 Characteristics And Forms Of Other Fees Connected With Criminal Proceedings

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ABSTRACT

This article illuminates the scientific views of procedural sciences, the legal nature of other fees connected with criminal proceedings that is generally recognized in criminal procedural legislation on the basis of the analysis of current legislation norms as well as the types of expenditures that is probable to include in it are distinguished. Moreover, the need to reflect in legislation as a new type of procedural fees the costs incurred to cover the damaged or destroyed items during the experiment, search and other investigative actions, as well as the expenses to ensure the protection of some participants in the criminal proceedings are grounded.

KEYWORDS

Criminal procedural legislation, procedural fees, sign of them, type, protecting participant of the process, damage as a result of investigative action, payment of fees.

INTRODUCTION

Paragraph 8th of the Article 318 of the Criminal Procedural Code of the Republic of Uzbekistan is expressed as the form of other incurred fees in the criminal proceedings. It is
obvious that this type of fee is comprehensive in its form of legal expression and abstract in its legal interpretation. Because the expression of this edition is not explained in any normative-legal documents, its legal boundaries are not clarified. Indeed, the institute of procedural fees does not work practicably in current condition, hence the negative aspects of this norm may be invisible. However, at the same pace of reforms in the judicial-law system, as this institution becomes fully-operational in the immediate future, its problematic aspects become apparent.

RESULTS AND ITS DISCUSSION

Based on the conclusions of the research, it should be noted that paragraph 8 in the Article 318 of the CPC does not specify accurately the features and forms of other fees incurred in the criminal proceedings:

First of all, the institute of procedural fees is an institution that regulates financial relations in criminal proceedings, therefore it controls over strict accounting of government’s expenditure from the state budget. At the same time, in case the legal content of this norm is ambiguous, it may become a source of improper use of state budget funds, as well as a source of illegal embezzlement.

Second of all, the use of such general expression in the Criminal Procedural Code, adopted on the constitutional basis, doesn’t only adversely affects the implementation of the functions of criminal procedural legislation, but also leads to violation of the rights and freedoms and legitimate interests of human in the criminal proceedings.

Analyzing the experience of foreign countries in the form of this paragraph, criminal proceedings are regulated by a single code in the following countries, such as Russia, Ukraine, Belarus, Azerbaijan, Moldova, Kazakhstan, Armenia, the norm similar to our national legislation, “other incurred fees in the criminal proceedings” is observed.

It allows us to conclude that the types of procedural fees are not in the form of fixed and invariable, without consideration in the Criminal Procedural Code, but the legislator may have introduced this norm in order to rely on the legal basis for reimbursement of fees (purchasing additional expenditures) incurred in the criminal proceedings.

Based on this, we consider the scientifical-theoretical views on the interpretation of procedural fees regulated by the norm in this expression in the legal literature and sources. Particularly, according to the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan dated on November 24, 2009, “On the practice of recovering procedural fees in the criminal cases”, other fees related to procedural expenses is expressed as incurred fees by interrogation, investigation and judiciary organs for the purpose of collection and investigation of evidence of guilt in the criminal case. Other fees may contain expenses related to the reimbursement of the persons (except accused persons) the separation of the criminal case into separate proceedings for the recognition of the value of items damaged or destroyed during the investigative experiment or forensic examination[1].

Russian scientists A.V. Smirnov, K.B. Kalinovsky, B.T. Bezlepkin, V. Lebedev, V. Bodzhev, V.I. Radchenko have the same views on this matter, and in their opinion, other fees incurred in criminal proceedings are:

a) Recovery of the value of items that are not covered by the criminal procedural legislation, directly connected with the
activities of collecting, examining and evaluating evidence, namely, damaged or destroyed items during the investigative experiment or forensic examination (except for the identification of the accused) fees related to, as well as compensation for material damage caused during the search;

b) Expenses associated with the search and presentation of evidence by participants in criminal proceedings, namely the legal representatives of the victim, including a lawyer who provides him with legal assistance on the basis of contract, obtaining extracts from the criminal case file, burial of the exhumed corpse;

c) Outlays related to protection of the children of the suspect, accused, as well as protection of his property. In particular, the transfer of custody of the accused on the basis of contract [2].

Another Russian scientist, P.A. Lupinskaya, in addition to the above, also includes in the category of other expenses incurred in criminal proceedings the costs associated with the arrival of a state-appointed defense attorney (advocate) at the place of inquiry, preliminary investigation and trial. Moreover, she proposes to include in the type of procedural fees the costs of compensation for pecuniary damage to the victim and the damage caused by the illegal actions of the organs responsible for criminal proceedings [3].

Among the proposals is to add to the list of additional costs of Russian procedural scholars divided into the above three categories, as well as the cost of the visit, it is feasible to agree with the first proposal by P.A. Lupinskaya, namely the state-appointed defense attorney (advocate) to the place of inquiry, preliminary investigation and trial.

However, P. A. Lupinskaya’s other two proposals are much more controversial. In our opinion, the material damage caused to the victim is not related to the criminal proceedings, but to the consequences of the crime committed. Similarly, damage caused as a result of illegal actions of officials responsible for criminal proceedings cannot be accessed as procedural fees as it was caused by illegal actions in its own name, that is, contrary to the requirements of criminal procedural legislation. Another procedural scientist, B.K. Nurgazinov proposes to include the cost of arrivals, including accommodation, and per diem, in procedural fees and said that the officials responsible for the criminal case, namely the preliminary investigation officer, the interrogator, the investigator and the judge, had to move from one place to another due to the need for investigation and other procedural actions[4].

Nevertheless, in our opinion, not all costs associated with criminal proceedings are included in procedural fees. On this basis, procedural fees do not include pre-trial investigation officer, interrogator, investigator and judge’s business trip, logistics of their activities, maintenance and use of buildings and equipment they serve, purchase of special weapons and equipment used in the search of accused and defendants in hiding from the investigation and court and their use, as well as the costs associated with office equipment and postal service, are not included in the procedural fees. They are, in essence, expenditures related to the financing of the implementation of the internal function of the state, which consists of law enforcement.

In case the expenses of state organs are covered from the state budget as the basis for reimbursement of procedural fees for probable necessity in criminal proceedings,
the norm of the Criminal Procedural Code can’t be accepted as acceptable approach to express other fees in criminal proceedings.

To our way of thinking, in order to provide information on what expenses can be generalized on the basis of this norm, it is essential to use particular characteristics of procedural fees in its formation. Consequently, accurate criteria are set for both law-applicant and learner to rely on. On this basis, it is vital to refer to the following characteristics that are specific to the procedural fees studied in our research:

1) To be occurred in the process of criminal proceedings;
2) To be served to the functions of criminal proceeding;
3) To be occurred in connection with the performance of criminal procedural obligations.

In this regard, the norm to be discussed in the Article 318, paragraph 8 of the Criminal Procedural Code, as well as in the criminal procedural codes of some foreign countries studied, is described as “other fees in the criminal proceedings”, which uses only one of the above features. In this case, based on the content of the applicable law, all expenses incurred in the criminal case must be included in the procedural fees. This approach, at the same time, is unsuitable for the essence and unguaranteed pecuniary costs of the institute of procedural fees that can be resolved at the expense of this institution. Based on the above, it is purposeful to reflect the paragraph 8th of Article 318 of the current CPC in the sense of “other expenses associated with the procedural obligations performed by the participants in the criminal proceedings”.

In our point of view, the norm of this form fully covers the above indications of procedural fees. In this occurrence, the term “criminal proceedings” means that these costs must be incurred during the criminal proceedings, namely, from the time when one of the reasons for instituting criminal proceedings is determined until the court’s verdict in the criminal case.

The expression “participants of proving” has two meanings: on the one hand, in the sense of collecting, examining and evaluating evidence in order to establish the facts relevant to legal, reasonable and fair decision (Article 85 of the CPC), on the other hand, in the sense of the category those are involved in proving. Participants in proving contains the suspect, accused, defendant (in case of exemption from payment for legal aid), advocate (involved on the basis of decision or verdict), public prosecutor, public defender, as well as the victim, civil plaintiff, civil defendant and their representatives (second part of the Article 86 of the CPC), as well as participants involved in proving, namely witnesses, experts, specialists, translators, eye-witnesses and other citizens and officials (third part of the Article 86, of the CPC).

These kinds of participants do not include the interrogator, investigator, prosecutor, the court, as in the first part of the Article 86 of the CPC they are listed as the participants of the proof. The process of proof is, in essence, the main goals and objectives of criminal proceedings. Execution of procedural obligation means the actions of participant in the criminal proceedings established by law and serving the conduct of the criminal case. These procedural obligations are clearly defined in the norms determining the legal status of participants in criminal proceedings.

At the same time, in the process of criminal
proceedings, there is a need for the assistance of other citizens whose procedural status is not defined by law.

Quintessentially, it includes assistants who participate in the identification as a similar person to the identifiee (to be identified person), owners of “to-be identified” items with similar things, or assistants in conducting investigative actions such as exhuming the corpse and investigative experiment. In such situation, it would be logically correct to use the legal status of the eyewitnesses involved in the relevant investigative action.

To our mind, the implementation of this proposal serves to clarify the additional and probable types of procedural fees that may be encountered in criminal proceedings, and to establish clear criteria for their legal regulation. If we consider this issue in terms of these criteria, there is a need to discuss the number of other reasons that complete the strict list of types of expense. In particular, the adoption and implementation of the Law of the Republic of Uzbekistan “On protection of victims, witnesses and other participants of the criminal proceedings” defined the mechanisms for the implementation of the institution in the criminal procedural legislation (Article 270 of the CPC) [5].

As the purpose of this law is to regulate relations in the field of protection of victims, witnesses and other participants of the criminal proceedings. In accordance with the Article 6th of the Law the protection measures are provided to a number of participants in criminal proceedings or persons who assist to the prevention or detection of a crime.

It is apparent that the need to apply the provisions of this law arises in the course of criminal proceedings. Defendants are participants in the criminal proceedings, and the measures taken to protect them serve the interests of the criminal case, namely the process of proving. Furthermore, according to the Article 26 of the Law, funding and logistical support of protection measures for defendants are allocated from the budget and the state bodies which provide protection for these purposes. Due to the costs associated with the protection of defendants are borne by other sources not prohibited by law, they can not be borne by these persons. This, in fact, requires that these costs be recognized and reimbursed in law as procedural fees.

At this point, the question may arise as to whether it is appropriate to include in the procedural fees the costs associated with taking measures to protect participants such as suspects, accused, defendants, prisoners who defend their interests in the criminal proceedings. In our view, it would be legitimate and logical to include the costs associated with taking measures to protect these individuals in the category of procedural fees. This is because the safety of the suspect, accused, defendant or their close relatives may be threatened by other offenders or close relatives of the victim who are involved in the criminal case or who have not been exposed during the criminal investigation.

Failure to take timely measures to protect against existing threats may result in non-compliance by the participants in the criminal proceedings with their procedural obligations, which may adversely affect the evidentiary process.

In addition to this, restricting the protection of the legitimate interests of the victim in the case and endangering the life, health, property and other interests of the suspect, accused, defendant and their close relatives is
also contrary to the goals, objectives and principles of criminal procedural legislation.

Therefore, it is proposed the need to include the costs associated with protection of victims, witnesses and other participants of the criminal proceedings in procedural fees.

Another of the costs incurred in judicial practice relates to the issue of compensation for property damage caused or destroyed during the investigative actions carried out in the course of criminal proceedings. This type of pecuniary loss can occur mainly in the process of search, experiment, identification, review, and forensic examination. Because in conducting these investigative actions, sometimes citizens have to use their accommodation, things and item-belongings. For example, in the course of a search operation conducted in search of things and items relevant to the work, as well as in connection with the search for a person, citizens enter residential buildings and other real estate objects in different situations and conduct searches to find items there.

During the investigative experiment, in the restoration of the original (preliminary) condition, physical and legal entities seem to be possible damaged when using their items, objects and other similar valuable materials.

Recognition during the investigative action, has possible damage that is caused to objects and items used as related objects in the identification of the object. The investigative action may also necessitate procedural actions related to the objects and things in the premises of citizens’ homes, enterprises, organizations and institutions, property.

There is also a possibility of material damage to the objects of inspection belongings to individuals and legal entities during forensic examination. Although cases of pecuniary damage as above have not been raised as a serious problem in judicial practice, it cannot be concluded that there is no problem with this issue. This is due to the fact that more citizens do not know their rights, do not raise the issue of compensation, even if they consider themselves the cause of the situation, do not try to obtain compensation for the material damage caused by the actions of state authority official under the influence of a particular oriental concern and the damage is often attributed to the property of the suspect, accused, defendant.

The study of the experience of foreign countries on this issue revealed that in the criminal procedural legislation of countries such as Azerbaijan, Armenia, Moldova, compensation is recognized as the separate type of procedural fees in the ongoing forensic examination [6].

Except this, taking into account, property damage caused during the investigation may arise in the course of criminal proceedings, and the conduct of the investigation is related to the process of proof, the sides (makes damage and suffer damage) to the property perform certain procedural obligations as persons the costs associated with recovering the damages will be borne entirely in accordance with the procedural fees.

CONCLUSION

On the basis of abovementioned facts, it is proposed to make the following amendments and additions in the criminal-procedural code of the Republic of Uzbekistan:

1) To express the paragraph 8 of the Article 318 of the criminal procedural Code in the sense of “other fees associated with
procedural obligations of the participants of proof in conduction criminal case”

2) To add new paragraphs in the Article 318 as the following edition:
   - “expenses associated with defending provision of the victims, witnesses and other participants of the criminal process”
   - “expenses associated with recovering the value of damaged or destroyed items in the process of conducting experiment, search and other investigative actions”.

3) It is recommended to take into consideration the following forms of “other costs incurred in the criminal proceedings” (other expenses associated with the performance of the procedural obligations of the participant in the criminal proceedings) in the Article 318, paragraph 8 of the CPC in judicial-investigation practice as:
   1) the use or lease of things, items and objects that are not covered by the institute of procedural fees in the criminal procedural legislation, directly related to the activities of collecting, examining and evaluating evidence, such as investigative experiment, identification or forensic examination and other investigative actions; payment to their rightful owners in the agreed order and amount, as well as the costs of their repair, storage, and transportation;
   2) expenses associated with the involvement of assistants who participate in the identification as a person similar to the identifier, citizens who assist in the conduct of investigative actions, such as the exhumation and burial of the corpse, the investigative experiment;
   3) expenses associated with obtaining extracts from criminal case materials, arrival and departure of the victim’s representatives, including a lawyer providing legal assistance to the victim on a contractual basis, as well as advocate appointed at the expense of the state to provide legal assistance to the suspect, accused and defendant;
   4) expenses associated with taking measures to protect unaccompanied minors, elderly parents, other dependent relatives or other persons or institutions under the care of a person detained, arrested or placed in a medical institution for examination, uncontrolled property or house of the person subject to coercive measures;
   5) expenses associated with the requisition and confiscation of property of the victim and other persons, as well as the destruction of material evidence in the case;
   6) expenses spent to inform the lawyer or close relative of the suspect, accused, defendant about his place of detention;
   7) payments made by the relevant interdepartmental commissions to provide financial incentives to citizens in accordance with the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan “On approval of the regulation of stimulating active participation of citizens and public organizations in crime prevention and fighting against crime” [7];
   8) payments related to the issuance of a new passport (travel document) instead of a suspended passport (travel document), etc.

The main forms of “other fees incurred in the criminal proceedings” in the paragraph 8, Article 318 of the CPC, that is probably apparent in the criminal proceedings are described. In judicial-investigation practice, there is a need to cover other types of
expenses as well. In this process, it would be expedient to address this issue according to the aforementioned main features of procedural fees.

REFERENCES


