



Distinctive aspects of the procedure and application of detention as a measure of procedural coercion in the experience of certain foreign countries

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ABSTRACT

The article examines the procedure and application of detention, one of the measures of procedural coercion, by studying the experience of several foreign countries. The use of detention as a procedural coercion measure in law enforcement activities of foreign countries has been scientifically analyzed, and some of its distinctive aspects have been explored. The article highlights important issues related to detention, including its connection to the restriction of individual rights and freedoms, its relevance in urgent situations involving criminal incidents, as well as its significance in preventing the continuation of criminal activity by a person detained as a suspect in committing a crime.

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Айрим хорижий мамлакатлар тажрибасида ушлаб туриш процессуал мажбурлов чорасининг тартиби ва қўлланилишининг ўзига хос жиҳатлари

АННОТАЦИЯ

Калит сўзлар:

ушлаб туриш,

ҳибсга олиш,

ордер,

фактик ушлаш,

гумон,

жиноят,

процессуал мажбурлов.

Мақолада процессуал мажбурлов чораларидан бири ушлаб туришнинг тартиби ҳамда қўлланилиши юзасидан айрим чет давлатларнинг тажрибаси ўрганилган. Ушлаб туриш процессуал мажбурлов чораси хорижий мамлакатлар ҳуқуқни муҳофаза қилиш фаолиятида ҳам қўлланилиши, унинг айрим ўзига хос жиҳатлари илмий таҳлил қилинган. Ушлаб туришнинг шахс ҳуқуқ ва

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эркинликларини чеклаш билан боғлиқлиги, жиний ҳодиса юзасидан кечиктириб бўлмайдиган вазиятларга хослиги, шунингдек ушлаб туришнинг жиний содир этишда гумон қилинувчи сифатида ушланган шахснинг жиний фаолиятини давом эттиришини олдини олишдаги аҳамиятига оид муҳим масалалар ёритиб ўтилган.

Особенности процедуры и применения меры процессуального принуждения в виде заключения под стражу в опыте некоторых зарубежных стран

АННОТАЦИЯ

Ключевые слова:

задержание,
арест,
ордер,
фактическое задержание,
подозрение,
преступление,
процессуальное
принуждение.

В статье исследуется порядок проведения одной из мер процессуального принуждения, а также анализируется опыт некоторых зарубежных стран по её применению. Мера процессуального принуждения в виде заключения под стражу используется в правоохранительной деятельности зарубежных стран, и её специфические аспекты были научно проанализированы. Рассмотрены важные вопросы, касающиеся связи задержания с ограничениями прав и свобод личности, особенностей ситуаций, требующих незамедлительного реагирования в связи с уголовным происшествием, а также значимости задержания подозреваемого для предотвращения продолжения преступной деятельности.

Detention as one of the measures of procedural coercion is important for the rapid and complete detection of crimes, the imposition of fair punishment on each person who has committed a crime, as well as the strengthening of the rule of law, the prevention of crime, and the protection of the interests of the individual, the State and society. Because detention is used to prevent a criminal suspect from engaging in criminal activity, fleeing, concealing or destroying evidence. The application of a measure of procedural coercion is also provided by the criminal procedural legislation of foreign countries in its essential importance. The norms of detention, as noted in the legislation of foreign countries, differ in some specific aspects, although their basis, procedure of application, and duration are similar.

In a developed State, detention in the United States of America is expressed [1] in the form of “detention” and is used with the authorization of the court due to the significant restriction of individual rights under the Constitution. In many cases, the procedural and coercive measure involves short-term imprisonment. Procedural and coercive measures related to such short-term deprivation of liberty are also applied to persons who have committed crimes of minor gravity (intoxication in a public place, drunk driving, violation of public order and rules of alcohol trade, etc.). Longer prison sentences apply to persons suspected of committing dangerous crimes. A scholar in the field of criminal procedure law, Professor G. Tulganova, touched upon another aspect of US criminal procedure law, which is that the police must gather the necessary factual information and file a motion to take a certain person into custody in order to take a

criminal suspect into custody. At the same time, in cases that cannot be delayed, it is permissible to be caught or imprisoned without a warrant, but in that case, in order to test the legality of the imprisonment, the requirement to bring the person in custody “as soon as practicable” before a court must be met [2].

A from scholars who have studied the U.S. criminal justice system. T. Goltsov emphasized the fact that the legislation of the state in question does not provide for the very institution that could be called a “suspect”. In contrast, the use of the term “**alleged offender**” has been raised in the United States. In contrast, the use of the term “alleged offender”, most commonly interpreted as “accused”, has been raised in the United States [3].

In the United States, police must also follow a number of rules that are set forth in laws and bylaws. Specifically, a police officer may search a suspect and obtain weapons, items that may be considered evidence in a case. The prisoner is then taken to the place where they are being held and their imprisonment is formalized. During this clearance, information is entered into the police logbook about the suspect's name, time of arrival, what he or she is suspected of doing, then a photograph is taken and fingerprints are taken. As a rule, at this time, the prisoner is explained what he or she is suspected of doing and is allowed to talk to the right person (relatives, friends, lawyer) on the phone, albeit once.

From scholars who studied the experience of foreign countries regarding the basis of detention, N. Khairiev noted that in England and Wales the basis of detention (they use the expression “custody”) is regulated by the Law on Police and Criminal Evidence 1984, as well as the “Code of Practice” developed on its basis. According to these sources, the right to detention was given to the police [4].

Section 25 of the UK Police and Criminal Evidence Act provides the following 5 general grounds for detention, namely:

- when the identity of the suspect is unclear or it takes a long time to identify the suspect;
- if a police officer doubts the reliability of information about the suspect's identity;
- due to the fact that the suspect's whereabouts were not reported to the police, he was apprehended by law enforcement officers;
- if the police officer reasonably concludes that the arrest of the suspect is necessary to prevent the suspect from causing him or another person physical or property damage, from acting in a manner contrary to the ethical standards of the community and from obstructing public transportation;
- when the detention of a suspect is considered important to protect the rights of minors or persons who find it difficult to defend themselves [5].

In the UK, police recording, i.e. arrest, is a measure used for a short period of time. Such arrest shall be for a strictly prescribed period of time, which in the initial case shall be 24 hours. However, the law allows the application of this term up to 36 hours in cases of committing certain types of socially dangerous crimes (murder, infliction of grave bodily harm, infliction of grave harm to the state and society, etc.). Its extension to a later date is decided by a court known as a magistrates' court. This period may be extended first to 72 hours and then to 96 hours. However, in the case of offenses related to terrorist activities, the period of detention is 48 hours, but can be extended by the Minister of the Interior to 7 hours if necessary [6].

In the UK judicial and legal system, we see that the grounds for applying the procedural coercive measure of detention have much to do with establishing the identity of the detained suspect. In addition, the police officer's opinion of the detainee, i.e., an assessment of the detainee's degree of public danger, is crucial in the choice on whether or not to apply the record to the suspect.

The US and UK Criminal Procedure Laws have common features inherent in detention. However, in this case, the nature (public danger) of the offense, the grounds for suspicion should be taken into account [7].

The Code of Criminal Procedure of the Federal Republic of Germany (German: Strafprozessordnung, abbreviated to StPO) is the main source of criminal procedure law in Germany and is the legal act governing the investigation of crimes, criminal proceedings, and the trial of criminal cases [8].

At the 112th session of the UN General Assembly on

German Criminal Procedure Law, it was decided to abolish the death penalty and replace it with the death penalty:

- if the defendant is found to have escaped or absconded;
- where there is a risk of the defendant evading criminal responsibility, taking into account the circumstances of the particular case;
- when the defendant's behavior gives rise to a strong suspicion that he or she is running and hiding;
- if there is a risk of destruction, alteration, seizure, suppression or falsification of evidence;
- may adversely affect defendants, witnesses or experts;
- encourage others to exert negative influence on defendants, witnesses or experts and risk the truth being difficult to establish [9].

Under German law, a defendant may be imprisoned if he or she is seriously suspected of and accused of committing a crime. It is found that such a decision is inextricably linked to the preliminary findings made about the detainee.

German law establishes that the application of record-keeping is also linked to the suspicion of a person of having committed certain crimes. For example, record keeping applies to drug offenses and to persons who have committed offenses more than once. Arrest, on the other hand, is authorized by the court on the basis of a written warrant. The warrant shall specify the following, namely:

- information about the defendant;
- the time and place of the commission of the offense of which he or she is suspected, the indicia provided by law;
- criminal offense and applicable criminal regulations;
- the grounds for arrest, as well as the facts that give rise to a strong suspicion that an offense has been committed and the grounds for the arrest.

A relative of the detainee or a person authorized by the detainee must be notified immediately of the arrest and the subsequent decision to continue detention. In addition, it is essential that the detainee himself or herself be given the opportunity to notify a relative of his or her detention, as long as this does not jeopardize the purpose of the investigation. In the Federal Republic of Germany, the police detain a suspect for a maximum of 48 hours, after which the prisoner must be taken to court [10].

Among the scholars of the branch N. Kovalyov distinguished in German legislation between arrest at the place where the crime was committed, as well as detention by court decision (in flagrante delicto). The judge may also issue a special order to compel the defendant to appear in court if there are grounds for authorizing detention or if the defendant fails to appear when summoned by the judge or prosecutor (Vorführungsbefehl). A judge will order an arrest if there is strong evidence against the suspect (Haftbefehl) (dringender Tatverdacht) [11].

There are also some specific aspects of German criminal procedure law relating to detention. For example, if a defendant is arrested on an arrest warrant, he or she must be brought before a competent judge immediately. The judge must immediately upon arrest and no later than the next day question the defendant on the charges. During the interrogation, the accused must be shown the circumstances of the charge and informed of his or her right to answer the charge or remain silent. He must be given an opportunity to remove the grounds for suspicion and arrest and to provide facts in his favor. If detention continues pending investigation, the accused must be informed of the right to appeal as well as other avenues of appeal.

On the grounds and procedure of application of the measure of procedural coercion to detention, the criminal procedural legislation of the Russian Federation is considered to be quite close to the legislation of our republic in this direction. In accordance with article 91 of the Code of Criminal Procedure, an inquirer or investigator has the right to detain a person suspected of committing an offense for which a penalty of deprivation of liberty may be imposed if one of the following grounds is present, namely:

- when a person commits a crime or is apprehended immediately after committing a crime;
- when the victim or witnesses indicate that the person committed the crime;
- if there are obvious traces of a crime on the person or on his or her clothing or home;
- there is other information that may serve as grounds for suspecting a person of committing a crime, if he or she has attempted to escape or has no permanent place of residence or his or her identity has not been established, or if he or she has been sent by the investigator, head of the investigative body or person conducting the initial inquiry, with the consent of the procurator, to request that a preventive measure in the form of remand in custody be imposed on the person.

Within no more than 3 hours after the suspect is brought to the body of inquiry or to the investigator, a protocol of arrest shall be drawn up, in which a record shall be made of the explanation of the rights granted to the suspect. If the defense counsel participates in the criminal proceedings from the moment of detention of the suspect, he/she is obliged to participate in the preparation of the arrest report. The report shall indicate the date and time of its preparation, the date, time, place, grounds and reasons for the detention of the suspect, the results of the personal search and other circumstances of the detention. The arrest report shall be signed by the suspect and the arresting officer. An inquirer or investigator must inform the prosecutor in writing of the detention of a suspect within 12 hours of his or her detention [12].

There are some specific aspects of retention observed in the French Republic. For example, from scholars studying the French experience K. Kalinovsky and Sh. Faiziev drew attention to the fact that the police have the right to detain not only the suspect, but also the victim and witnesses to testify about the crime [13].

It is worth noting that in many countries detention is not in the form of the procedural coercive measure “detention”, but in the form of “detention in custody”.

Based on the experience of foreign countries regarding the measure of procedural compulsion to detention, we consider it necessary to introduce into criminal procedural legislation the concept of “actual detention” of a suspect. It is advisable to include the time of the suspect's detention in practice, i.e. in a separate procedural norm of the concept of “actual detention” or in an additional procedure provided for in part one of article 226 of the Code of Criminal Procedure. The inclusion in our criminal procedure legislation of the concept of actual detention in the calculation of the time of detention serves to interpret its application in a similar manner.

As one of the positive experiences of foreign countries concerning detention as a measure of procedural coercion, it can be noted that the document drawn up on detention is also signed by the person who detained the suspect. This approach is also considered important from the point of view that the detaining officer has detailed information about where, on what grounds the suspect was detained.

The following general conclusions were drawn from the experience of the studied foreign countries regarding the order and application of the measure of procedural coercion to retention.

- the use of a preventive coercive measure against a suspected offender is an integral part of the jurisdiction of all States, the bases of which are considered to be mutually identical;

- the period of application of a procedural coercive measure of detention is established in foreign countries in different ways and provides for a duration from 24 to 96 hours. In this case, the rules concerning the extension of the retention period are applied;

- it is stipulated that the procedural actions to be carried out with regard to detained persons, i.e. examination of the grounds for their interrogation, detention, will be carried out during the period of detention in each country;

- the commonality inherent in all States in applying a measure of procedural coercion is manifested in refraining from any restrictions on freedom, freedom of the individual contrary to law.

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