ten former Uzbekistan prisoners of conscience conducted for this report with former prisoners of conscience in Uzbekistan also reveal that there are many rehabilitation-related needs that are currently unmet by Uzbekistan’s existing rehabilitation framework. Interviewees report that imprisonment caused damages from lost employment, lost businesses, seized property, damaged property, torture and ill-treatment, injuries from medical neglect, legal fees and court costs, the costs of prison visits, and costs incurred by their families for sending food and hygienic support. Furthermore, some interviewees continue to face restrictions on numerous rights—including the right to register an NGO, the right to travel, the ability to obtain certain occupational licenses, and the ability to work in certain professions—despite the fact that these rights are due to be reinstated after released from imprisonment. All but one of the interviewees in Uzbekistan reported needing ongoing medical or psychological treatment due to imprisonment. However, no interviewee, including the one who was legally entitled to receive reparations, reported being able to access any government medical or psychological support after release, despite several seeking support from the Uzbekistan government’s post-release services.

The Kazakhstan and Uzbekistan governments’ failure to address the needs of former prisoners of conscience is evidence that the governments are not fulfilling their international obligations to provide reparations for violations of human rights norms with respect to former prisoners of conscience. However, there are several similar improvements that both governments can make to their legislation and implementation of rehabilitation to ensure that former prisoners of conscience are able to access the reparations that are required under the governments’ respective international obligations.
In terms of substantive legal reforms, our analysis had identified the following areas for improvement to help improve Kazakhstan’s and Uzbekistan’s compliance with their international human rights norms.

- Incorporate “Prisoner of Conscience” into Legal Framework and into Political Dialogue.
- Guarantee a General “Right to Rehabilitation.”
- Improve Safeguards Against Coerced Confessions.
- End Admissions of Guilt for Parole, Amnesty, or Pardons.
- In Kazakhstan, End the Practice of Financial Blacklisting.

In terms of procedural reforms, we recommend that that Kazakhstan and Uzbekistan make the following changes to the procedural implementation of rehabilitation.

- Permit a Civil Rehabilitation Claim Without Prior Acquittal.
- Create Processes for Reversing Admissions of Guilt.
- Increase the Right to Reopen Criminal Cases.
- Ensure the Preservation of Records Concerning Former Prisoners of Conscience.
- Create Procedures to Challenge Blacklisting.

With respect to more systemic reforms, we recommend that both governments consider implementing an independent rehabilitation procedure to review the rehabilitation of political prisoners. The structure of such a procedure may be easily adapted from the model currently in-use in both countries to compensate Soviet-era repression. Such a model need only be expanded in scope of application and reparations to address rehabilitation needs of modern-day political prisoners.

Adopting and effectively implementing the above recommendations will begin the process of bringing Kazakhstan and Uzbekistan more in line with their international commitments to former prisoners of conscience. Until more action is taken by both governments to improve their systems of providing rehabilitation, human rights violations committed against prisoners of conscience will continue long past release from government detention.
Politically motivated detention has been a longstanding human rights problem in several Central Asian states.\(^1\) However, two countries in the region, Kazakhstan and Uzbekistan, have undergone political transitions with new leadership publicly stating an intent to implement reforms more closely aligned with the states’ international human rights obligations.\(^2\) In both countries, the legacy of politically motivated detention, coupled with regular large-scale prisoner amnesties, has led to a growing number of recently released prisoners of conscience.\(^3\) Although releasing prisoners of conscience is an important first step to addressing wrongful detention in the country, both governments have more to do if they intend to fulfill their commitments under international human rights law.

Addressing the issue of politically motivated detention in a way that comports with international human rights norms not only requires that Kazakhstan and Uzbekistan release all prisoners of conscience, but that the governments of both countries take steps to rehabilitate victims of wrongful detention and repair the damage caused. Kazakhstan and Uzbekistan both have legal frameworks for rehabilitating victims of wrongful prosecution and imprisonment. However, these frameworks have been largely ineffective at rehabilitating former prisoners of conscience. Both governments will have to repair the harms caused before they are fully in compliance with their international human rights commitments.

---

"Rehabilitation" is the act of restoring a person who was injured or wronged back to the state—whether that be physical, mental, or financial—that they were in prior to the occurrence injury or wrong. In the context of politically motivated detention, rehabilitation of a prisoner of conscience involves government action aimed at undoing or repairing the harm caused by the politically motivated detention.

The foregoing definition of "rehabilitation" closely tracks the term's usage among civil society in Central Asia. However, it is important to note that the term "rehabilitation" has a slightly different meaning in international law. In international law, the term “reparations” is used to refer to actions taken to restore or repair the damages caused by wrongs. In international law, "rehabilitation" takes on a different meaning, referring to one of many types of reparations. The usage in international law will be addressed in greater detail below.

Throughout this report, the usage of "rehabilitation" follows the practice of civil society in Kazakhstan and Uzbekistan, with the only exception being in the International Human Rights Standards section, where the international law usage is adopted.

The present report seeks to examine the current state of rehabilitation of former prisoners of conscience in Kazakhstan and Uzbekistan and identify the gaps the between the rehabilitation practice and both government’s international commitments. The report begins by providing an overview of the international human rights obligations of both governments with respect to rehabilitating former prisoners of conscience. The report then closely examines the rehabilitation frameworks in both countries and seeks to identify how and why prisoners of conscience fail to obtain rehabilitation through these programs. The report also assesses the needs of current prisoners of conscience with respect to rehabilitation and proposes reforms that can help bring government practice closer to international standards.

**METHODOLOGY**

The information contained in this report was collected and developed through a series of interviews and consultations, legal research of relevant domestic and international legal frameworks, and social research into the context surrounding the identified issues. Interviewees for this report are former prisoners of conscience who were imprisoned in either Uzbekistan or Kazakhstan. A total of twenty-one former prisoners of conscience were interviewed: eleven were formerly imprisoned in Kazakhstan and ten in Uzbekistan. All interviews were conducted first-hand, and interviewees were posed a uniform set of questions that addressed the interviewees’ background, politically motivated detention, injuries and damages suffered as the result of their detention, awareness of the domestic rehabilitation framework, experiences with the rehabilitation framework, and current rehabilitation needs. Interviewees are not named individually to protect anonymity. Throughout the report, the former prisoners of conscience that we interviewed will be collectively referred to as "interviewees."
Kazakhstan and Uzbekistan’s international human rights commitments create obligations on their governments to protect human rights and to provide rehabilitation and redress for their violations of human rights. The first section below provides overview of the source of Kazakhstan and Uzbekistan’s human rights obligations under international law. The second section then addresses the scope of the obligation to provide reparations for violations of human rights under international law.

Kazakhstan’s & Uzbekistan’s Responsibility To Protect Human Rights

The main source of Kazakhstan’s and Uzbekistan’s international human rights obligations is the treaty commitments of the two states. Within the United Nations human rights system, there are nine core international human rights treaties, and Kazakhstan and Uzbekistan are both parties to most of the UN system treaties. At the time of publication, Kazakhstan has acceded to eight of the nine core human rights treaties, while Uzbekistan has acceded to seven of the nine core human rights treaties. Both countries are parties to:

- The International Convention on the Elimination of All Forms of Racial Discrimination,
- The International Covenant on Civil and Political Rights,
- The International Covenant on Economic, Social and Cultural Rights,
- The Convention on the Elimination of All Forms of Discrimination against Women,
- The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,
- The Convention on the Rights of the Child, and
- The International Convention on the Rights of Persons with Disabilities.

In addition, Kazakhstan is also party to the International Convention for the Protection of all Persons from Enforced Disappearances. By agreeing to join the treaties above, both states have committed to protecting and promoting the human rights guarantees enumerated in the treaties.

---

4 Note that some of Kazakhstan’s and Uzbekistan’s international human rights obligations derive from other sources of law, such as via customary international law. See, e.g., Human Rights Watch, The Legal Prohibition Against Torture, (March 11, 2003), available at https://www.hrw.org/news/2003/03/11/legal-prohibition-against-torture#laws.
7 See id.
8 See id.
9 See id.
10 See ICCPR, art. 2; ICERD, art. 2; ICESCR, art. 2; CEDAW, art. 2; CAT, art. 2; CRC, art. 2; CRPD, art. 2; ICPED, art. 1.
Although support for the principle that imprisoning individuals for exercising their civil or political rights violates human rights can be found in many of the UN human rights treaties, the treaty that most directly addresses the human rights issues associated with politically motivated detention is the International Covenant on Civil and Political Rights ("ICCPR"). The ICCPR requires states to protect the rights to freedom of movement, freedom of religion, freedom of expression, freedom of assembly, freedom of association, and political participation. The ICCPR also prohibits discriminatory application of laws, arbitrary arrest and detention, and torture, which are all human rights issues that often arise in prisoner of conscience cases.

Other human rights treaties that Kazakhstan and Uzbekistan are parties to also have provisions that are implicated in prisoner of conscience cases. For example, cases involving some form of discrimination may implicate the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, or the International Convention on the Rights of Persons with Disabilities. Moreover, mistreatment while in detention may raise issues under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

When a government imprisons, tortures, or executes a person on the basis of how they express their views, who they are, or what they believe, the government violates one or more the above human rights treaties. As a result, when the governments of Kazakhstan and Uzbekistan turn an individual into a prisoner of conscience, they are violating the states’ treaty obligations.

The UN human rights treaties contain provisions that describe a state’s obligations when its government violates rights protected in the treaties. In the event of a violation, whether in a prisoner of conscience case or otherwise, the text generally requires that the government provides some form of redress to the person whose rights it violated. However, the treaties do not fully articulate the scope of reparations for human rights violations. Other sources of international law fill in the gaps concerning the reparations governments owe victims of their human rights violations. The following section illustrates how international law concerning the right to reparations applies to violations of international human rights treaties.

---

12 ICCPR, arts 2, 7, 9, 14, & 26.
14 See International Covenant on Civil and Political Rights, art. 2(3)(a); Convention against Torture, art. 14; Convention on the Elimination of All Forms of Racial Discrimination, art. 6; Convention on the Rights of the Child, art. 39; International Convention for the Protection of All Persons from Enforced Disappearances, art. 24(4); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 83. However, not all treaties have such explicit provisions. See the International Covenant on Economic, Social and Cultural Rights; The Convention on the Elimination of All Forms of Discrimination against Women.
The right to reparations for violations of international law is a longstanding norm of international law.\textsuperscript{15} As noted above, this right is guaranteed under numerous international human rights instruments, including treaties and general principles.\textsuperscript{16} There is no contemporary dispute, as a general matter, that victims of human rights violations have a right to an effective remedy and reparations.\textsuperscript{17}

Although international treaties and general principles regarding the right to reparations do not consistently adopt uniform terminology or scope, international human rights bodies, such as the UN Treaty Bodies, and political bodies at the UN, such as the Human Rights Council and the General Assembly, have coalesced around recognizing the right to reparations for human rights violations to involve one or more of the following five forms of redress:

- Compensation,
- Restitution,
- Rehabilitation,
- Satisfaction, and
- Guarantees of non-repetition.

The most recent draft of the UN Human Rights Treaty explicitly includes the five forms of redress listed above as reparations for human rights violations.\textsuperscript{18} The UN Treaty Bodies—which are committees established to monitor and interpret UN human rights treaties—have begun to interpret language in the earlier UN treaties that do not mention reparations to cover these five types of reparations.\textsuperscript{19} As a result, these earlier UN human rights treaties are interpreted to require these five forms of reparations when violations occur.


\textsuperscript{17} See id.

\textsuperscript{18} The International Convention for the Protection of All Persons from Enforced Disappearance, in Article 24, provides a comprehensive definition of reparations, guaranteeing that 'victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation. The right to obtain reparation . . . covers material and moral damages and, where appropriate, other forms of reparation, such as: (a) restitution, (b) rehabilitation, (c) satisfaction, including restoration of dignity and reputation; (d) guarantees of non-repetition.'

\textsuperscript{19} See, e.g., UN Human Rights Committee, General Comment No. 31, The Nature of General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, 2004, para. 16 (stating that the right to an "effective remedy" provides for a right to reparations, including "restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations."); the CEDAW Committee adopts this framework in the case S.A. v. Denmark, UN Committee on the Elimination of All Forms of Racial Discrimination, UN Doc. CERD/C/97/D/58/2016, para. 78 (Feb. 6, 2019), available at www.undocs.org/CERD/C/97/D/58/2016; UN Committee on Economic, Social and Cultural Rights, General Comment No. 20, UN Doc. E/C.12/GC/20, para. 40 (July 2, 2009), available at www.undocs.org/E/C.12/GC/20; UN Committee on the Elimination of Discrimination Against Women, General Comment No. 38: On Trafficking in Women and Girls in the Context of Global Migration, UN Doc. CEDAW/C/GC/38, para. 43 (Nov. 5, 2020), available at www.undocs.org/CEDAW/C/GC/38; UN Committee Against Torture, General Comment No. 4: On the Implementation of Article 3 of the Convention in the Context of Article 22, UN Doc. CAT/C/4/Add.1 (Nov. 16, 2000), available at www.undocs.org/CAT/C/4/Add.1; UN Committee on the Rights of the Child, General Comment No. 4: On Children’s Rights in Relation to the Digital Environment, UN Doc. CRC/C/2014/38, para. 46 (March 2, 2014), available at www.undocs.org/CRC/C/GC/4; However, two treaty bodies have not yet adopted this framework in their legal publications, namely the treaty bodies for the Convention on Migrant Workers and the Convention on Persons with Disabilities.
States have also understood the obligation to provide reparations for human rights violations to include these five forms of redress. Many states have affirmed resolutions in political bodies at the UN that adopt this interpretation of the right to reparations for human rights violations. For example, the UN Human Rights Commission, the predecessor to the UN Human Rights Council, adopted several guiding principles reflecting the reparations framework. In 1997, the UN Human Rights Commission adopted the “Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity,” which are intended to reflect international norms around state obligations to protect human rights, and which explicitly state that, “The right to reparation...shall include measures of restitution, compensation, rehabilitation, and satisfaction as provided by international law.”

Accordingly, under the current norms concerning reparations, states that violate human rights and maintain an obligation to provide reparations have a responsibility to, where appropriate, provide adequate compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition.

Types Of Reparation

Below is an overview of how the five types of reparation are generally understood in international human rights law. Because politically motivated imprisonment is most directly addressed under the ICCPR, the caselaw below is primarily drawn from the UN Treaty Body responsible for interpreting and monitoring that treaty, namely the UN Human Rights Committee.

---


22 UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc. GA Res. 60/147, (Mar. 21, 2006), available at www.undocs.org/A/RES/60/147.
Compensation

Compensation is the reparation that provides monetary awards for certain losses or harms that occurred as the result of violation. The compensated losses or harms may be material or immaterial. Compensation can be further broken down into two categories: material damages and moral damages. Material damages, sometimes referred to as pecuniary damages, compensate the victims and/or their related parties for economic loss attributable to the violation suffered. Moral damages, also referred to as non-pecuniary damages, compensate the victim for the suffering, physical, psychological, reputational or otherwise, caused by the state’s violation of the victim’s rights. Depending on the facts of the case and the jurisdiction, one or both forms of compensation may be available to parties other than the victim, including family members, legal entities, and other third parties. In addition to material or moral damages, courts may award legal fees and costs associated with bringing the case to the international tribunal.

Restitution

Restitution is the reparation that seeks to restore the victim’s legal status to its original position before the violation occurred. Restitution is generally understood to include restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one’s place of residence, restoration of employment, and return of property.

---

23 Id.
26 See id.
27 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, supra 21
28 See UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc. GA Res. 60/147, prin. 19 (Mar. 21, 2006), available at www.un docs.org/A/RES/60/147.
generally, international law requires that reparations include restitution in kind, where possible.\textsuperscript{29} in the case of a violation by an act of the judiciary, the act must be reversed and the consequences annulled, which may include a re-trial or commutation of sentence, as applicable.\textsuperscript{30} in addition to the reversal of criminal trials, the bodies consider that states should recognize the rights of victims that were denied as a result of the violation (e.g. expungement of a person’s criminal record in instances of wrongful conviction). This type of restitution is often granted with a form of compensation. It is important to note, however, the consensus is that compensation alone is insufficient in cases of wrongful conviction and compensation must accompany the overturned conviction. For example, in the case of \textit{Khalmamatov v. Kyrgyzstan}, the UN Human Rights Committee held that an unlawfully detained and convicted petitioner must be provided an annulment of his conviction in addition to the compensation that he was due.\textsuperscript{31} Another form of restitution that is particularly relevant in cases of wrongful detention is the restoration of liberty, as it is inherent in rectifying the wrong that a victim must be released.\textsuperscript{32}

Additionally, restoration of employment is considered a natural remedy for any violation that adversely affects a victim’s employment. in the case of \textit{Chira Vargas-Machuca v. Peru}, the UN Human Rights Committee held that the state should ensure the petitioner’s “effective reinstatement to his duties and to his post, with all the consequences that that implies, at the rank that he would have held had he not been dismissed in 1991, or to a similar post,” and “compensation comprising a sum equivalent to the payment of the arrears of salary and remuneration that he would have received from the time at which he was not reinstated to his post.”\textsuperscript{33} if a state cannot restore employment, then the jurisprudence of the Treaty Bodies and courts suggest that appropriate compensation must be made.\textsuperscript{34}

\textsuperscript{29} \textit{The Chorzow Factory (Jurisdiction) Case}, supra 15(stating “Restitution in kind . . . are the principles which should serve to determine the amount of compensation due for an act contrary to international law.”)


Rehabilitation

In international human rights law, rehabilitation often refers to the provision of medical and psychological care, as well as legal and social services, that may be required to repair a victim or restore them to a pre-violation condition. In practice, Treaty Bodies often consider rehabilitation awards within compensation awards. Typically, the relevant body orders costs associated with rehabilitation in connection with an award for damages. For example, the UN Human Rights Committee requires states to afford necessary medical assistance to victims.

In some contexts, rehabilitation is interpreted more broadly than mere medical and psychological services. Some UN Treaty Bodies understand the proper scope of rehabilitative reparations to include restoring a victim’s physical, mental, social and vocational ability, as well as full inclusion and participation in society. Rehabilitative measures should not depend on a state’s available resources. The Committee against Torture suggests appropriate measures be determined on an individual level through independent, holistic and professional evaluations of a victim’s needs and include victims’ input in selection of a service provider. The CEDAW Committee has also adopted a broader understanding of the scope of rehabilitation, finding that, where appropriate to restore the victim, it can include both the provision of legal services and a safe place for the victim to live with their family.

Satisfaction

Generally, "satisfaction" refers to symbolic measures directed at the victim that a state may take to issue a public acknowledgment of wrongdoing, to conduct truth seeking, and to take public accountability for the wrongdoing. International courts acknowledge that, when coupled with other forms of reparations such as compensation, satisfaction for moral damage or damages to dignity or reputation may be appropriate for rights violations. Satisfaction can be provided through judicial decisions of an international tribunal that condemn the actions of a state, orders for an apology, public acknowledgment of violations of the victim’s rights and acceptance of responsibility by the state, or an order for public commemoration.

---

35 See, e.g., UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc. GA Res. 60/147, (Mar. 21, 2006), available at www.undocs.org/A/RES/60/147.


37 Committee against Torture, General Comment No. 3, para 11.

38 See generally General Comment No. 3 on Article 14 of the Convention against Torture.

Apology, public acknowledgment, and acceptance of responsibility by the state is considered crucial to a victim’s award. The UN Human Rights Committee’s resolutions on impunity state that “for the victims of human rights violations, public knowledge of their suffering and the truth about the perpetrators, including their accomplices, of these violations are essential steps towards rehabilitation and reconciliation." For example, satisfaction may include any of the following actions: verification of the facts and public disclosure of the truth, in so far as it is not against the interest of the victim; investigation of the whereabouts of the disappeared; public apologies, including an acceptance of responsibility; inclusion of an accurate account of violations that occurred in future training and in educational materials at all levels; holding commemorative ceremonies; and creating public memorials.

Outside of the UN system, some international human rights courts will order public commemoration as a symbolic form of reparation in cases where violations were against groups or a large number of persons. A key example of this concerns the Inter-American Court on Human Rights, which in one case ordered the naming of a street and educational center in honor of victims or the creation of a public monument to victims.

**Non-Repetition**

When an international court orders reparations, the order often requires the cessation and non-repetition of the human rights violation in question. Guarantees of non-repetition constitute more than a verbal and public affirmation that the violation will not occur again. A guarantee of non-repetition requires that a state take steps to remedy systemic defects leading to the violation. A successful guarantee of non-repetition will involve changes that genuinely decrease the risk of a future violation, typically through a formal legal change that prohibits certain activities or creates new procedures. For example, the UN Human Rights Committee has found that constitutional amendments that enshrine certain procedural safeguards at trial can be an adequate guarantee of non-repetition. Non-reparation orders may also include recommendations to repeal certain legislation that is likely to give rise to similar violations in the future. They may also require assurance of protection of human rights advocates and defenders and medical, legal, media and other key personnel and human rights training in military and police forces.

---

41 Street Children Case, para 103; Trujillo Orozco, para 122.
42 Barrios Atos, para 44(f) and operative para 5(f).
REHABILITATION OF FORMER PRISONERS OF CONSCIENCE IN KAZAKHSTAN

The Republic of Kazakhstan has recently undergone a political transition. Former President Nursultan Nazarbayev ruled Kazakhstan from Kazakhstan’s independence in 1991 until he officially stepped down in 2019. His successor, Kassym-Jomart Tokayev, has largely maintained the status quo. Although Tokayev has ostensibly sought to implement reform, in January 2022, a series of protests swept the country. The impetus was rising fuel prices, however, protestors expressed broader discontent over corruption and the political system. After authorities began indiscriminately using stun grenades and teargas to disperse crowds of protesters and blocking the internet and mobile phones, violent elements joined the protests and began defacing and assaulting government buildings and other targets. At least 10,000 people were arrested and 238 died. Outside observers suggested that the violence may have been connected to a power struggle between ruling elites. After the protests were contained, Tokayev promised a series of reforms, some of which were adopted in a hastily called constitutional referendum and others to be implemented later. He also stripped Nazarbayev and his family of several key posts.

The current Tokayev regime continues to use politically motivated detention to maintain political control. As a result, Kazakhstan has numerous former prisoners of conscience, and the number continues to grow after the widespread crackdown following the January protests. The government has an international obligation to help prisoners of conscience who have been released meaningfully regain their lives through full rehabilitation and restoration. While Kazakhstan has rehabilitated numerous Soviet-era victims of human rights violations, more recently released former political prisoners have been unable to obtain reparations from the government.


Kazakhstan’s Tokayev vows to present new package of political reforms in September, TASS (Jan. 11, 2022), available at https://tass.com/world/386269.


This section examines what rehabilitation rights are afforded, both formally and in practice, to post-Soviet prisoners of conscience in Kazakhstan. The first sub-section examines the legal framework on rehabilitation currently in place in Kazakhstan. The second sub-section provides an overview of how that framework is applied in practice as it relates to former prisoners of conscience. The third and final sub-section attempts to identify the unmet needs of former prisoners of conscience.

The Right to Rehabilitation under Kazakhstan Law

Grounds for Rehabilitation under Current Kazakhstan Law

Kazakhstan law provides for the state to make reparations to former detainees when certain aspects of their detention are determined to be unlawful, and it offers reparations for some former detainees that the government has wronged. Below are the legal bases for receiving rehabilitation that are most relevant to cases of former prisoners of conscience. For clarity, the legal grounds for rehabilitation are divided into four different categories based on their scope and the area of Kazakhstan law that gives rise to them:

Category 1 - Criminal Code Rehabilitation
This category, created under Criminal Procedure Code Articles 37-38, primarily applies to people who have been wronged in relation to a criminal prosecution. This category specifically covers people who are acquitted or who are suspected, accused, or tried, but determined to be innocent of the charges on the grounds that: (1) either the crime did not occur, (2) an element of the crime cannot be proven, (3) there is no complaint from the victim in crimes requiring such, (4) a law has abolished the crime, (5) the Constitutional Council has found the crime unconstitutional, or (6) res judicata precludes prosecution.50

Category 2 - Administrative Code Rehabilitation
This category, created under the Administrative Code Articles 677 and 678, includes people who were wrongfully subjected to administrative proceedings or who in the course of unlawful administrative proceedings were wrongfully detained, arrested, or subjected to coercive medical measures.51 This category also includes people who were detained in dangerous conditions or ill-treated in relation to administrative detention.52

Category 3 - Soviet-Era Rehabilitation
This category, defined under the Law on Rehabilitation of Victims of Massive Political Repression, includes Kazakhstan citizens who can demonstrate that they were victims of political repression in the territory of the former USSR.53 To qualify for this category, a court must make a finding that the initial criminal conviction was unfounded and acquit the individual of all charges in the same procedure as an ordinary wrongful trial.54

Category 4 - Crime-Victim Fund
This category, created under Criminal Code Article 146, includes individuals who were victims of certain crimes.55 With respect to prisoners of conscience, the victim compensation fund provides compensation to individuals subjected to torture or ill-treatment.56

54 Order of the President on Additional Measures for the More In-depth Research into the Heritage of and for Preserving the Memory of the Victims of Political Repressions, № P-5598, October 8, 2020 (https://lex2uz/docs/5041021_rus/)
55 On Rehabilitation of Victims of Massive Political Repression, supra 53
56 Kazakhstan Criminal Code, Article 146.
Prisoners of conscience that fall within the scope of these provisions can claim reparations from the government under Kazakhstan law. Other possible grounds for rehabilitation that are not identified under the above categories—such as being granted amnesty, pardon, or a mitigation of punishment—do not qualify individuals to seek rehabilitation. Only those who qualify under one of the above rehabilitating categories have the right to redress, reparation, and compensation, as described below.

**Scope Of Rehabilitation Under Current Kazakhstan Law**

Those who fall within the scope of the legislative provisions above are entitled to monetary compensation for material damage as well as non-material damage (moral damages) as well as some forms of restitution, rehabilitation, and satisfaction for people entitled to rehabilitation.

**Compensation For Material Damage Under Kazakhstan Law**

When a person is entitled to rehabilitation under one of the rehabilitating categories, they have the right to monetary compensation for certain material damages caused by the government. However, the extent of the compensation may depend on the category that the person falls within.

Those who are entitled to rehabilitation for wrongful criminal or administrative prosecution (i.e., those who qualify under Category I or Category II) may claim compensation by filing a civil case for compensation after receiving a criminal or administrative decision recognizing eligibility for rehabilitation. The material damages that one is entitled to recover includes:

- Lost wages, pensions, allowances, and other lost income;  
- Illegally confiscated property;  
- Fines, court costs, and other costs paid in connection with illegal criminal proceedings;  
- Money paid for legal assistance;  
- Injuries to health;  
- Loss of earnings;  
- Increased cost of living; and  
- Pension contributions.

In addition to recovery for the above, those eligible for compensation for material damages may also be eligible to receive moral damages, as described in the following section.

---

59 Id.
60 Id.
61 Id.
63 Id. art. 937 & 938.
64 Id. art. 943.
65 Id. art. 944.
Those who fall under Category III for Soviet-era repression and who were detained in some manner are entitled to compensation "in the amount of three quarters of the monthly calculation index . . . for each month of stay in [detention], but not more than 100 times the monthly calculation index."\(^{66}\)

Lastly, those who fall under Category IV because they are eligible for the Crime Victims Compensation Fund are entitled to compensation payments, the amount of which is determined on the basis of the crime that the victim suffered.\(^{67}\) The amounts vary between thirty, forty and fifty monthly calculation indices.\(^{68}\) In the case of torture, the victim is entitled to thirty monthly subsistence indices, which at the time of publication is approximately 200 USD.\(^{69}\)

**Compensation for Non-Material Damage under Kazakhstan Law**

In addition to material damages, some former prisoners may seek monetary compensation for non-material or other moral damages. Those who fall within Categories I and II are entitled to moral and other non-material damages as outlined in the Civil Code.\(^{70}\) The Civil Code allows for compensation for the following non-material injuries:\(^{71}\)

- Injuries to life and health;
- Injuries to dignity, honor, and good name;
- Injuries to business reputation;
- Invasions of private life, personal secrets, and family secrets; and
- Other non-material rights and benefits.

Although there are provisions for criminal and administrative compensation for moral damages, those who fall within Categories III and IV are not entitled to compensation for any damages in excess of that described in the material damages section above, which does not include compensation for moral injuries.

---


\(^{68}\) Note, however, that in some circumstances the amount may be lower than 30 monthly calculation indices. See Law of the Republic of Kazakhstan, *On the Victims Compensation Fund*, art. 7 (Jan. 10, 2018), https://adilet.zan.kz/eng/docs/Z18000000131.


Restitution Under Kazakhstan Law

Kazakhstan law provides restitution for those who were wrongfully detained. Those who fall under Category I for wrongful criminal prosecution are entitled to restoration of labor rights, pension rights, housing rights, and "other rights." Additionally, any rank, status, or award that was deprived as the result of proceedings should be restored. Additionally, the individual is entitled to have any state awards returned.

Those who fall within Category II on the grounds of wrongful prosecution under the Administrative Code are entitled to have any restrictions on their rights and freedoms guaranteed under the Kazakhstan Constitution removed.

Those who fall under Category III for Soviet-era repression are entitled to have all social and political rights restored, including restoration in any awards, honorary, or military ranks that were stripped of them. They are also entitled to have Kazakhstan citizenship restored if it had been wrongfully stripped of them, and they have to right to return to live in the area they resided before the repression. Those who fall within Category IV and are either disable or pensioners also have additional rights to preferential treatment for certain, limited government programs.

Those who fall within Category IV are not entitled to restitution due to their membership in the category.

Rehabilitation Under Kazakhstan Law

Using the term “rehabilitation” as it is applied in international law to refer to the provision of medical and psychological care and legal and social services, Kazakhstan law does not provide rehabilitated victims any additional rights to obtain rehabilitative services from the government other than those services already provided to all former prisoners. All former prisoners, not just ones entitled to rehabilitation, are provided state-support for the purposes of post-conviction reintegration. The reintegration program gives all former prisoners access to basic needs, such as food, clothing, employment, housing, medical treatment, and legal aid.

Although former prisoners of conscience do not have the means of obtaining direct services from the government due to their status as prisoners of conscience, victims may instead seek monetary compensation for rehabilitative services, as far as those services fall within the grounds to obtain compensation outlined above. For example, those subjected to ill-treatment in relation to criminal or administrative prosecution may seek compensation for social, medical, and psychological assistance on the grounds that their cost of living has increased or that they have suffered a loss to health. However, if rehabilitative services do not fit within the grounds for compensation—e.g., if they are not connected to a criminal or administrative case finding evidence of the ill-treatment—the victim will have no additional ability to obtain services other than those provided to all former prisoners.

73 Id.
74 Id.
77 Id. art. 20.
78 Id. art. 24.
80 See id.
Satisfaction Under Kazakhstan Law

Kazakhstan law grants some meaningful forms of symbolic admission of wrongdoing to victims of wrongful imprisonment, in addition to receiving a judgement or court order acquitting them of the crime.

Former prisoners who fall within Categories I and II are entitled to a formal apology from the body conducting the criminal or administrative proceedings and adopting the decision on rehabilitation of the individual.\(^{82}\) Additionally, Category I victims are entitled to public recognition of their illegal prosecution or wrongful detention. Such public recognition includes publication of information about the rehabilitation in the press, on radio, television or other media.\(^ {83}\) Lastly, Category I victims are entitled to have the body conducting the illegal proceedings write a letter on the cancellation of the illegal decision to the victim’s place of work, study, or residence.\(^ {84}\)

Additionally, those wrongfully subjected to criminal or administrative prosecution are entitled, under Article 143 of the Civil Code, to have the media that published information that injured the victim’s reputation, such as information about the criminal prosecution, publish correct information about the victim’s rehabilitation.\(^ {85}\)

Former prisoners who fall within Category III due to being subjected to Soviet repression are provided a certificate of rehabilitation, which grants the person the status of a victim of political repression, recognizing that they were wronged by the state.\(^ {86}\)

Those who fall within Category IV are not entitled to satisfaction due to their membership in the category.

Guarantees Of Non-Repetition Under Kazakhstan Law

Given that guarantees of non-repetition are systemic reforms that often take the form of new legislation, current Kazakhstan law does not contain provisions that amount to guarantees of non-repetition.

---


\(^{83}\) Id. art. 41(3).

\(^{84}\) Id. art. 39(2).

\(^{85}\) Kazakhstan Civil Procedure Code, arts. 143, available at https://adilet.zan.kz/eng/docs/K940001000._

The Right To Rehabilitation In Practice In Kazakhstan

The Kazakhstan government often fails to provide prisoners of conscience with rehabilitation under the legal framework outlined above. Due to various gaps and procedural restrictions, the current rehabilitation program is not structured in a way that fully restores former prisoners of conscience. As a result, the framework does not meet international standards on reparations.

Former Prisoners Of Conscience’s Access To Rehabilitation Programs

In practice, most former prisoners of conscience in Kazakhstan are not eligible for rehabilitation, as they do not fall within one of the four categories required to seek rehabilitation. Numerous procedural factors and institutional pressures facing prisoners of conscience cases routinely serve to bar these former prisoners from rehabilitation programs.

Under Category I, the procedural history of the criminal case of a prisoner of conscience can, and often does, directly prevent access to rehabilitation. As described above, to be eligible for rehabilitation for a wrongful criminal prosecution under Category I, a prisoner must be acquitted of their charges or have their conviction quashed. However, many former prisoners of conscience are released after serving the term of their sentence, and as a result they continue to be considered guilty of committing a crime under Kazakhstan law. Moreover, in addition to being viewed as guilty of a crime under the law, the current rehabilitation framework for wrongful criminal prosecution explicitly excludes prisoners released on grounds such as amnesty, pardon, or on a suspended sentence. Because many former prisoners of conscience are released only after completing their sentences or after receiving a pardon or other early-release programs, those former prisoners are ineligible for rehabilitation under the current rehabilitation framework. Without a court overturning their convictions, former prisoners will often be ineligible for Criminal Code rehabilitation under Category I. Furthermore, the exact same issue arises for Administrative Code rehabilitation under Category II, which also requires that the administrative judgement be overturned before one is eligible for administrative rehabilitation.


89 See e.g., President of Kazakhstan Pardoned Journalist, Kazakhstan, supra 88; Ailing Political Prisoner Freed after 15 Years Behind Bars, supra 88
Accordingly, acquittal or reversal of one’s conviction is a key element of eligibility for the primary forms of rehabilitation for wrongful criminal and administrative prosecution. However, obtaining an acquittal or a reversal of one’s conviction to qualify for rehabilitation can be an impossible task for former prisoners of conscience. If a prisoner has already exhausted their domestic remedies by appealing their conviction to the highest domestic court available, they are no longer entitled to have courts reopen and reexamine their case unless they can show that there is newly discovered exculpatory evidence. Although there are other ways that cases can be re-examined, such as the Prosecutor General petitioning to reopen a case, these avenues are discretionary and do not grant an absolute right to reopen the case to the victim. In many cases of political prisoners, there is no new evidence to present to the court that was not raised in the initial proceedings. As a result, many former prisoners of conscience released on grounds that do not entitle them to rehabilitation do not have the ability to have a court re-examine their conviction and grant them the acquittal necessary to qualify for rehabilitation.

Even if former political prisoners are able to reopen their cases, the Kazakhstan criminal justice system imposes several additional procedural barriers that prevent prisoners from having their convictions overturned. For example, the government’s practice of extracting forced confessions is used to deny rehabilitation to former prisoners of conscience. Under Kazakhstan law, those who “voluntarily self-incriminated themselves” are not entitled to rehabilitation for wrongful prosecution under both the Criminal Procedure Code and the Administrative Code rehabilitation provisions. Human rights observers have found that Kazakhstan police occasionally use pressure and mistreatment during detention to extract confession from detainees. This practice of pressuring prisoners of conscience to sign confessions has been used against former prisoners of conscience. Although the issue of forced confessions can be raised at trial, courts often refuse to investigate or nullify such convictions. Because these confessions are left intact, the government can consider former prisoners that were pressured into signing confessions to have “voluntarily self-incriminated themselves,” which precludes the possibility of obtaining rehabilitation. Accordingly, when prisoners are pressured to sign confessions, the government can deny rehabilitation if there are no avenues for legally nullifying the confession.

Moreover, Kazakhstan authorities often force, as a condition of their release, former prisoners to sign formal documentation accepting guilt for their alleged crime and asking forgiveness. The government uses formal admissions of guilt, whether extracted prior to prosecution or as a condition of release on parole, as evidence of the commission of a crime. As a result, signing these admissions precludes former prisoners from obtaining acquittals and subsequent rehabilitation.

---

90 See Kazakhstan Criminal Procedure Code, art. 499, available at https://adilet.zan.kz/eng/docs/K1400000231. Note that there may be other ways to have the case opened, but the victim does not have a right to reopen proceedings in those cases. See, e.g., Kazakhstan Criminal Procedure Code, art. 484(4), available at https://adilet.zan.kz/eng/docs/K1400000231.

91 See id., art. 484(4).


94 See, e.g., Freedom Now, Case of Serikzhan Bilash, https://www.freedom-now.org/cases/serikzhan-bilash/; Freedom Now, Case of WhatsApp Members, https://www.freedom-now.org/cases/whatsapp-group-members/ (where three of the members were pressured to sign false confessions).

95 See, e.g., Freedom Now, Case of WhatsApp Members, supra 94 (where the trial court refused to conduct an investigation into allegations of false confessions raised during proceedings).

96 See, Interview Responses, on file with author.
For example, the Kazakhstan government repeatedly attempted to pressure prisoner of conscience Aron Atabek into signing an admission of guilt to secure his release. Aron Atabek was a Kazakhstani poet, journalist, and social activist, and he was imprisoned in 2007 after being convicted for his part in organizing a protest that resulted in the death of a police officer. Atabek was sentenced to eighteen years imprisonment, of which he was forced to spend a significant portion in solitary confinement. In 2012, Kazakhstan authorities offered to pardon Atabek on the condition that he admit that he was guilty of crime for which he was convicted. However, Atabek refused the offer, maintaining his innocence under the belief that he acted within his rights when organizing the protest. Atabek refused to request parole for the same reason, as authorities required an admission of his guilt. In early 2021, Atabek again objected to a commutation of his sentence on humanitarian grounds, instead insisting that his conviction be overturned rather than commuted. On October 1, 2021, after over fourteen years in prison and months after 2,500 people signed a petition to President Tokayev calling for Atabek’s freedom, Pavlodar City Court No. 2 commuted Atabek’ sentence on humanitarian grounds due to his diminishing health, at which point he was released from prison. Despite having significant health needs following his detention, Atabek was not entitled to criminal code rehabilitation due to his release via commutation. Atabek passed away a few weeks after his release without having received any form of rehabilitation.

100 Id.
101 Id.
102 Id.
103 Id.
Although Atabek resisted the government’s pressure to admit guilt for the unfounded allegation against him, other political prisoners will accept the government’s offer of freedom in exchange for an admission of guilt, as was the case for Yaroslav Golyshkin. In October 2016, Golyshkin, a Kazakhstani journalist and editor of the Pavlodar-based newspaper, "Versiya," was imprisoned on baseless charges of “blackmail" after he conducted a journalistic investigation into a rape case allegedly involving the son of the governor of Pavlodar province. He was ultimately sentenced to eight years in prison. After repeated calls for his release by civil society, Golyshkin was offered an official pardon in 2019 by President Tokayev on the condition that he would fully admit guilt for his charges. Golyshkin accepted the offer and was released on presidential pardon. As a result of his admission, he would not be eligible for rehabilitation.

Because the government uses the practices describe above when releasing prisoners of conscience, it is very difficult for former prisoners of conscience who were criminally prosecuted to qualify for rehabilitation under Category I. Being denied access to Category I precludes all possible rehabilitation for criminal conviction.

The process to obtain compensation via civil proceedings is tied directly to criminal or administrative proceedings. Under Kazakhstan law, the factual findings and the judgement of a court in a person’s criminal or administrative trial are binding on any civil proceedings concerning the same person and facts. In other words, for one to pursue a civil case for rehabilitation for wrongful criminal or administrative proceedings, one must first obtain a criminal or administrative judgement finding that one is entitled to rehabilitation. As a result, the civil case does not function to determine whether one is eligible for rehabilitation. The civil case is concerned with the amount and nature of rehabilitation, as well as what government department is responsible for payment of rehabilitation. For example, if a court finds that a prisoner of conscience is guilty of a crime, then the prisoner of conscience cannot pursue any future civil proceedings for rehabilitation unless there is another criminal judgement overturning their conviction and recognizing their eligibility for rehabilitation. The result is that the government’s denial of rehabilitation to former prisoners of conscience in their criminal case functionally prevents former prisoners from bringing a case for consideration of their eligibility for rehabilitation under civil law.

If excluded from the first three categories, former prisoners of conscience may still seek rehabilitation under the others, such as under the administrative code rehabilitation. However, many former prisoners of conscience did not have administrative cases against them, and even if they did, the damages from the administrative case are pale in comparison to the damages caused by the criminal prosecution. As a result, any administrative code rehabilitation would be grossly insufficient if the person also suffered criminal prosecution.

108 President of Kazakhstan Pardoned Journalist, supra 88.
Additionally, Categories III and IV are very limited in scope. Category III only applies to victims of Soviet-era repression, which precludes all prisoners of conscience prosecuted after the fall of the Soviet Union. Similarly, Category IV, only applies to former prisoners of conscience subjected to torture and ill-treatment. Thus, not all former prisoners of conscience are eligible to seek compensation under this category. Local lawyers have raised concerns about whether receiving compensation from the fund precludes or waives the victim’s right to seek compensation for civil damages, which further restricts the feasibility of pursuing rehabilitation under Category IV. Because this preclusion issue is not explicitly addressed in the text of the Victims Compensation Fund law, some former prisoners of conscience may be hesitant to pursue Category IV.

Despite the limitations imposed by the categories for rehabilitation, several former prisoners of conscience have attempted to use the courts to expand the scope of Category III, under the Soviet-era political prisoner laws to apply to post-Soviet prisoners of conscience, but so far these efforts have been unsuccessful.

Most recently, political activist and human rights defender Alnur Ilyashev attempted to do this. Ilyashev was convicted in June 2020 under Criminal Code Article 274, which prohibits disseminating false information, for posting criticism of the Nur Otan Party and the government’s handling of the pandemic on social media.\(^\text{110}\) The previous year, Ilyashev and three others were ordered to pay Nur Otan Party members around $15,500 for allegedly disseminating false information.\(^\text{111}\) Following his conviction, Ilyashev sought recognition as a “victim of mass repression” under Category III for his political prosecution in June 2020. Although the Category III framework was created initially to rehabilitate victims of Soviet political repression, expanding this framework to recent political prisoners would provide a new avenue for rehabilitation and restoration of the rights lost due to wrongful prosecution. However, in 2021, Kazakhstan courts refused Ilyashev’s petition for recognition as a victim of mass repression.\(^\text{112}\)

Given the limited scope of the rehabilitation categories and the immense procedural barriers to initiating the legal process, many prisoners of conscience are categorically excluded from eligibility for rehabilitation under current Kazakhstan law.

**Former Prisoners Of Conscience’s Treatment Under The Rehabilitation Framework**

It is rare for prisoners of conscience to qualify for rehabilitation for wrongful imprisonment. So far, there has been one recent case concerning two prisoners of conscience who were determined to be eligible for rehabilitation under Kazakhstan law. These former prisoners, Seytkazy Matayev and Aset Matayev, were journalists prosecuted in retaliation for reporting on issues critical of the government. Only after successfully petitioning the Prosecutor General to ask the court to reopen their case were the men able to have their convictions overturned.

---

\(^{110}\) *Kazakh Activist’s ‘Fake News’ Conviction Upheld*, supra 87


\(^{112}\) See Ilyashev Court Proceedings on Victim of Mass Repression Status, on file with author.
CASE EXAMPLE:
SEYTKAZY MATAYEV & ASET MATAYEV

In 2016, Seytkazy Matayev, then-head of the Kazakh Journalists’ Union, and his son Aset Matayev, the director of the independent news agency KazTag, were wrongfully prosecuted and convicted for tax evasion and embezzlement.\textsuperscript{113} Seytkazy was sentenced to six years imprisonment while Aset was sentenced to five years imprisonment.\textsuperscript{114} Both men maintained their innocence, and civil society organizations determined that the prosecution was done in retaliation for the men’s legitimate journalistic activities.\textsuperscript{115} Seytkazy Matayev was released in December 2017 after his sentence was reduced under a 2016 mass amnesty.\textsuperscript{116} However, Aset was not released and served the remainder of his detention.\textsuperscript{117} After appealing to the Prosecutor General, the Prosecutor General’s office petitioned the Supreme Court to reexamine the case of the Matayevs on the grounds that they were wrongfully convicted.\textsuperscript{118} On July 19, 2022, the Supreme Court overturned the convictions of both Seytkazy and Aset and acquitted both men on all charges, finding that no basis for their convictions and that their trial was the result of illegal actions by the conducting bodies.\textsuperscript{119} The Supreme Court also found that both men are entitled to rehabilitation, including compensation and the restoration of their rights, for their wrongful conviction and imprisonment.\textsuperscript{120} At the time of publication, these men have not yet received rehabilitation.

\textsuperscript{114}Id.
\textsuperscript{116}Id.
\textsuperscript{118}The Supreme Court Fully Acquitted Seytkazy and Aset Matayev, KazTag (July 19, 2022), available at https://kaztag.kz/ru/news-of-the-day/verkhovnyy-sud-pohostyu-opravdal-seytkazy--aseta-mataevykh (in Russian); The Supreme Court Acquitted the Chairman of the Union of Journalists Seytkazy Matayev and His Son Aset Matayev, RFE/RL (July 19, 2022), available at https://www.azattyq.org.translate.google/a/31949812.html?_x_tr_s=auto&_x_tr_l=en&_x_tr_h=en-US.
\textsuperscript{119}Id.
\textsuperscript{120}Id.
Although it is extremely rare for former prisoners of conscience to qualify for rehabilitation, Kazakhstan does have a history of providing rehabilitation to non-political detainees who were wrongfully imprisoned and mistreated while in detention. The two most prominent examples of non-political prisoner rehabilitation are Alexander Gerasimov and Rasim Baimarov.\textsuperscript{121} Both of these cases concern torture and ill treatment committed by the Kostanay Regional Police Department and the failure to investigate torture allegations by the Kostanay City Court.\textsuperscript{122} After long and protracted legal battles that included petitions to the UN Committee Against Torture, both Gerasimov and Baimarov were recognized by Kazakhstan courts, in 2013 and 2014 respectively, as eligible for rehabilitation in the form of compensation under the Civil Code for the material and moral damage resulting from their mistreatment. Gerasimov was awarded the then-equivalent of $13,000 USD for material damages, to be paid by the Kostanay Region Police Department,\textsuperscript{123} and Baimarov was awarded the then-equivalent of $600 USD for material damages.\textsuperscript{124} These amounts are far smaller than what both men sought at trial. Gerasimov requested the equivalent of $144,000 USD and Baimarov sought $655,000 USD. Although neither man received the amount of compensation requested, their awards led to some optimism that former prisoners subjected to mistreatment would be able to claim compensation for that mistreatment.

Since the Baimarov decision, there have been no comparable cases of rehabilitation for torture. Both Gerasimov and Baimarov only received compensation after a UN treaty body found that they were subjected to torture. The Kazakhstan Ministry of Foreign Affairs, the body responsible for ensuring implementation of Kazakhstan’s international human rights obligations, contacted the Prosecutor General’s office about implementing the treaty body decisions on Gerasimov and Baimarov. However, the Ministry of Foreign Affairs has not been successful in guiding implementation of other treaty body decisions. Currently, there are twelve other treaty body decisions against Kazakhstan finding that the government engaged in torture or other prohibited ill-treatment, but none of the victims in those cases received rehabilitation under the frameworks described above. All other attempts to seek moral damage compensation for the human rights treaty violations from the state have been rejected by national courts asserting that treaty body views on individual submissions are mere recommendations that are not binding on Kazakhstan.

For the other legal bases of rehabilitation, such as Categories III and IV, compensation is very limited, as discussed above. Due to the minimal amount of compensation, payments under these categories function more as a symbolic gesture rather than a genuine attempt to make victims whole. As a result, if a former prisoner of conscience successfully obtains reparations under these programs, they are unlikely to be fully rehabilitated.

As a result, even those who qualify for rehabilitation under Kazakhstan law face immense legal hurdles or are likely to receive far less in compensation that is necessary to achieve full rehabilitation.


\textsuperscript{124} The 1st instance court n case No 2-8617/2014 from 12 December 2014 is accessible at https://bureau.kz/monitoring_2/sudebnaya_praktika/article_1798/ (rus.); The 2nd instance (appeal) court decision on case No 3-2172-15 from 8 May 2015 https://docs.google.com/document/d/1of6VaoSwtICh3ZO_NKUBD0RgFNIkJ4S/edit?usp=sharing&ouid=14303459888709951592&shhp=true&sd=true (rus.)
Former Prisoners of Conscience’s Access to General Post-Conviction Services

Those who do not qualify for rehabilitation are still entitled to the government’s support programs for former prisoners. As noted above, Kazakhstan has state programs that aim to provide all former prisoners, not just those entitled to rehabilitation, support for post-conviction reintegration. The reintegration program gives all former prisoners access to basic needs, such as food, clothing, employment, housing, medical treatment, and legal aid.

However, former prisoners of conscience report that these state services can be difficult, if not impossible, to obtain. One interviewee claimed that after being released, he sought medical support from local agencies responsible for reintegration services to treat cardio-vascular issues that developed while in detention. However, after repeated applications, these agencies refused to provide him with any ongoing medical treatment. With a lack of support, the interviewee was unable to afford treatment for his condition. Multiple interviewees reported a lack of access to medical services, both while detained and after release. Travel restrictions put in place as part of one interviewee’s parole conditions prevented him from traveling abroad to receive necessary medical care. Because the government’s post-conviction services can be difficult to obtain and many former political prisoners are unable to seek legal rehabilitation due to the circumstances of their release, they are often left without any support or redress.

Needs Assessment Of Former Kazakhstan Prisoners Of Conscience

The interviews with Kazakhstan prisoners of conscience reveal that former prisoners of conscience have many rehabilitation-related needs that are not currently met by Kazakhstan’s existing rehabilitation framework. The failure to address the needs of former prisoners of conscience is evidence that the Kazakhstan government is not fulfilling its international obligations to provide reparations for its violation of human rights with respect to former prisoners of conscience.

Although two prisoners of conscience in Kazakhstan have received recognition of their entitlement to rehabilitation, none of the individuals interviewed for this report have been recognized as entitled to rehabilitation under one of the categories for rehabilitation in Kazakhstan. All but two interviewees were aware of the procedures available under Kazakhstan law to reopen their cases and seek rehabilitation. Although most interviewees were aware of the discretionary process to reopen their cases, none of the interviewees did so, reporting that they believed the process would be futile. Moreover, all Kazakhstan interviewees report having unmet rehabilitative needs as a consequence of wrongful detention. These needs are discussed below as they relate to the five types of reparations that the interviewees are entitled to from Kazakhstan’s international human rights commitments.

Compensation Needs Of Former Kazakhstan Prisoners Of Conscience

Interviewees report that their imprisonments caused damages from lost employment, lost businesses, seized property, damaged property, torture and ill-treatment, medical costs, legal fees and court costs, and the costs of prison visits. None of the interviewees have received compensation for any material or moral damages as the result of wrongful imprisonment.

126 See id.
127 See Former Prisoner of Conscience Interviews, on file with author.
128 Former Prisoner of Conscience Interviews, on file with author.
Restitution Needs Of Former Kazakhstan Prisoners Of Conscience

As a result of imprisonment, all interviewees continue to be deprived of certain legal rights and privileges. Interviewees report that since release, they continue to face restrictions on the right to travel, the ability to obtain certain occupational licenses and the ability to work in certain professions. Many interviewees also report being deprived of civil rights due to their convictions, including, running for political office, leading a civil society organization, organizing protests, and similar political activities. Parole officers periodically monitor one interviewee’s social media accounts to monitor his ban on engaging in political activities.

Access to re-employment was an issue for all but one of the interviewees at the time of release, and ten of the interviewees continue to face issues securing employment. Many interviewees claim that they have unable to secure jobs related to their profession or qualifications, or secure jobs similar to those they maintained before their detention. After one interviewee found employment, police periodically visited his place of employment, which intimidated his employer and ultimately led to the interviewee’s termination.

Although Kazakhstan law provides general post-release employment services for released convicts, most interviewees report difficulty accessing these programs. Of the ten interviewees who face ongoing employment issues, only two interviewees report receiving some kind of employment assistance. The remaining eight report being unable to access services to help secure employment.

Additionally, interviewees convicted of extremism-related charges report being placed on a “financial blacklist” that restricts access to financial services. Under the “Law on Fighting Against Laundering Income Received Illegally and Against the Financing of Terrorism,” people convicted of extremism-related charges are placed on the state list of people “associated with the financing of terrorism and extremism” for up to eight years. When a person is placed on the list, their bank accounts are frozen and they are prohibited from making any bank transfers or payments, including mortgage payments. Additionally, those on the blacklist have their state personal identification number blocked, which prevents them from using state services, such as a notary.

Due to these restrictions, interviewees reported that they cannot (i) pursue employment opportunities that require direct deposit for payment; (ii) they cannot buy or sell property, as transferring property requires a notary service; and (iii) they cannot obtain insurance in order to drive. As a result, former prisoners of conscience convicted of extremism are functionally cut off from these services.
Rehabilitation Needs Of Former Kazakhstan Prisoners Of Conscience

The overwhelming majority of Kazakhstan interviewees report needing ongoing medical or psychological treatment due to imprisonment. Nine of the eleven Kazakhstan respondents report needing continuing medical care following their release, and of those who identified themselves as needing continuing medical treatment two report ongoing mental health issues as the result of detention, while all nine report ongoing physical health issues. However, no interviewee reports being able to access any government medical or psychological support after release. Several interviewees mentioned that they attempted to seek medical services under the state provided post-sentence reintegration program, but no interviewee was able to access medical care from these programs.

Satisfaction & Non-Repetition for Former Kazakhstan Prisoners of Conscience

No interviewees reported receiving any satisfaction or government recognition of the violation of their rights.

Moreover, the Kazakhstan government has not attempted to make any systemic changes that would prevent future forms of politically motivated detention in response to the detention of the interviewees. Indeed, the Kazakhstan government continues to detain prisoners of conscience, demonstrating that there is continued need for guarantees of non-repetition.

Although Kazakhstan’s international human rights commitments require the government to provide full reparations for the human rights violations committed against former prisoners of conscience, the government is failing to fulfill its obligations. The result is that former prisoners of conscience are left with uncompensated damages, continuing restrictions on their rights, ongoing medical needs, and no recognition of the wrongs committed against them. In order to ensure that wrongfully detained individuals receive full reparations, the government must change its rehabilitation process to ensure outcomes that comply with international human rights law.

The Republic of Uzbekistan has undergone significant political transition in recent years. President Islam Karimov ruled Uzbekistan from the fall of the Soviet Union in 1991 until his death in September 2016. His reign was distinguished by brutal human rights abuses, the most notable of which was the Andijan massacre in 2005. A Human Rights Watch report at that time declared “Uzbekistan’s human rights record remained abysmal across a wide spectrum of violations.”

Shavkat Mirziyoyev assumed the presidency after Karimov’s death and made successive declarations about reform in many sectors. Most remarkably, Mirziyoyev’s first few years in leadership saw political prisoners released, people removed from the religious/extremist blacklist, and some international human rights organizations and foreign media invited back to the country.

One of the most heralded changes in Uzbekistan was the release of more than fifty political prisoners from wrongful detention. These individuals represent only a small percentage of the estimated thousands wrongfully imprisoned in the country, but these releases may signal that Mirziyoyev is serious about making a clear break from the Karimov era. These releases can be commended, but Tashkent must help those released meaningfully regain their lives through full rehabilitation and restoration. While Uzbekistan has rehabilitated numerous Soviet-era victims of human rights violations, more recently released former political prisoners have been unable to obtain reparations from the government.

---

133 Media landscape in Uzbekistan, Foreign Policy Centre (July 14, 2020), available at https://fpc.org.uk/media-landscape-in-uzbekistan.
This section examines what rehabilitation rights are afforded, both formally and in practice, to post-Soviet prisoners of conscience in Uzbekistan. The first sub-section examines the legal framework on rehabilitation currently in place in Uzbekistan. The second sub-section provides an overview of how that framework is applied in practice as it relates to former prisoners of conscience. The third and final sub-section attempts to identify the unmet needs of former prisoners of conscience.

The Right to Rehabilitation under Uzbekistan Law

Uzbekistan does not have a law specifically providing for rehabilitation or reparations for former prisoners of conscience. Moreover, the terms “political prisoner” and “prisoners of conscience” are not employed by authorities, nor are these terms found in legislation in Uzbekistan.

However, the laws in Uzbekistan provide means of redress for the general class of individuals who can show that they had been wrongfully charged, sentenced, convicted, or otherwise mistreated by the government. Prisoners of conscience should, in theory, fall within the scope of these laws, even if in practice, as discussed in more detail below, they are often unable to avail themselves of these forms of redress. Recent amendments to the Civil Code in March 2022 have opened new avenues for redress for prisoners of conscience that were also victims of torture and other ill-treatment. The current framework and recent legal developments are discussed in the following.

Grounds for Rehabilitation under Current Uzbekistan Law

Like Kazakhstan, Uzbekistan law provides for the government to make reparations to former detainees who been gravely “wronged” by the government. Below are the legal bases for receiving rehabilitation that are most relevant to the cases of former prisoners of conscience. For clarity, the legal bases are divided into three different categories based on their scope and the area of Uzbekistan law that gives rise to them:

Category 1 - Criminal Code Rehabilitation
This category, created under the Criminal Procedure Code Articles 83 and 301, includes people who have been unlawfully charged, arrested, jailed, put under house arrest, or otherwise detained. This category applies people who are acquitted or who are suspected, accused, or tried, but determined to be innocent on the grounds that either the allegations were not substantiated, the crime did not occur, or the suspect or the accused was proved not to have been involved in the crime. Article 303 also allows partial rehabilitation for people who, after serving a criminal sentence, have had a reviewing court overturn the original conviction, either in whole or in part, such that the person has already served more time than their new conviction requires.

Category 2 - Administrative Code Rehabilitation
This category, created under the Administrative Code Article 324, includes people who were convicted on administrative charges but were unlawfully charged and sentenced to detention in custody.

---

135 Id. Art. 303.
Category 3 - Soviet-Era Rehabilitation
This category, defined under Presidential Order p-5598, includes people who have demonstrated that they were victims of Soviet political repression (in Uzbek: qatag'on). To qualify for this category, a court must find that the initial criminal conviction was unfounded and acquit the individual of all charges in the same procedure as an ordinary wrongful trial.\textsuperscript{137}

These legal provisions entitle qualifying individuals to reparations from the government. While there are other grounds for rehabilitation that are not identified above, these grounds do not allow individuals to seek reparations. For example, legal bases leading to prisoner release—such as being granted amnesty, a presidential pardon, or early release including on health grounds—do not entitle individuals to rehabilitation, and thus individuals who are released on those grounds are not entitled to reparations under the law. Only those who meet the conditions set out in the three categories have the right to redress, reparation, and compensation under Uzbekistan law, as described below.

Scope of Rehabilitation under Current Uzbekistan Law

Those eligible under one of the rehabilitating grounds are entitled to monetary compensation for material damage, as well as non-material damage (moral damages) from the state budget regardless of whether there has been a conviction of the state officials responsible for the violation of the victim's rights.\textsuperscript{138} The government also provides some form of restitution, rehabilitation and satisfaction for those entitled to rehabilitation.

Compensation for Material Damage under Uzbekistan Law

When a person is entitled to rehabilitation under one of the rehabilitating grounds, they have the right to monetary compensation for certain material damages caused by the government. However, the extent of the compensation may depend on the category that the person falls within.

\textsuperscript{137} Order of the President on Additional Measures for the More In-depth Research into the Heritage of and for Preserving the Memory of the Victims of Political Repressions, Nº P-5598, (October 8, 2020). https://flex.uz/docs/5041021 (in Russian)
Those who fall within Categories 1 and 2 are entitled to compensation for the following damages, paid via initiating a civil case:

- Lost income that this person would have received (lost profit);\(^{139}\)
- Retirement pension and benefits;\(^{140}\)
- Loss or damage to his property (real damage);\(^{141}\)
- Money, deposits, and interest thereof, and the cost of objects and other property confiscated or converted to the state income pursuant to a sentence or a court ruling;\(^{142}\)
- Cost of property seized by the inquiry agency;\(^{143}\)
- Fines and trial expenses collected pursuant to the court sentence;\(^{144}\)
- Amounts paid by the person to the defense counsel bureaus, collegium of advocates or a law firm for the legal services, other expenses inflicted to him through the unlawful actions applied for him;\(^{145}\)
- Expenses that a person has made to restore the violated right; and\(^{146}\)
- Expenses that a person will have to make to restore the violated right.\(^{147}\)

The law provides that an individual is entitled to full compensation for the above damages. Moreover, because Category 3 requires an acquittal of one’s criminal conviction, those who fall within Category 3 are entitled to the same compensation as those under Category 1.

**Compensation for Non-Material Damage under Uzbekistan Law**

In addition to material damages, a person who is entitled to criminal or administrative rehabilitation under Category 1 or Category 2 may also seek monetary compensation for non-material or other moral damages.\(^ {148}\) Article 1021 of the Uzbekistan Civil Code outlines six types of injuries for which one may seek non-material damages related to wrongful imprisonment.\(^ {149}\)

- Harm due to unlawful conviction;
- Harm due to unlawful criminal prosecution;
- Harm due to unlawful use of detention;
- Harm due to unlawful application of an administrative penalty or detention; and
- Harm from the use of torture and other cruel, inhuman, or dignity-degrading types of treatment and punishment.

---


\(^{144}\) Uzbekistan Civil Code, art. 14, available at [https://lex.uz/docs/1111181](https://lex.uz/docs/1111181) (in Russian).


\(^{147}\) Uzbekistan Criminal Procedure Code, Article 304, supra 142 Administrative Code of the Republic of Uzbekistan, Article 324, supra 142.

\(^{149}\) Uzbekistan Criminal Procedure Code, Article 304, supra 142 Administrative Code of the Republic of Uzbekistan, Article 324, supra 142, when read in conjunction with Uzbekistan Civil Code, art. 14, available at [https://lex.uz/docs/1111181](https://lex.uz/docs/1111181) (in Russian).

\(^{151}\) Uzbekistan Criminal Procedure Code, Article 304, supra 142 Administrative Code of the Republic of Uzbekistan, Article 324, supra 142, when read in conjunction with Uzbekistan Civil Code, art. 14, supra 144.


\(^{156}\) Russian).
When assessing moral damages, the relevant court will look at the nature of the physical and moral suffering endured by the victim, and the court will also consider the degree of guilt of the inflictor. In evaluating moral damages, the Uzbekistan Supreme Court has instructed courts to consider the following:

"the subjective assessment of the damage by the victim; the objective data about the degree of the moral and physical suffering of the plaintiff; the importance of the non-material good that was encroached upon (life, health, honor and dignity, personal liberty, inviolability of the housing, material possessions, etc.); the severity of the outcomes of the violation (e.g. murder of close relatives, infliction of bodily injuries, which have caused a disability, loss of employment, deprivation of liberty, etc.); the degree of guilt of the tortfeasor; the victim; the financial situation of the tortfeasor; and other relevant circumstances."

A person can receive non-material damages regardless of the fault of the perpetrator and regardless of whether they receive any material damages in relation to the claim. Although the court may consider the guilt of the perpetrator when deciding on the amount of moral damages, the government is obligated to provide compensation moral damages resulting from the government harms above regardless of the degree of the guilt of the actual perpetrator.

With respect to moral damages, the Supreme Court of Uzbekistan has instructed courts to not recognize claims for moral damage when the damage occurred prior to the enactment of the legislation providing the grounds for claiming moral damages. As a result, victims of torture or other ill-treatment may only recover moral damages if the torture occurred at some point after March 2022, when the law granting the right to compensation for such moral damages came into effect. The Supreme Court has stated that moral damages should be restricted even when the effects of an injury for which one might seek moral damages continues after the enactment of legislation that allows victims to claim moral damages for those injuries. For example, if an individual was tortured before the Civil Code permitted recovery of moral damages for torture, that victim cannot claim moral damages after torture was added to the Civil Code, even if the psychological effects of the torture continue to this day. Accordingly, under the current Supreme Court interpretation of moral damages, the March 2022 Civil Code Amendments only provide moral damages for future victims of torture or ill-treatment.

**Restitution under Uzbekistan Law**

Uzbekistan law does provide some restitution for those who were wrongfully detained. Those who qualify under Category 1 on the basis of being wrongfully suspected, accused, tried, or convicted in criminal proceedings are entitled to have proceedings cancelled or their conviction overturned. Similarly, those under Category 2 who were wrongfully subject to administrative proceedings are also entitled to cancellation of the administrative decision. These decisions declaring the victim’s innocence are one form of restitution.

---

150 Id.
152 Uzbekistan Civil Code, arts. 1021 & 1022, supra 149
154 Ruling No. 7 of the Plenary of the Supreme Court of the Republic of Uzbekistan On Some Issues of Application of the Legislation on Moral Damage Compensation, supra 153 Point 4.
In addition, Article 310 of the Criminal code entitles those who fall within Category 1 to:158

- Reinstatement of prior employment, or in the event of the position no longer being available, provided an equivalent job, if fired due to unlawful detention;
- Time spent in detention is considered general work experience;
- Reinstatement of position at an educational institution, if expelled due to unlawful detention;
- Return of residential premises, or in the event that return is impossible provided with an equivalent residence in the same location, if lost due to unlawful detention; and
- Return or reissuance of passport, if suspended due to unlawful involvement in a case.

Because Category 3 requires an acquittal of one’s criminal conviction, those who fall within Category 3 are entitled to the same restitution as those under Category 1. Furthermore, Article 324 of the Administrative Code entitles those who fall within Category 2 to “the abolition of any other restrictions associated with the [overturned] decision.”159

Rehabilitation under Uzbekistan Law

Using the term “rehabilitation” as it is applied in international law to refer to the provision of medical and psychological care and legal and social services, Uzbekistan law does not provide rehabilitated victims any additional rights to obtain rehabilitative services from the government other than those services already provided to all former prisoners. All former prisoners, not just ones entitled to rehabilitation, are provided state-support for the purposes of post-conviction reintegration.160 The reintegration program gives all former prisoners access to basic needs, such as food, clothing, housing, medical treatment, and legal aid.161 The program also provides the grounds for engaging newly released prisoners in paid public works and in temporary seasonal work,162 which generally means involvement in the annual cotton harvest.

161 See id.
162 See President Mirziyoyev’s address to the nation on the Constitution Day on December 7, 2021 https://president.uz/en/lists/view/4815 (in English) in which he announced pardoning of 182 imprisoned convicts who had pleaded guilty and “had firmly embarked on the path of correction.” With regard to the reintegration of ex-prisoners, President Mirziyoyev said: “At present, almost 80 percent of those serving sentences in colonies are involved in labor, but these years of work are not added to the total length of service and are not taken into account when calculating a pension. The abolition of this restriction, which does not meet the principle of social justice, would contribute to preventing the re-commission of crimes due to financial need. A system of ‘primary care package’ will also be introduced to assist convicted citizens in finding their place in society. In particular, such persons who have submitted a specific business project [proposal] and wish to start their own business, will be provided with one-time [off] material assistance in the amount of up to 10 million Uzbek soums from the Probation Service Development Fund”.

Duty To Rehabilitate
Although victims do not have the means of obtaining direct services from the government on the basis of their status as prisoners of conscience, victims may instead seek monetary compensation for rehabilitation services, insofar as those services fall within the grounds to obtain compensation outlined above. For example, those subjected to ill-treatment may seek compensation for social, medical, and psychological assistance. However, if rehabilitation services do not fit within the grounds for compensation, the victim will have no additional ability to obtain services other than those provided to all former prisoners.

**Satisfaction under Uzbekistan Law**

Uzbekistan law grants very few symbolic admissions of wrongdoing to victims of wrongful imprisonment. In addition to having a judgment or court order acquit them of the crime, those who fall within Category 1 are entitled, under Article 309 of the Criminal Code, to having the media that published information about the victim’s involvement in a case publish news about the rehabilitation.

Additionally, those who fall within Category 3 due to being subjected to Soviet repression are recorded by the government’s Working Group on the Memory of Victims of Soviet Repression. The Working Group summarizes and preserves the wrongs perpetrated against victims and preserves them for future generations. The Working Group also has the ability to organize educational events to teach about the repression against victims who fall within Category 3.

**Guarantees of Non-Repetition under Uzbekistan Law**

Given that guarantees of non-repetition are systemic reforms that often take the form of new legislation, current Uzbek law does not contain provisions that would amount to guarantees of non-repetition.

---

163 Members of Parliament enacting the amendments to include torture and ill-treatment to the civil code understood themselves to be giving victims the right to compensation for social, medical, and psychological services. See Deputy Inomzhon Kudratov, Legislative Chamber of Oliy Majlis (uzb. for ‘Parliament’), April 22, 2022, website of Oliy Majlis, https://parliament.gov.uz/ru/events/opinion/379047 (in Russian) (“Following the review of periodic reports of the Republic of Uzbekistan, the UN Human Rights Committee and the Committee against Torture have given several recommendations [to Uzbekistan] regarding protection of the victims of torture, particularly, by providing them with social, medical, and psychological assistance and addressing them for the sustained harm in the form of compensation”); See also, Review by the Legislative Chamber of Oliy Majlis of the draft of the amendments to the Civil Procedure Code of Uzbekistan aimed at “Improvement of the Procedure of Payment of Compensation to Victims of Torture,” available at https://parliament.gov.uz/ru/events/chamber/367527 (in Russian).


165 Order of the President on Additional Measures for the More In-depth Research into the Heritage of and for Preserving the Memory of the Victims of Political Repressions, No P-5598, October 8, 2020 https://lex.uz/docs/5041021 (in Russian).

166 Id.

167 Id.
In 2020, Uzbekistan officials reported that they were considering adopting a new criminal code and even released a draft for comment. Since that time, no apparent progress has been made. Enacting a new criminal code could constitute a guarantee of non-repetition with respect to prisoners of conscience if the government were to remove or amend criminal code provisions officials have used to pursue politically motivated detention. Removing or amending these provisions to comport with human rights laws would help prevent future politically motivated detention. As such, a new criminal code that removes the grounds for prosecuting prisoners of conscience would be a form of a guarantee of non-repetition. However, the 2020 Criminal Code draft maintains many of the provisions that are used to detain prisoners of conscience. Moreover, the government is not ostensibly replacing the criminal code for the express purpose of ending politically motivated imprisonment. Accordingly, any criminal code reform that retains the form of the 2020 Criminal Code draft cannot, at the moment, be considered a guarantee of non-repetition.

The Right to Rehabilitation in Practice in Uzbekistan

Despite the legal provisions above, the Uzbekistan government often fails to provide prisoners of conscience with the rehabilitation that they are guaranteed under the law. Although there is not an exhaustive review of the rehabilitation status of all former prisoners of conscience, the evidence that is available on whether prisoners of conscience receive rehabilitation and what rehabilitation they receive suggests that the current rehabilitation program does not fully restore former prisoners of conscience and does not meet international standards on reparations.

Former Prisoners of Conscience’s Access Rehabilitation Programs

Often, former prisoners of conscience are categorically excluded from the rehabilitation framework in Uzbekistan. In order to qualify for rehabilitation, former prisoners must fall within one of the three categories of rehabilitation. However, most former prisoners of conscience are released on non-rehabilitating grounds, which prevents them from seeking rehabilitation under the law. Former prisoners who are released on pardon, amnesty, or humanitarian release for health reasons do not qualify for rehabilitation under the law.

Of the over fifty recognized political prisoners who have been released since 2016 and of the many individuals released after being convicted on religious grounds, almost all of them are still considered to have been guilty of committing a crime under the law. In order to qualify for reparations for their imprisonment, they would require a court to acquit or overturn their conviction. However, at the point of release, a former prisoner of conscience’s legal case is generally outside of the timeframe for any appeals.


As a general matter, there are no grounds under Uzbekistan criminal procedure that entitle them to reopen their cases. Although Uzbekistan law does permit the re-opening of criminal proceedings on the basis of “newly discovered evidence,” prisoners of conscience often will not have new evidence to raise that was not already presented at trial, which would foreclose this avenue. Other avenues to reopen criminal cases require that either the Chairman of the Supreme Court or Prosecutor General file to have the case reconsidered in the Supreme Court, which is a discretionary process and does not guarantee a right to reopen a case for convicts.

Even if an international human rights body finds an imprisonment was politically motivated, Uzbekistan courts may still refuse to reopen the former political prisoner’s case. This was the case for the political prisoner Salijon Abdurahmanov, who was denied rehabilitation despite having an international legal opinion recognizing the unlawfulness of his imprisonment. Abdurahmanov is an Uzbek journalist who contributed to various news outlets, including Radio free Europe, Voice of America, and Uznews.net. In October of 2008, he was convicted on unfounded drug charges and sentenced to serve ten years in prison. After serving over nine years in prison, Abdurahmanov was released on October 4, 2017. In September 2019, Abdurahmanov filed a petition to obtain reparations with the Supreme Court of Uzbekistan, arguing that a favorable decision on his case from the UN Human Rights Committee entitled him to rehabilitation from the Uzbekistan government. The Human Rights Committee found that Abdurahmanov’s detention was unlawful and amounted to a violation of Uzbekistan’s international human rights, and that Uzbekistan should provide reparations for these violations. However, in a thirty-minute hearing on March 26, 2019, the Supreme Court refused to recognize Abdurahmanov as unjustly convicted, thus precluding him from rehabilitation under Uzbekistan law. Moreover, immediately following the hearing, the Uzbekistan government opened new criminal investigations against Abdurahmanov in apparent retaliation for publicly seeking rehabilitation.

Moreover, even if released prisoners of conscience were able to reopen their cases, many were forced, as a condition of release, to sign formal documentation accepting guilt for their alleged crimes and asking for forgiveness. The government uses formal admissions of guilt as evidence of the commission of a crime, and as a result, signing these admissions effectively precludes former prisoners from obtaining rehabilitation. These procedural restrictions even prevent access to rehabilitation for former prisoners of conscience who serve their full sentences without early release. Unless there is new evidence to raise, prisoners convicted under laws that blatantly flout international human rights standards have no means to challenge the legality of their detention upon release. In other words, when a former prisoner was convicted under a section of the Criminal Code that violates human rights norms, the prisoner has no means to seek rehabilitation for their imprisonment. For example, people who are convicted under Criminal Code Article 120 (Homosexuality) for engaging in same-sex relations have no legal avenue to reopen their case on the basis that crime for which they were imprisoned violates their human rights. As they are unable to obtain a decision overturning their conviction, they are effectively barred from qualifying for rehabilitation.

---

176 Id.
Being unable to obtain a reversal is a key barrier preventing former prisoners of conscience from receiving rehabilitation, because like in Kazakhstan, the process to obtain compensation via civil proceedings is tied directly to criminal or administrative proceedings. Under Uzbekistan law, one must first obtain a criminal or administrative judgement finding that one is entitled to rehabilitation before filing a civil case for rehabilitation for wrongful criminal or administrative proceedings. The civil case does not function to determine whether one is eligible for rehabilitation. Eligibility is determined by the criminal or administrative court that is terminating proceedings or reversing a conviction. The civil case is primarily concerned with the amount and nature of rehabilitation, as well as what government department is responsible for payment of rehabilitation. Consequently, the government’s denial of rehabilitation to former prisoners of conscience for criminal cases functionally prevents former prisoners from bringing a case for consideration of their eligibility for rehabilitation under civil law.

Despite the fact that the Uzbekistan government has released many wrongfully detained people, these former prisoners cannot effectively claim compensation for damages unless they were released on legal grounds in one of the three categories for rehabilitation—i.e., unless their release documents state that their sentences were overridden by a reviewing court or that their charges have been dropped.

**Additional Barriers to Raising Rehabilitation Claims**

Procedural barriers aside, the Uzbekistan government also maintains extraneous administrative barriers that prevent former prisoners from asserting rehabilitation claims. In order to reopen proceedings or to file an appeal, a defendant is required to present certain information from their trial. However, multiple former prisoners of conscience, including Samandar Kukanov and Erkin Musaev, report being denied access to their original case files covering their trials. When they attempted to have their convictions overturned, officials claimed their case files were either lost or destroyed.

---

179 In 2022, by June 1, President Mirziyoyev has pardoned 140 persons (75 persons on March 19 (Президент помиловал 75 человек. Gazeta.uz. (Mar 19, 2022) https://www.gazeta.uz/ru/2022/03/19/act/ [in Russian]) and 65 persons on April 29 (Президент помиловал 75 человек. Gazeta.uz. (Mar 19, 2022) https://www.gazeta.uz/ru/2022/03/29/act/ [in Russian], of whom 6 were acquitted of all charges, 92 were released conditionally, and 8 were those whose sentences were commuted to other than imprisonment types of punishment.


CASE EXAMPLE:
SAMANDAR KUKANOV

Samandar Kukanov is a former politician & the longest-serving political prisoner in the history of Uzbekistan. Kukanov spent over twenty-three years in prison on politically motivated charges and was released in October 2016.\(^{182}\) Kukanov filed an application to receive his case file in order to request rehabilitation. However, in August 2018, Kukanov received a reply to his enquiry about rehabilitation from the Tashkent City Criminal Court stating that his case file and court records could not be retrieved due to his case exceeding the length that their court archive maintains documents, and that they had been destroyed in compliance with their document retention policy.\(^{183}\) The Court stated that the absence of his file made it impossible to process his rehabilitation claim.\(^{184}\) Despite the absence of his file, Kukanov filed a claim with the Supreme Court in April 2019 requesting a rehabilitation proceeding. In June 2019, the Criminal Board of the Supreme Court of Uzbekistan granted his request and in July 2019, the Court amended some of the Kukanov's conviction, but ultimately upheld his sentence, finding it lawful and precluding rehabilitation.\(^{185}\)

---


\(^{184}\) *Id.*

CASE EXAMPLE:
ERKIN MUSAEV

Erkin Musaev is a former United Nations Tashkent office employee, who spent eleven years in prison for fabricated espionage charges.\(^1\) After Musaev’s release, he sought re-review of his conviction. However, court authorities refused to provide him with a copy of his judgement, and the courts subsequently denied his right to appeal for failing to attach his judgement to his petition.\(^2\) Like other former prisoners, Musaev has struggled to find gainful employment due to his criminal record. He has been subject to surveillance by security services and has faced great difficulties reintegrating into society after years in prison.

Moreover, former prisoners of conscience who fail to meet the legal requirements for rehabilitation can also be subject to oppressive post-release conditions.

For example, Azam Farmonov, a human rights activist released from wrongful detention in 2017, is still required to pay a monthly portion of his salary to the government as part of the terms of his conditional release.\(^3\) In cases like Farmonov’s, the government not only fails to make the victims of its human rights violations whole, but it further exacerbates the injury caused by imprisonment by making reintegration unduly burdensome.

The only remaining option for the former political prisoners barred from obtaining rehabilitation on the basis of wrongful detention is to seek rehabilitation under the government’s post-conviction reintegration program. This may grant them access to certain basic necessities, including food, housing, and employment. However, as discussed below, former prisoners of conscience can face difficulty in obtaining these services as well.

**Former Prisoners of Conscience’s Treatment under the Rehabilitation Framework**

Although it is rare for former prisoners of conscience to possess the legal status required to qualify for rehabilitation, those who do can still face barriers to obtaining redress for the violation of their human rights. So far, there have been three cases of prisoner of conscience rehabilitation in Uzbekistan. Each of these cases is summarized below.


The first case of rehabilitation of a former political prisoner rehabilitated under the Mirziyoyev era was Chuyan Mamatkulov. Mamatkulov is a human rights defender who, in 2012, was arrested and sentenced to ten years in prison for various crimes, including infringing on the constitutional order, drug possession, kidnapping, fraud, and preparation of extremist materials. While detained at the notorious Zhaslyk Prison, he was tortured by prison staff. In March 2015, his term was extended for allegedly disobeying prison staff. In early March 2018, the Criminal Board of the Supreme Court of Uzbekistan reduced Mamatkulov’s initial sentence to five years and two months. Subsequently, in March 2018, the Supreme Court overturned the decision to extend his prison term for disobedience and reexamined Mamatkulov’s initial conviction, reducing his overall sentence to three years, one month, and twenty days. As the result of the Supreme Court’s March 2018 decision, Mamatkulov was released on March 25, 2018, having completed his sentence. After his release, Mamatkulov filed a petition to the Supreme Court requesting a retrial of his case. In December 2018, the Supreme Court made the unprecedented decision to grant Mamatkulov’s request for a re-trial. In March 2020, the Regional Criminal Court of Qashqadarya acquitted him of all charges on the grounds that no evidence that crime was committed under Article 83 of the Criminal Procedure Code. On the basis of his acquittal, Mamatkulov filed a civil case to for damages in the amount 500 million sum (approximately $50,000 USD) for the time he spent wrongly imprisoned following his 2012 conviction. In October 2020, the Qashqadarya Inter-Regional Court ruled in his favor, awarding him 60 thousand sum (approximately $6,000 USD) for his wrongful detention, only a small fraction of the amount Mamatkulov requested and was owed as the result of his wrongful detention.

Not long after Mamatkulov received rehabilitation, Elyor Tursunov was successful in his rehabilitation claim. In December 2013, Tursunov was sentenced to seventeen years in prison for falsified charges, including infringing on the constitutional order, terrorism, distribution of prohibited printed materials, and of illegal border crossing. On March 18, 2018, following a submission to the Supreme Court by Tursunov’s lawyer, all charges against Tursunov’s were lifted and he was acquitted after spending six years, eleven months and ten days in prison. In December 2020, the Kashkadarya Region Criminal Court ordered the Finance Department of the Administration of Kashkadarya Region to pay Tursunov 91,208,182 sum (approximately $8,650 USD) in compensation for his moral and material damage.
The most recent case where the government found a political prisoner entitled to rehabilitation is the case of Andrei Kubatin. Kubatin was an academic imprisoned on unfounded treason charges in 2017. Kubatin was released after authorities reversed his conviction in September 2019. He was entitled to rehabilitation under Article 83 of the Criminal Procedure Code, as he had a court order overturning his conviction. Kubatin applied for rehabilitation to the same court that absolved him and had his rights formally reinstated. Kubatin also filed for compensation for wrongful imprisonment and medical costs for the hypertension he developed while in prison. While seeking compensation, Kubatin died due to Covid-19 complications one year after his release. Following his death, the Taskent Military reviewing the compensation claim determined that Kubatin’s family was only entitled to 463,000 sum (approximately $45 USD), the approximate amount that it cost to file rehabilitation claim with the court. On May 17, 2021, after appealing the initial compensation amount, the Uchta Interdistrict Court of Tashkent increased the compensation amount awarded to Kubatin’s widow and son, granting them 30 million sum (approximately $2,900 USD). On September 17, 2021, Tashkent City Civil Court ruled on appeal to increase the amount of compensation for moral damage from 30 to 150 million sum (approximately $14,000 USD). After multiple appeals, Kubatin’s family was able to obtain a moderate amount of compensation for his wrongful detention.

The above cases demonstrate how even the prisoners of conscience who qualify for rehabilitation often face an arduous process to obtain it. These successes have only come after years of legal action seeking compensation. Even when a court has recognized and awarded rehabilitation to a former prisoner of conscience, the rehabilitation awarded is inadequate, as it fails to fully cover the past and future damages resulting from wrongful imprisonment. Accordingly, Uzbekistan has only partially fulfilled its obligations by granting rehabilitation to Mamatkulov, Tursunov, and Kubatin’s family. An important first step to providing victims of wrongful detention the rehabilitation that they are entitled to under international human rights norms will be for Uzbekistan courts to begin granting the full amount of rehabilitation already guaranteed in Uzbekistan legislation.

However, even if courts were willing to provide to former prisoners the full amount of rehabilitation possible under the law, some of the legal grounds for rehabilitation currently in force in Uzbekistan do not apply to all former prisoners who should otherwise be entitled to rehabilitation under Uzbekistan’s international obligations. As noted above, recent amendments to the Civil Code in March 2022 have granted victims of torture and other ill-treatment the right to obtain compensation for their pecuniary and non-pecuniary damages. However, some prisoners of conscience are categorically excluded from collecting under this amendment, even if they are recognized as entitled to rehabilitation. The Uzbekistan Supreme Court has stated that the courts should not recognize claims for moral damage when the damage occurred prior to the enactment of the legislation providing the grounds for claiming moral damages. The result is that former prisoners who were tortured prior to March 2022 cannot seek moral damages unless the torture continued after March 2022. While former prisoners may seek material damages caused by torture, their moral damages will remain uncompensated, leaving them without full rehabilitation.

Former Prisoners of Conscience’s Access to General Post-Sentence Services

All former prisoners, including those who do not qualify for rehabilitation, are eligible for government services aimed at post-sentence reintegration. As noted above, these services include assisting former prisoners with finding basic employment, with healthcare needs, and other practical necessities that arise for recently released prisoners. However, former prisoners of conscience report that these state services can be difficult, if not impossible, to obtain.199

CASE EXAMPLE:
AZAM FARMONOV

Azam Farmonov is a human rights activist sentenced to serve nine years in prison on baseless extortion charges in June 2006.199 His sentence was extended an additional five years, but he was granted an early release in October 2017.200 Because Farmonov was not acquitted, he was unable to obtain rehabilitation under Uzbekistan law. Instead, he attempted to pursue the government’s former prisoner services, but was unsuccessful in obtaining medical care. In reporting his troubles to Central Asia researcher Steve Swerdlow, Farmanov said that “it is extremely difficult to get the medical care payment that is supposed to be provided by the government for former prisoners. Obtaining the monetary stipend provided by the government for medical is so difficult, I simply gave up.” 200

Because many former political prisoners are unable to seek legal rehabilitation due to the circumstances of their release and because the government’s post-conviction services can be difficult or impossible to obtain, former political prisoners are often left without any support or redress from the government who wrongfully detained them.

The Current Needs of Former Uzbekistan Prisoners of Conscience

The interviews conducted with former Uzbekistan prisoners of conscience for this report show that former prisoners of conscience have many rehabilitation-related needs that are currently un-met by Uzbekistan’s existing rehabilitation framework. Moreover, these unmet needs reveal that Uzbekistan is not currently in compliance with its international obligations to provide full reparations for its violation of human rights norms with respect to former prisoners of conscience.

All but one of the interviewees were aware of the procedures to reopen their cases and seek rehabilitation. Those aware of the procedures to reopen their cases all pursued the available legal processes. The primary way that interviewees attempted to overturn their convictions involved petitioning either the Chairman of the Supreme Court or Prosecutor General to file to reopen their case before the Supreme Court. The vast majority of interviewees’ attempts to have their cases reviewed were unsuccessful.

Only one of the interviewees was officially recognized as entitled to rehabilitation under one of the categories for rehabilitation in Uzbekistan. None of the other interviewees received rehabilitation under Uzbekistan law. Additionally, all Uzbekistan interviewees report having unmet rehabilitation needs. These needs are discussed below as they relate to the five types of reparations that the interviewees are entitled to from Uzbekistan’s international human rights commitments.

Compensation Needs of Former Uzbekistan Prisoners of Conscience

Interviewees report that their imprisonments caused damages from lost employment, lost businesses, seized property, damaged property, torture and ill-treatment, injuries from medical neglect, legal fees and court costs, the costs of prison visits, and costs incurred by their families sending food and hygienic support. As noted above, one interviewee was recognized under law as entitled to rehabilitation, which included compensation. However, this interviewee only received compensation for non-pecuniary (moral) damages. None of the interviewees have received compensation for material damages caused as the result of their wrongful imprisonment.

Restitution Needs of Former Uzbekistan Prisoners of Conscience

All interviewees report that they continue to be deprived of certain legal rights and privileges as the result of imprisonment. Interviewees report that they have lost the right to register NGOs, the right to travel, the ability to obtain certain occupational licenses, and the ability to work in certain professions. Although many of these rights are due to be reinstated after a prisoner is released from imprisonment, interviewees have found that officials nonetheless impede their access to these rights. One interviewee reported being refused access to a passport after being released, and multiple interviewees report being denied the right to register NGOs. Multiple interviewees reported difficulty accessing employment upon release. For example, one interviewee reported being refused employment in a certain field, despite meeting the qualifications for the position and the presence of legislation in Uzbekistan explicitly prohibiting employment discrimination on the basis of criminal history. While nine of the interviewees report having issues securing employment, only one reported being able to access the government’s post-conviction employment program. The remaining eight report being unable to receive government employment assistance.
Rehabilitation Needs of Former Uzbekistan Prisoners of Conscience

Nine of the ten Uzbekistan respondents report needing continuing medical care following release, and of those nine, four report ongoing mental health issues as the result of detention while eight report continuing physical health issues. However, no interviewee, including the one legally entitled to receive reparations, reported being able to access any government medical or psychological support after release. Several interviewees notified local authorities about their healthcare needs as required to receive healthcare under the state provided post-sentence reintegration program, but no interviewee was able to access medical care from these programs.

In terms of other rehabilitative services, some interviewees reported receiving rehabilitation assistance from NGOs that provide legal advice on how to obtain new driver’s licenses, passports, and other documents. NGOs provide some job training support as well.

Satisfaction Needs of Former Uzbekistan Prisoners of Conscience

Only one interviewee received any recognition of wrongdoing from the government in the form of a judicial decision finding that his initial conviction was unlawful. No other satisfaction was provided to any interviewees.

Guarantees of Non-Repetition for Former Uzbekistan Prisoners of Conscience

In response to the detention of the interviewees, the Uzbekistan government has not attempted to make any systemic changes that would prevent future forms of politically motivated detention. Indeed, the Uzbekistan government continues to detain prisoners of conscience, demonstrating a continued need for guarantees of non-repetition.

Although Uzbekistan’s international human rights commitments require the government to provide full reparations for human rights violations committed against former prisoners of conscience, the government is failing to fulfil its obligations. As a result, former prisoners of conscience are left with uncompensated damages, continuing restrictions on their rights, ongoing medical needs, and no recognition of the wrongs committed against them. To ensure that wrongfully detained individuals receive full reparations, the government must change its rehabilitation process to ensure the procedure produces outcomes that comply with international human rights law.

---

Both Uzbekistan and Kazakhstan have significant gaps in their rehabilitation frameworks that leave former prisoners of conscience without redress for violations of their human rights. As described above, there are clear gaps in both substantive and procedural aspects of the way that rehabilitation for wrongful detention is administered in these countries. Due to their shared legal background and comparable governance structures, both governments face similar problems with respect to administering rehabilitation.

In the following, we propose several changes that both governments can make to bring their rehabilitation programs in compliance with their international human rights obligations, both in law and in practice. Most recommendations will apply equally to both governments, but where a recommendation is made specifically in reference to the practice of one country, it will be noted. The proposals are divided into substantive, procedural, and structural recommendations. Substantive recommendations are those that concern rights, duties, and privileges that should be adopted by law or implemented in practice. Procedural recommendations concern changes to existing processes related to the provision of rehabilitation in both countries. Structural recommendations are those that propose a more structural change to the administration of rehabilitation.

**Substantive Reform Proposals**

Below are substantive proposals aimed at improving the ability of prisoners of conscience in Uzbekistan and Kazakhstan to obtain full rehabilitation for the violation of their human rights.

01) **Incorporate “Prisoner of Conscience” into Legal Framework and Into Political Dialogue.** Neither government uses “prisoner of conscience” to guide legislation and policy, further contributing to the neglect of the rehabilitation rights of prisoners of conscience. Both governments should adopt the practice of employing the term in relation to the provision of rehabilitation to victims of individuals detained for the exercise of their civil and political rights.

02) **Guarantee a General “Right to Rehabilitation.”** Governments should add provisions guaranteeing a general, legally enforceable right to rehabilitation for prisoners of conscience that is not conditioned on the acquittal of a victim’s criminal sentence. Ensure that the right to rehabilitation is enforceable by victims in multiple fora, including in criminal, civil, and administrative proceedings.

03) **End the Use of Discretionary and Inherently Discriminatory Criminal Code Provisions.** Governments should repeal criminal and administrative code provisions that are too vague and overboard, such that they may be discriminatorily applied to prisoners of conscience, such as fake news laws or extremism provisions. Additionally, governments should repeal criminal code provisions that create prisoners of conscience in virtue of their inherently discriminatory application, such as Uzbekistan’s Article 120. Moreover, the governments should guarantee a right to rehabilitation for all individuals prosecuted under inherently discriminatory laws.
04) Improve Safeguards Against Coerced Confessions. The issue of coerced confessions has been present in both countries. Preventing coerced confessions will remove an additional barrier that prisoners of conscience face in obtaining rehabilitation. Governments should adopt practices protecting against coerced confessions, such as prohibiting interrogating suspects without an independent attorney present, ensuring that all confessions are provided in the signee’s language, and investigating and prosecuting all reports of torture and ill-treatment while suspects are in pre-trial custody.

05) End Admissions of Guilt for Parole, Amnesty, or Pardons. Both governments should remove the practice of requiring an admission of guilt to obtain early release. Instead, condition release on factors related to likelihood of recidivism and behavior while in detention.

06) End Blacklisting. Governments should end the practice of blacklisting all together. Moreover, Kazakhstan should guarantee a right to financial services for former prisoners, including prisoners of conscience, to ensure that burdensome administrative regimes do not functionally exclude individuals from financial services.

**Procedural Reform Proposals**

Below are procedural proposals aimed at improving the ability of prisoners of conscience in Uzbekistan and Kazakhstan to obtain full rehabilitation for the violation of their human rights.

01) Permit a Civil Rehabilitation Claim without Requiring Acquittal. In Kazakhstan, amend Civil Procedure Code Article 76(3), which prevents civil courts from considering matters upon which there is a criminal court judgement, to permit civil courts to review rehabilitation cases regardless of the status of criminal proceedings. Ensure that the criminal proceedings do not prejudice civil rehabilitation proceedings.

02) Create Processes for Reversing Admissions of Guilt. Both governments should create procedures that allow individuals to legally invalidate an admission of guilt that was signed as a condition of early release or duress. Alternatively, create evidentiary rules that explicitly exclude such admissions from any future legal proceedings, particularly those concerning rehabilitation.

03) Increase the Right to Reopen Criminal Cases. Grant former prisoners the right to reopen criminal cases on grounds other than new evidence, including the existence of politically motivated prosecution, prosecution under inherently discriminatory charges, and the existence of a decision from an international human rights tribunal finding that the individual's detention violated human rights law.

04) Ensure the Preservation of Records Concerning Former Prisoners of Conscience. Copies of all records of criminal proceedings should be made readily available to suspects, defendants, convicts, and their families. In addition, all records concerning a person in detention should be preserved for the duration of their detention and made available to that person at their request. Permanently preserve records concerning individuals who have been found to be wrongfully detained by international human rights bodies.
Create Procedures to Challenge Blacklisting. In the event that blacklisting continues, Kazakhstan should provide direct legal means to challenge blacklisting. The government should create and publish clear standards for the practice of blacklisting, ensuring the existence of carveouts for wrongfully detained individuals. Ensure that any standards for admitting individuals to blacklists relates to particularized facts about the threat that the individual blacklisted poses to the public order if permitted access to such services. Ensure that any entry on the blacklist is challengeable at law, and repeatedly challengeable as circumstances change.

**Systemic Reform Proposals**

Below are systemic proposals aimed at improving the ability of prisoners of conscience in Uzbekistan and Kazakhstan to obtain full rehabilitation for the violation of their human rights.

01) **Independent Rehabilitation Procedure.** Both governments should establish an independent agency to review the rehabilitation of political prisoners. Governments may adopt the model used in both countries to compensate Soviet-era repression to address rehabilitation of modern-day political prisoners.

   a) A rehabilitation agency should have the responsibility to evaluate cases of former political prisoners and determine their individual reparation and rehabilitation needs.

   b) The agency should have the ability to receive information about an alleged case of a prisoner of conscience from former prisoners or their legal representatives.

   c) The agency should have the authority to petition the court to reopen a criminal case for reevaluation of the criminal allegations and for evaluation of the victim's eligibility for rehabilitation.

   d) The agency should have jurisdiction to review and recommend for implementation UN Treaty Body opinions with respect to prisoners of conscience.
Photo Credits

Cover - Uzbek convicts in the yard of Jaslyk prison in 2003 (Shamil Zhumatov, Reuters)

Page 24 - Aron Atabek in 2006 and 2021 (Courtesy of family)

Page 27 - Seytkazy Matayev (Shamil Zhumatov, Reuters)

Page 42 - Samandar Kukanov (Radio Azadliq, Citizen Journalist)

Page 43 - Erkin Musaev (Amnesty International)

Page 44 - Chuyan Mamulkulov (Steve Swerdlow)

Page 45 - Andrei Kubatin (Fergana News)

Page 46 - Azam Farmonov (Radio Free Europe/Radio Liberty)
"I HAVEN’T RECEIVED ANY COMPENSATION YET, BUT EVEN IF THEY DO COMPENSATE ME, IT WILL NOT COVER EVEN A TENTH OF THE COST TO ME & MY FAMILY OF 9 YEARS OF ARBITRARY DETENTION."

FORMER POLITICAL PRISONER