Жамият ва инновациялар –
Общество и инновации –
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On some issues of ensuring the rights and interests of the detainee

Bekhzod RASHIDOV[1]

Ministry of Internal Affairs of the Republic of Uzbekistan

ARTICLE INFO

Article history:
Received September 2022
Received in revised form
25 September 2022
Accepted 20 October 2022
Available online
25 November 2022

Keywords:
detention,
the right to silence,
explanation of the rights of the detainee,
judicial control.

ABSTRACT

The article reveals the issues of applying such measures of coercion as detention. Some aspects of ensuring the rights and legitimate interests of the individual in the criminal process are analyzed, in particular, the introduction of the Habeas Corpus Institute and the Miranda warning into national criminal procedure legislation. A comparative legal analysis of the norms of national and international legislation regulating the detention procedure is carried out. The author presents an analysis of statistical indicators in this area. The author forms conclusions and proposals to ensure the interests of detainees.

DOI: https://doi.org/10.47689/2181-1415-vol3-iss10/S-pp199-204

Қамоққа олинган шахснинг ҳуқуқ ва манфаатларини таъминлашнинг айрим масалалари

Калит сўзлар:
ҳибсга олиш,
сукут сақлаш ҳуқуқи,
ҳибсга олинган шахснинг ҳуқуқларини тушунтириш,
суд назорати.

АННОТАЦИЯ

Мақолада ҳибсга олиш каби мажбурлов чорасини қўллаш масалалари очиб берилган. Жиноят ишида шахснинг ҳуқуқ ва қонуний манфаатларини таъминлашнинг айрим жиҳатлари, хусусан, миллий жиноят-процессуал қонунчилигига “Хабеас корпус” институти ва Миранда қоидаларининг киритилиши таҳлил қилинган. Ҳибсга олиш жараёнини тартибга солувчи миллий ва халқаро қонунчилик нормалари қиёсий-ҳуқуқий таҳлил қилинган. Муаллиф ушбу соҳадаги статистик кўрсаткичлар таҳлилини тақдим этган. Муаллиф ҳибсга олинганларнинг манфаатларини таъминлаш учун хулоса ва таклифларини тақдим этган.

[1] Head of Educational and Methodological Department of the Academy of the Ministry of Internal Affairs of the Republic of Uzbekistan, Doctor of Law, Associate Professor.

О некоторых вопросах обеспечения прав и интересов задержанного

Ключевые слова:
задержание,
право на молчание,
разъяснение прав задержанному,
судебный контроль.

АННОТАЦИЯ

В статье раскрываются вопросы применения такой меры принуждения, как задержание. Анализируются некоторые аспекты обеспечения прав и законных интересов личности в уголовном процессе, в частности внедрения в национальное уголовно-процессуальное законодательство института Хабеас корпус и правил Миранды. Проводится сравнительно-правовой анализ норм национального и международного законодательства, регламентирующего процедуру задержания. Автором представлен анализ статистических показателей в данной сфере. Автором формируется выводы и предложения по обеспечению интересов задержанных лиц.

Today, issues of ensuring the rights and freedoms of the individual in criminal proceedings, a respect for their honor and dignity are of particular relevance. The Universal Declaration of Human Rights proclaims that everyone has the right to liberty and security (Article 3) and that no one may be subjected to arbitrary arrest or detention (Article 9) [1]. A similar rule is presented in Part 1 of Article 9 of the International Covenant on Civil and Political Rights of 1966 [2]. Personal freedom as an object of criminal law protection is based on a set of international and national legal norms. In this aspect, important attention is paid to the issues of compliance with international institutions in national criminal proceedings, such as Habeas Corpus and Miranda warnings.

Large-scale reforms implemented in the judicial and legal sphere in the Republic of Uzbekistan are aimed at ensuring the priority of the interests and rights of the individual. The above contributes to the implementation of generally recognized provisions of international law in matters of ensuring respect for the honor and dignity of a person into the norms of national legislation.

In recent years, the judicial and legal sphere has been radically improved, and solid foundations have been created for guaranteeing individual rights in criminal proceedings. Being a measure of criminal procedural coercion, the detention of suspect affects one of the most important legal values – the right to freedom and personal integrity. Therefore, its application requires the strictest observance of the rule of law by state bodies and officials, which has been repeatedly noted in the legal literature [3. PP. 483–490].

I.S. Troinina [4. PP. 69–73], A.V. Pobedkin, V.N. Yashin [5. PP. 16–24], O.A. Lutsenko, I.F. Gemeshliyev [6. PP. 118–122], I.A. Odinayev, S.A. Roganov [7. PP. 83–86], V.I. Rudnev [8. PP. 130–137] and other scientists devoted their works to procedural aspects of detention.

Particular attention is paid to ensuring compliance with the principles of humanity in the implementation of detention. According to Matkarimov K.K., the humanization of criminal proceedings includes, first of all, the humanization of legislation, especially the legal status of persons involved in the criminal proceedings [9. PP. 37–40].

One of the most critical procedural actions for participants in the criminal process is detention. Judicial practice shows that it is at this stage that the greatest number of violations of procedural norms, and infringement of the rights and freedoms of individuals are recorded.

Chapter 27 of the Code of Criminal Procedure of the Republic of Uzbekistan contains norms regulating the grounds and procedure for the detention of a suspect. This chapter provides for the obligation of officials to perform certain actions within the prescribed period from the moment the person is detained.

Detention in accordance with Article 220 of the Code of Criminal Procedure consists of short-term imprisonment of a person suspected of committing a crime to suppress his criminal activities, and prevent escape, concealment, and destruction of evidence.

The purpose of detention is to isolate temporarily a person from society until all circumstances necessary for further determination of the status of the detained person are clarified. At the same time, this person is deprived of the opportunity to continue antisocial behavior or a criminal act, as well as to oppose law enforcement agencies.

Detention of a suspect is an urgent measure of procedural coercion, the essence of which is a short-term detention in a temporary detention facility to establish his involvement in the commission of a crime and resolve the issue of choosing a measure of restraint in respect of him in the form of detention. Criminal procedural detention differs from actual detention, administrative detention, and preventive measure in the form of detention.

In addition, the current Code of Criminal Procedure regulates the detention procedure, in particular, the grounds for detention are provided for in Article 221 of the Code of Criminal Procedure of the Republic of Uzbekistan:

– a person that was caught while committing a crime or immediately after it was committed;

– eyewitnesses, including victims, will point to this person as having committed a crime;

– obvious traces of a crime will be found on him or his clothes, with him, or in his dwelling;

– there are data that give grounds to suspect a person of committing a crime or if he attempted to escape or his identity has not been established.

The institution of Habeas Corpus and the Miranda warning was introduced into national criminal proceedings to liberalize and ensure the rights and freedoms of the individual.

In the national criminal procedure legislation, the institution of Habeas Corpus has been enshrined since 2008, when, in accordance with the Decree of the First President of Uzbekistan “On transfer to the courts of the right to issue sanctions for detention” of August 8, 2005 [10], of January 1, 2008, when this right was transferred from the Prosecutor’s Office.

An analysis of judicial practice shows an increase in acquitted persons over the recent period: in 2017 – 263, 2018 – 867, 2019 – 859, 2020 – 781, and 2021 – 932. In 2020, the court received total of 10,651 materials for application of preventive measure of detention, of which 10,458 were satisfied. In 2021, 20,792 materials were received by the court, of which 20,388 were satisfied [11].

According to the law adopted in 2012, judicial control was expanded to include the procedure for applying procedural measures of coercion in the form of removal from office and placement of a person in medical institution and put into practice. And over the following years, this form of judicial control over the investigation gradually expanded by

transferring the right to authorize measures of procedural coercion and several investigative actions related to inviolability of the individual. From 1991 to 2016, there were only 5 types of measures of procedural coercion. From 2017 to 2022, the number of measures of procedural coercion and investigative actions sanctioned by the court increased from 5 to 10.

In goal 15 of the Development Strategy of New Uzbekistan for 2022-2026, it is planned to strengthen judicial control over the investigation through the further development of Habeas Corpus institution.

In addition, in accordance with the Decree of the President of the Republic of Uzbekistan № DP-4850 "On measures to further reform the judicial and legal system, strengthen guarantees of reliable protection of the rights and freedoms of citizens" of October 21, 2016, in 2017, the period of detention of persons suspected of committing a crime was reduced from 72 to 48 hours [12]. Thus, the procedural terms of detention were brought into line with the norms of the Covenant on Civil and Political Rights. The initial moment of the countdown of the 48 hours of detention is determined by the moment of actual detention of the person.

If the court does not decide on detention or other restriction of freedom within the prescribed period, the person must be released immediately.

If a court decision on the detention of a person or other type of restriction of freedom is not made within 48 hours, such a person must be released immediately. The term starts from the moment of actual detention of the person (the moment of the actual restriction of his rights to free movement).

It should be noted that Habeas Corpus institution is enshrined in the constitutions of the United States, Germany, Italy, Spain, Austria, the United Kingdom, Portugal, and other countries.

In addition, the provisions of national criminal procedure legislation stipulate that, upon arrest, a person must be explained in a language that he understands his rights and grounds for detention, which reflect the provisions of the Miranda warning.

This provision is based on a case where the Supreme Court overturned a decision against Miranda on the grounds that his rights under the fifth, sixth and fourteenth amendments were violated.

Miranda's warnings consist of three parts, and therefore the officials who detain during interrogation are obliged to explain to interrogated, suspected: the right to remain silent; anything they say can be used against them; the right to invite or appoint a lawyer. These rights may be communicated to the suspect orally, or the suspect may be asked to read the rights for himself. In practice, the police usually use both approaches. The Supreme Court gave police detailed instructions on how to deliver Miranda's warnings.

The Miranda warning is enshrined in Article 9 of the International Covenant on Civil and Political Rights, which states that the detainee must be explained "the reasons for his arrest and promptly informed of the charge against him".

Miranda's warnings are reflected in the Constitutions of Spain, Greece, the Netherlands, Croatia, Slovenia, Azerbaijan and other countries.

It should be noted that since May 2020 the provisions of the Miranda warning have been embodied in the norms of the national criminal procedure legislation.

In particular, in accordance with Article 224 of the Code of Criminal Procedure, law enforcement agencies are required to:

- identify themselves and, at the request of the detainee, present an identity document;

- inform the suspect that he is detained on suspicion of committing a crime;
- explain to the detainee the procedural rights to a telephone call or message to a lawyer or close relative, to have a defense counsel, to refuse to testify;
- notify the detainee that the testimony given by him can be used as evidence in the criminal case against him;
- require the detainee to proceed to the nearest internal affairs agency or other law enforcement agency.

The above determines the recognition of illegal methods of interrogation of suspects, including confessions under pressure, in violation of procedural order, as unreliable and unacceptable.

Implementing the Miranda warning helps to protect people from arbitrary detention and criminal charges. In turn, awareness of this rule increases the level of legal literacy and legal awareness of the population. Only people who understand and know their rights can demand them from the state.

This rule is aimed at preventing the violation of the rights of suspects, strengthening the guarantee of the rights and freedoms of citizens in criminal proceedings, serving the broad application in practice of the noble principle that life, rights and freedoms are the highest value, and preventing pressure from officials of the relevant department on the detainee. In addition, the proposed norm once again confirms our country's commitment to human rights and recognition of the supremacy of universally recognized norms of international law in our country.

Summing up, we should note that the issues of ensuring the rights of a suspect during detention remain one of problematic issues today, which does not have an unambiguous solution either in practical units or in theory. The consolidation of the provisions of Habeas Corpus and the Miranda warning in the norms of national criminal procedure legislation is aimed at guaranteeing the inadmissibility of possible pressure on detainees, minimizing the possibility of self-accusation, ensuring constitutional guarantees of the rights and freedoms of the individual, as well as a balance between the powers of the bodies conducting the detention and the inalienable rights of the individual.

REFERENCES:

1. Universal Declaration of Human Rights. Access link: https://www.un.org/ru/documents/decl_conv/declarations/declhr.shtml. Access date: 09/10/2022.

2. International Covenant on Civil and Political Rights of December 16, 1966 // https://lex.uz/docs/2638212.

3. Panokin A.M. Detention of a suspect in criminal proceedings // Current problems of Russian law. 2013. – No. 4 (29). – PP. 483–490.

4. Troinina I.S. Detention of a suspect as a measure of criminal procedural coercion // Judicial power and criminal process. – 2018. – No. 3. – P. 69-73.

5. Pobedkin A.V., Yashin V.N. Actual and procedural detention of the suspect: the decision of the legislator is necessary // News of the Tula State University. – 2018. – No. 1–2. – PP. 16–24.

6. Lutsenko O.A., Gemeshliyeva F.F. Detention. The concept, essence, evidentiary value of this legal institution // North Caucasian Legal Bulletin. – 2016. – No. 2. – PP. 118–122.

7. Odinayev I.A., Rognov S.A. Criminal procedural aspects of detention under the legislation of the Russian Federation and the Republic of Tajikistan // Bulletin of the Saint Petersburg University of the Ministry of Internal Affairs of Russia No. 3 (75) 2017. – PP. 83–86.

8. Rudnev V.I. The status of the detainee as a new participant in criminal proceedings // Journal of Russian Law No. 4 – 2017. – PP. 130–137.

9. Matkarimov K.K. Some conceptual issues of humanization of criminal proceedings in the Republic of Uzbekistan // Judicial power and criminal process. – 2015. – No. 4. – PP. 37–40.

10. Decree of the First President of Uzbekistan No. DP-3644 “On the transfer to the courts of the right to issue a sanction for detention” of August 8, 2005 // Collection of Legislation of the Republic of Uzbekistan, 2005, No. 32-33, Article 242.

11. Statistics of the Supreme Court. Access link: https://stat.sud.uz/.

12. Decree of the President of the Republic of Uzbekistan No. DP–4850 “On measures to further reform the judicial and legal system, strengthen guarantees of reliable protection of the rights and freedoms of citizens” of October 21, 2016 // Collection of Legislation of the Republic of Uzbekistan, 2016, No. 43, Article 497.

13. Pastukhov P.S. The evolution of the rights of a suspect during interrogation in criminal pre-trial proceedings in the United States // Perm Legal Almanac – 2022. – No. 5. – PP. 418–435.