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Procedural Aspects Of Suspect Apprehension As Procedural Coercion Measure In Criminal Process

Mavlanov Kamoliddin Toychievich
Teacher, Tashkent State University Of Law, Uzbekistan

ABSTRACT

This article deals with the rights and obligations of the suspect, measures of procedural coercion applied to him, grounds for apprehension of the suspect, protection of the rights of apprehended person. At the same time, it also reflects debate among procedural scholars on theoretical basis of restriction of individual freedom.

KEYWORDS

Suspect, evidence, apprehension, defense, offense, procedural coercion measures.

INTRODUCTION

The Constitution of the Republic of Uzbekistan enshrines the right of everyone to liberty and security of person. Democratic rights and freedoms of the person are protected by the Constitution and laws. Many international and domestic legal instruments also set basic standards and guarantees of personal inviolability. At the same time, as long as there is crime in society and its worst types are committed, the state cannot give up its coercive measures [1]. State coercion is a measure aimed at subjugating a person, which

is carried out by its competent state bodies and officials in the form of special documents and within legal norms of psychological and physical influence on the person.

The state empowered law enforcement agencies to use various coercive powers to combat crime. Among them, criminal procedural coercive measures are aimed at further restricting human rights and freedoms. The reason is that a crime is a socially dangerous act and combating it requires strict measures. The procedure for applying coercive procedural measures is clearly defined in the Criminal Procedure Code of the Republic of Uzbekistan. There is a separate (IV) section for them that is divided into types in the following sections:

1) Detention;
2) Precautionary measures;
3) Suspension of the passport (travel document);
4) Dismissal from office;
5) Compulsory summon;
6) Placement of a person into a medical institution.

Grounds for suspecting a person of a crime are set out in Article 359 of the CPC. According to it, if a person is detained on suspicion of committing a crime on the grounds provided by Article 221 of the CPC, or if the case contains information that gives enough grounds to suspect a crime, he will be involved in the criminal case as a suspect. Article 221 of the CPC sets out grounds for detention of a person suspected of committing a crime:

1) If the person has been arrested for a crime or directly after its commission;
2) Witnesses of the crime, including victims, directly identify him as the person who committed the crime;
3) There are obvious traces of the crime on him or on his clothes, near or at home;
4) There is information that a person is reasonably suspected in committing a crime, if he intends to flee or has no permanent residence or his identity has not been established.

However, Article 359 does not specify "information that gives grounds for suspicion of a crime in the case ", i.e. exactly what information is the basis. However, Article 82 of the CPC clearly states the grounds for accusing a person. Therefore, we believe that it is necessary to clarify the grounds for suspicion with a separate article in our criminal procedure legislation.

Today, the term "detention" is used in practice, law and scientific literature in various senses: 1) actions related to arrest a person who committed a crime; 2) placement of the suspect in custody; 3) keeping him in custody; 4) administrative detention. In order not to confuse concepts that are different in legal nature and used in different areas of law, but names of which are almost indistinguishable from each other, in our research work we deal with criminal-procedural detention (detention). Detention as a duration of action in any case should be carried out only in cases clearly specified in the legislation (Article 221 of the CPC of the Republic of Uzbekistan). Sources referred to in this article may contain various information. In order to use them, the information must serve as a basis for suspecting a person of a crime. In this case, two grounds for suspicion can be seen: procedural - existence of a reasonable suspicion, factual -

presence of information indicating the need to restrict freedom of the suspect. It is self-evident that the grounds for detaining a person are at the same time the grounds for suspecting him of having committed a crime. Our current legislation does not provide a clear boundary between grounds for suspicion and grounds for detention. Although these concepts are interrelated, they are completely different institutions of criminal procedure law. Reasons for detention and suspicion are different. Therefore, legal framework established for them should also be different [2]. Ignoring this situation creates a risk of repressive nature in activities of law enforcement agencies.

In many developed foreign countries, when a person is suspected of committing a crime, they go to court before being arrested. If the police can convince the judge that the detention is justified, they will receive a warrant from the court. There is no such procedure in the criminal procedure legislation of the Republic of Uzbekistan, i.e. judicial consent is not required for detention of a person. Court permission is required only when certain precautions (arrest or house arrest) need to be applied. This practice does not comply with international human rights standards [3] and could lead to abuse of power by investigators. Habeas Corpus standards guarantee that every person deprived of his or her liberty has the right to sue for the legality and validity of his or her detention. This rule is reflected in the eighth commentary of the UN Human Rights Committee. Mandatory assessment of legality of detention by a court ensures individual's right to inviolability [4] and drastically reduces the number of unjustified restrictions on freedom of expression in criminal proceedings. **Therefore, it is necessary to support introduction of the institution of "investigative judge" in our national criminal procedure legislation, who will exercise judicial control in pre-trial period and give this judge the power to study the legality of detention of the suspect.**

Detention of persons suspected of a crime is directly related to the person's right to inviolability. This measure is based on the task of investigating and exposing crimes and is a necessary measure aimed at restricting freedom of movement of the suspect. Study of the Code of Criminal Procedure suggests that a “suspect” (Article 222 of the CPC) as well as a “suspect in the commission of a crime” (Article 220 of the CPC) were identified as persons subject to coercive detention. In general, a person subject to coercive measures of criminal procedure may or may not have the status of a suspect [5]. Based on Article 360 of the CPC, we conclude that the status of “a person suspected of committing a crime” exists until the case is initiated, and after initiation of a criminal case, he becomes a "Suspect". However, Article 224 of the CPC denies this conclusion. In general, our criminal procedure legislation does not provide a clear distinction between these concepts, which has led to a number of confusions in norms of the law. While these concepts do not pose a serious problem in law enforcement process, we need to combine them into a single concept or show clear differences. In our opinion, it is necessary to unite these concepts. The reason lies in suspicion at the heart of both concepts. In world practice, a suspect in a crime participates in the process as a "suspect". On December 19, 2003, the Plenum of the Supreme Court of the Republic of Uzbekistan in its Decree No. 17 “The suspect and application of laws to protect the rights of the

accused persons with disabilities" established that Article 221 of the CPC detainee is considered a suspect from the moment of detainment on the grounds of his right to freedom of movement is limited in practice. From that point on, the detainee is expected to enjoy all the rights granted to the suspect. This means that the "suspect in commission of a crime" has no rights and obligations and his procedural status has not been established.

It is clear from the content of Article 47 of the Code of Criminal Procedure that although there is information that a suspect has committed a crime, this information is not sufficient to involve him in the case as an accused. While recognition as a suspect depends on the decision of inquiry officer, investigator or prosecutor, in reality it is a matter of putting on paper previous suspicions as suspect. That is, suspect appears when there is information about commission of a crime and this information confirms that the person is involved in the crime. It should not be tied to a decision to admit that he is entering the process. Given that this decision is made after initiation of criminal proceedings or simultaneously, whereas suspect exists even before initiation of criminal case, the definition provided for in Article 47 of the CPC does not cover the actual status of the suspect.

Today in the Republic of Uzbekistan there are two types of coercive measures of detention on suspicion of committing a crime due to uncertainty in the legislation: physical detention aimed at restricting a person's freedom of movement (Article 91 of the CPC) and procedurally enforced legal detention [6]. Our criminal procedure legislation regulates grounds and procedure for criminal-procedural detention, as well as the process of apprehension of an individual (Article 224 of the CPC). However, this measure requires a certain amount of time from physical detention to legal detention and this issue currently creates a gap in the legislation. According to our criminal procedure legislation, detention is a short-term imprisonment of a person suspected of committing a crime in order to prevent him from engaging in criminal activity, escape, concealment or destruction of evidence. The grounds for apprehension are also provided, which are as follows

1) A person is seized for a crime or directly after its commission;
2) Witnesses of the crime, including victims, directly identify him as the person who committed the crime;
3) There are obvious traces of the crime committed on him or on his clothes, near or at home;
4) There is information that a person has grounds to be suspected in commission of a crime, if he intends to flee or has no permanent residence or his identity has not been established.

Other information that may be the basis for a person's suspicion of having committed a crime may also be the basis for his apprehension [7]: the person to whom a petition has been sent to the court to apply a measure of restraint in the form of arrest. In general, apprehension of a person suspected of having committed a crime occurs at the initial stage of criminal prosecution without the permission of the court or prosecutor [8] and this coercive measure can be applied to a person only once on the above grounds. There are also procedural scholars who propose to conditionally divide the grounds for apprehension in order to prevent occurrence

of unfounded facts: grounds for suspicion and grounds for apprehension [9]. In this case, the grounds for suspicion indicate involvement of the person in the crime committed and give the right to apprehend him and hand over to law enforcement agencies. Grounds for detention indicate the need for short-term imprisonment.

Article 110 of the Code of Criminal Procedure stipulates that "an inquiry shall be conducted in the course of the preliminary investigation, immediately or no later than twenty-four hours after the suspect, accused has been apprehended, summoned for questioning or forcibly brought in". This provision of the law is controversial, and it is understood that a person who has been forcibly brought may also be detained for up to twenty-four hours in the building of investigative body conducting the interrogation. The police officer who enforced it shall introduce the person to the decision and record the time he was found. However, norms governing compulsory extradition do not specify length of time between the time of extradition to the investigating authority and the time of conducting investigative actions against him (with the exception of Article 110 of the CPC). It follows that a person who is brought in for questioning may be detained by the investigating authority for up to twenty-four hours. The above grounds are not specified in the grounds for detention set forth in Article 221 of the CPC. There are also proponents of setting an immediate interrogation time for a suspect who has been arrested or summoned for questioning. According to them, if the interrogation is delayed, this should happen within twenty-four hours and the reasons for the delay should be stated in the protocol [10]. In our view, immediate establishment of time limit should also apply to compulsorily brought suspects and by doing so the constitutional right of the suspect will be further guaranteed.

Rather than verbally explaining his rights to the suspect, it is preferable to give them a special note listing all the rights and criminal procedural measures that can be applied to them. The reason is that some of them can be forgotten when the rights are explained orally. According to our current legislation, the process of explaining the rights of a detainee will be videotaped. This is definitely a sign that a very good practice has been put in place. But at the same time, the process is not without some shortcomings. The psychological condition of the detainee was not taken into account. The purpose of compulsory videotaping is to ensure that the person is aware of his or her rights. The process of detention has a negative psychological effect on the suspect, in other words, the person has no imagination and at the same time his rights are explained to him. The result is unlikely to be as expected. That is why the European Union developed a special directive in 2012 [11] , according to which detainees are provided with a special written letter (Letter of Rights) stating their rights. This practice is used in almost all European countries. Therefore, we believe that it is necessary to include this procedure in our national legislation.

The right to liberty and security of person is enshrined in many universal and regional international human rights instruments. If there is a need to restrict this right by the state, it must be exercised in strict accordance with the procedure established by law. Also, such restrictions should be subject to judicial review. It should be borne in mind that deprivation of liberty affects not only the individual's freedom, but also his right to freedom of

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movement. Therefore, it is necessary to strictly regulate the powers of detention and arrest by means of legal norms and bring them in line with international standards. Execution of a person's apprehension is the prerogative of law enforcement officers, who deprive a person of the right to move freely in clearly defined cases. Employees must conduct their actions based on universal principles that must be followed in their work.

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