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**ҚЫЛМЫСТЫҚ СОТ ІСІН ЖҮРГІЗУДЕГІ ПРОЦЕСТІК ШЫҒЫНДАРДЫҢ  
ЖЕКЕЛЕГЕН ТҮРЛЕРІН ЕСЕПТЕУ ӘДІСТЕМЕСІ**

**Аннотация.** Ғылыми мақалада Қазақстан Республикасындағы процестік шығындарды есептеу мәселесі қозғалады. Процестік шығындардың құрамына жататын негізгі элементтерді анықтау үшін, авторлар олардың түсінігі мен мазмұнына негізгі ғылыми көзқарастарды зерделейді. Оған қоса Қазақстан Республикасының Қылмыстық-процестік заңнамасында процестік шығындар ұғымы көзделмеген, тек ҚПК-нің 177-бабына сәйкес олардың түрлері ғана көрсетілген. Қазақстан Республикасының Жоғарғы Сотының Нормативтік қаулысында көзделген «процестік шығындар» анықтамасы да айтарлықтай пысықтауды талап етеді. Зерттеу нәтижесінде авторлар қылмыстық іс жүргізу заңнамасының қылмыстық сот ісін жүргізу барысында жасырынған адамдарды күштеп әкелуді және іздестіруді жүзеге асыруға арналған шығындарды өндіріп алу тәртібін реттеу бөлігіндегі олқылықтарды анықтады. Осыған байланысты, авторлар Қазақстан Республикасы Үкіметінің қаулысымен нормативтік реттеу ұсынылатын күштеп әкелу және іздестіру шығындарын есептеу әдістемесін ұсынады.

**Түйінді сөздер:** процестік шығындар; іздестіру; күштеп әкелу; шығыстар; шығындар; қылмыстық сот ісін жүргізу; жедел-іздестіру шаралары; әдістеме; есептеу.

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## МЕТОДИКА РАСЧЕТА ОТДЕЛЬНЫХ ВИДОВ ПРОЦЕССУАЛЬНЫХ ИЗДЕРЖЕК УГОЛОВНОГО СУДОПРОИЗВОДСТВА

**Аннотация.** Научная статья посвящена вопросу расчета процессуальных издержек в Республике Казахстан. Для определения основных элементов, входящих в состав процессуальных издержек авторами изучены основные научные взгляды на их понятие и содержание. Более того, в Уголовно-процессуальном законодательстве Республики Казахстан отсутствует понятие процессуальных издержек, указаны лишь их виды, согласно ст.177 УПК. Определение «процессуальных издержек», данное Верховным Судом Республики Казахстан в нормативном постановлении также требует существенной доработки. В результате исследования авторами выявлен пробел уголовно-процессуального законодательства в части регламентации порядка взыскания расходов на осуществление привода и розыска лиц, скрывшихся в ходе уголовного судопроизводства. В связи с чем, авторами предложена методика расчета расходов на привод и розыск, которую предлагается нормативно регламентировать Постановлением Правительства Республики Казахстан.

**Ключевые слова:** процессуальные издержки; розыск; привод; расходы; затраты; уголовное судопроизводство; оперативно-розыскные мероприятия; методика; расчеты.

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## METHODOLOGY FOR CALCULATING CERTAIN TYPES OF PROCEDURAL COSTS OF CRIMINAL PROCEEDINGS

**Abstract.** The scientific article is devoted to the calculation of procedural costs in the Republic of Kazakhstan. To determine the main elements that make up the procedural costs the authors studied the main scientific views on their concept and content. Moreover, the Criminal procedure legislation of the Republic of Kazakhstan does not contain the concept of procedural costs, according to article 177 of the CPC only their types are specified. The definition of Procedural Costs given by the Supreme Court of the Republic of Kazakhstan in a regulatory decision also requires significant revision. As a result of the research the authors identified a gap in the criminal procedure legislation in terms of regulating the procedure for collecting expenses for the search and search of persons who disappeared during criminal proceedings. In this regard, the authors proposed a method for calculating the cost of the drive and search, which is proposed to be regulated by the Decree of the Government of the Republic of Kazakhstan.

**Keywords:** procedural costs; search; drive; expenses; costs; criminal proceedings; operational search measures; methodology; calculations.

The reaction of the State to the facts of committing a criminal offense is expressed, first of all, in the activities of law enforcement agencies aimed at bringing a person to criminal responsibility. However, a significant part of the cost of crime is accounted for by the costs associated with the pre-trial investigation of an illegal act.

The problem of procedural costs and the cost of crime in most cases has been the subject of criminological research both in Kazakhstan and in other countries [1]; [2].

In some foreign countries, there are different approaches to calculating procedural costs. For example, Professor Aaron Shalfin suggests the «Bottom-Up» method, i.e. this

method of calculating the costs of crime is an ex post approach used to estimate the costs of victimization after a crime has been committed. The idea is to identify the types of harm the victim is experiencing, and for a typical victim to figure out how much money it will take to make that victim whole [3].

To distinguish the types of costs, assign them to the process costs and calculate them, it is necessary to understand the definition of this concept.

According to the famous Kazakh scientist M. Kogamov, «procedural costs are primarily the costs of the state in monetary terms incurred in criminal proceedings... These costs (spent, paid) objectively arise during the pre-trial investigation of the case and its trial in court» [4, p. 645].

Some authors suggest that «procedural costs should be understood as all expenses incurred by participants in legal proceedings» [5, p. 48].

From the perspective of S. Bazhanov, «procedural costs is provided by the criminal procedure law, the expenses of bodies of inquiry, preliminary investigation, prosecution and trial for the implementation of the criminal procedure finding of fact criminal violations of protected relationships, recover from the person convicted of committing a crime, and in some cases attributable to the state» [6, p. 485].

According to Kazakh processalist T. Khanov, «procedural costs are understood as expenses or expenses incurred by the bodies conducting criminal proceedings in connection with the participation in a criminal case of certain persons or bodies that assist either in the process of collecting, researching and evaluating evidence, or as a result of the activities of other individuals and legal entities, due to their social status, which are imposed on the convicted person or accepted at the expense of the state» [7, p. 305].

A similar explanation is given by I. Rogov, S. Bychkova and K. Mami, who believe that «procedural costs are monetary expenses of the bodies conducting criminal proceedings in connection with the proceedings in a criminal case, which are imposed on the convicted person or accepted at the expense of the state» [8, p. 429].

It should be noted that the current CPC of the Republic of Kazakhstan does not fix the

concept of «procedural costs», in contrast to the criminal procedure legislation of Russia, Moldova and Kyrgyzstan.

Let's turn to the legislative definition of the concept of procedural costs, fixed in the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 10 of June 29, 2018. «On the recovery of procedural costs in criminal cases». «Procedural costs – are the costs related to the criminal proceedings, which shall be refunded from the funds of the republican budget or from the means of the suspect, accused, convicted, their legal representatives, as well as payments (remuneration) to individuals (victims, private prosecutors, witnesses, experts, interpreters, identifying witnesses, lawyers, etc.) and legal entities (expert institutions, criminal prosecution bodies, etc.) involved in criminal proceedings» [9].

As it can be seen from the analysis, Kazakh processualists have different opinions about the procedural costs. At the same time, the scientific understanding of procedural costs is much broader than the normative one, since they imply all expenses related to the conduct of criminal proceedings.

In addition, in determining the procedural costs, a significant role is played by the theoretical justification of the type of logical division, which is designed to systematize existing real objects. As a method of scientific research, classification is widely used in many Sciences, respectively, it is also used in the science of criminal procedure.

Thus, the legislator in article 177 of the CPC of the Republic of Kazakhstan identified the following types of procedural costs:

1) the amounts paid to witnesses, victims and their representatives, experts, specialists, interpreters, identifying witnesses in accordance with Articles 174 and 175 of CPC RK;

2) the amounts paid to witnesses, victims and their representatives, identifying witnesses, who do not have regular income, to distract them from ordinary activities;

3) the amounts paid to witnesses, victims and their legal representatives, identifying witnesses, working and having a regular income, for reimbursement of the lost wages for the time spent by them in connection with the call in the body, conducting the criminal proceedings;



4) remuneration, paid to experts, interpreters, specialists for the performance of their duties during the pre-trial investigation or the court, except where these duties are performed in the order of performance of work task;

5) the amounts paid for the provision by the defense counsel of legal assistance in the exemption of the suspected, accused or defendant from its payment or participation of a lawyer in the inquiry, preliminary investigation or in court by appointment;

6) the amounts paid for the provision of legal assistance by the representative of the victim (private prosecutor), if he (she) is exempt from its payment;

7) the amounts, spent for storing and sending of material evidence;

8) the amounts spent for examination in the bodies of judicial expertise;

9) the amount, spent in connection with the search of the suspected, accused, defendant, hiding from investigation or court, calculated in accordance with the procedure established by the Government of the Republic of Kazakhstan;

10) the amounts spent in connection with the conveyance of the suspected, accused or defendant to the investigator or the court in the case of their absence without good reason, as well as the stay of the judicial proceedings due to the absence of the defendant without good reason or his (her) coming in court in a state of intoxication;

11) other expenses, incurred in the criminal proceedings.

In criminal proceedings, the expenses of the victim, civil plaintiff, their legal representatives, interpreter, specialist, expert, witness, juror candidate summoned to court but not selected for the jury, the amount and procedure of which are regulated by the Rules of payment of expenses to persons incurred in the course of criminal proceedings (hereinafter – the Rules of Payment), are subject to reimbursement from the budget [10].

These expenses include:

1) expenses for appearance at the call of the body conducting criminal proceedings:

– the cost of travel on railway, water, automobile (except for taxi) transport and other types of transport existing in the area, and with the consent of the body conducting

criminal proceedings – the cost of travel on air transport;

– the cost of renting residential premises according to the standards adopted for paying for business trips, provided that these costs are not reimbursed by the organization, the employer;

2) daily allowance, if necessary for these persons to reside at the request of the body conducting criminal proceedings, outside the place of permanent residence and provided that the daily allowance is not reimbursed by the organization, employer;

3) average earnings for all the time spent at the request of the body conducting criminal proceedings to participate in a criminal case, except in cases where the average earnings are retained by the organization or employer;

4) expenses for the restoration or acquisition of property that has lost quality or has been lost as a result of a person's participation in an investigative or other procedural action at the request of the body conducting the criminal process.

Regarding the procedure for collecting procedural costs for a drive, the Supreme Court decides: «Explain that the procedural costs are collected from persons called to the investigator, the inquirer, the court or the Prosecutor – in cases of adjournment of the case in court or the production of an investigative action because of their absence without valid reasons. In each case, the body conducting criminal proceedings must find out the reasons for the failure of these persons, duly notified of the call.

The internal Affairs body entrusted with the execution of the order on summoning is obliged to provide the court with information confirming its proper execution».

For example, in New South Wales, there are two ways to recover expenses if you were acquitted, dismissed, or your case was dismissed. It is either the magistrate or the judge who decides on reimbursement of expenses against the prosecution, or issues a certificate of expenses, which is paid by the Ministry of justice from the consolidated Fund [11].

At the same time, neither the Government Decree nor the regulatory Decree of the Supreme Court of the Republic of Kazakhstan provides for the procedure for



calculating expenses related to the implementation of the project.

There are positive examples. This is the calculation of damages for violation of the normal activities of state bodies for distraction in a deliberately false report of an act of terrorism (article 273 of the Criminal Code of the Republic of Kazakhstan).

Department of Emergency Situations, Internal Affairs Department, Department of the National Security Committee and other institutions provide calculations on the time spent, the number of people involved, fuel and lubricants, office supplies, etc. The costs presented are called damages, although they are essentially procedural costs [12].

Taking into account the positive practice of calculating expenses for crimes related to false terrorism, it is proposed to fix a similar method.

The cost of one minute of working time is calculated using the formula:

$$P_{\text{cost of 1 minute of working time}} = \frac{\text{salary amount for 1 month}}{\text{balance}_{\text{working time for 1 month}}} \div 60 \text{ minutes}$$

where:

Submit to the Government of the Republic of Kazakhstan the following method for calculating drive costs:

$$\Sigma = t * P * x + y + z$$

$\Sigma$  – amount of government expenditure;  
 $t$  – time spent by each employee (hours/minutes);

$P$  – cost of one minute of working time;

$x$  – number of employees;

$y$  – office supplies expenses;

$z$  – fuel and lubricants expenses.

The list of procedural costs includes the amount spent in connection with the search for a suspect, accused, defendant, who disappeared from the investigation or court.

According to statistics [13] in 2019, a fairly large number of persons were put on the wanted list – 3602 (2018 – 1569, 2017 – 1495) persons who disappeared from the investigation, inquiry and court. Of the announced this year, 2954 persons (2018 – 1154, 2017 – 1035) were found, 28 (2018 –

37, 2017 – 14) persons were found outside the Republic of Kazakhstan.

The rules for calculating the amounts spent in connection with the search for a suspect, accused, defendant, fugitives from investigation or court, approved by Government Decree No. 1220 of November 21, 2014, establish that the procedural costs associated with the search for a suspect, accused, defendant, fugitives from investigation or court, consisting of the following, are subject to calculation:

«1) expenses on official trips of employees of the criminal prosecution body during carrying out operational, search actions;

2) the cost of travel by water, rail, road and air transport of the accused, suspect, defendant, fugitives from the investigation, court, from the place of detention to the place of bringing to responsibility;

3) daily expenses, if necessary, for the residence of the defendant, suspect, accused, fugitives from the investigation, the court, on the way from the place of detention to the place of bringing to justice».

In accordance with part 2 of the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 10 of June 29, 2018, expenses related to the conduct of special investigative measures and secret investigative actions do not relate to procedural costs.

At the same time, with part 11 Law of the Republic of Kazakhstan dated 15 September 1994. «On operational investigations», general (non-special) operational investigative activities shall be:

1) questioning of persons;

2) establishment of public and private relations with citizens, using them in operational investigative activity;

3) penetration;

4) application of a model of conduct imitating a criminal activity;

5) establishment of secret enterprises and organizations;

6) controlled delivery;

7) use of technical means for getting information that does not affect legally protected inviolability of private life, dwelling, personal and family secrets and confidentiality of personal deposits and savings, correspondence, telephone



conversations, mail, telegraph and other messages;

- 8) inquiries;
- 9) receipt of samples;
- 10) operational purchase;
- 11) use of sniffer dogs;
- 12) search for and identification of the individual signs;

13) a search of devices illegal withdrawal of information;

14) discovery, secret fixation and confiscation of traces of illegal acts, their preliminary study;

15) prosecution of individual preparing, committing or that has committed a crime and his detention;

16) carrying out with participation of witnesses of personal search of detainees, confiscation of things and documents that may be related to criminal activity, as well as inspection of residential premises, working and other places, inspection of vehicles.

During the antiterrorist operation, a personal search and inspection of personal belongings of individuals, inspection of vehicles, including the use of technical means, can be carried out without the participation of witnesses;

17) carrying out operations to capture armed criminals;

18) monitoring.

In these circumstances, the procedural costs may include the costs of conducting a General Operational investigation measures in connection with the search for a suspect, accused, defendant, fugitives from investigation or court, as well as the costs of being on a business trip, calculated in accordance with the procedure established by the Government of the Republic of Kazakhstan:

– time spent by an employee on a business trip within Kazakhstan related to the search;

– the time spent by the employee on a business trip abroad related to the search.

Thus, it is proposed:

1) complement the Resolution of the Government of the Republic of Kazakhstan

No. 1070 of October 9, 2014. «On certain issues of reimbursement of expenses incurred by persons in criminal proceedings» the following Methodology for calculating drive costs:

$$\Sigma = t * P * x + y + z$$

where:

$\Sigma$  – amount of government expenditure;  
t – time spent by each employee (hours/minutes);

P – cost of one minute of working time;

x – number of employees;

y – office supplies expenses;

z – fuel and lubricants expenses.

The cost of one minute of working time is determined by the following formula:

$$P_{\text{cost of 1 minute of working time}} =$$

$$\frac{\text{salary amount for 1 month}}{\text{balance}_{\text{working time for 1 month}}} \div 60 \text{ minutes}$$

2) complement the Resolution of the Government of the Republic of Kazakhstan No. 1220 of November 21, 2014. «About the approval of Rules of calculation of the sums spent in connection with search of the suspect, the accused, the defendant who disappeared from the investigation or court» the following Methodology to calculate the cost of the investigation:

$$\Sigma_{\text{of expenses for search}} = a * n * b * x$$

where:

$\Sigma_{\text{of expenses for search}}$  – the amount spent in connection with the investigation without

considering the cost of the trip;

a – employee's salary per day;

n – number of days on a business trip to search;

b – the number of the disappeared persons;

x – number of employees.

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