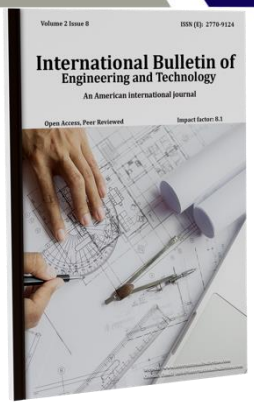

TACTICS OF DETAINING SUSPECTS IN THE INVESTIGATION OF CRIMES AGAINST PUBLIC ORDER

Nishonov Eldorjon Muzafar ugli
major, senior lecturer of the Department of Administrative Activities of Internal Affairs Bodies at the Faculty of Administrative and Organizational Activities of the Ministry of Internal Affairs of the Republic of Uzbekistan, 100197, Tashkent, Intizor Street, 68
E-mail: eldorjon199209@mail.com
Scientific specialization: 12.00.09 - Criminal process. Criminalistics, operational-search law and forensic examination.
UDC: 343.593:343.98.068 Criminalistics, operational-search law and forensic examination.
ORCID: 0009-0004-9898-653X
https://doi.org/10.5281/zenodo.14652351

Abstract: The article analyzes opinions and judgments expressed by scholars on the detention of individuals, and the author engages in scientific discussion with the scholars' views on this matter. It is substantiated that detention is a measure of procedural coercion. Since detention is not only a means of limiting a person's criminal activity but also a means of obtaining important evidence relevant to the case from the suspect, proposals and recommendations have been developed for its implementation. It is justified that detention should be carried out in the process of investigating hooliganism, taking into account the specifics of detaining the suspect.

Keywords: hooliganism, detention, coercive measure, suspect, video recording, evidence.

Decree of the President of the Republic of Uzbekistan dated January 28, 2022 It is justified that detention is a measure of procedural coercion. As detention is not only a means of limiting the criminal activity of a person, but also a means of obtaining important evidence relevant to the case from the suspect, proposals and recommendations have been developed for its implementation, and it is justified that it should be carried out in the process of investigating hooliganism, taking into account the specifics of detaining the suspect.

The Decree of the President of the Republic of Uzbekistan No. UP-60 "On the Strategy for the Development of New Uzbekistan for 2022-2026" identifies increasing the level of access to justice as one of the priority tasks [1]. In achieving justice, it is important to ensure the rights and freedoms of individuals during the detention process.

The procedural coercive measure of detaining a person is significant not only in putting an end to their criminal activity but also in obtaining evidence that is important for the case.

In this regard, there are various debates among scholars regarding the legal nature of this procedural coercive measure. We can conditionally divide them into two groups.

Scholars included in the first group, V.Yu. Melnikov, B.T. Bezlepkin, and A.V. Olshevsky, believe that detention is a measure of procedural coercion by its legal nature [2]. This approach is also reflected in Part 1 of Article 226 of the current Criminal Procedure Code of the Republic of Uzbekistan, according to which the detention of a suspect by an inquirer, investigator, or prosecutor in relation to a person suspected of committing a crime is limited to forty-eight hours from the moment of actual detention (the actual limitation of the right to

free movement) [3]. Detention is placed in Section IX of the Criminal Procedure Code, entitled "Procedural coercion."

In this regard, there are various controversies among scholars regarding the legal nature of this measure of procedural coercion. We can conditionally divide them into two groups.

Scholars included in the first group, V.Yu. Melnikov, B.T. Bezlepkin, and A.V. Olshevsky, believe that detention is a measure of procedural coercion by its legal nature.[2] This approach is also reflected in Part 1 of Article 226 of the current Criminal Procedure Code of the Republic of Uzbekistan, according to which the detention of a suspect is determined by the investigator, the investigator, or the prosecutor in relation to a person suspected of committing a crime to be forty-eight hours from the moment of his actual detention (the actual limitation of the right to free movement) [3] and the detention is placed in Section IX of the Criminal Procedure Code, entitled "Procedural coercion."

The second group of scientists, P.S. Efimychev, E.V. Mizulina, A.S. Alexandrov, K.N. Kovpgun, M.P. Polyakov, and S.P. Serebrova, argue that detention has a bilateral character, on the one hand, it is a measure of procedural coercion, and on the other hand, it is an investigative action.

We agree with the opinions of the first group of scientists that detention is a measure of procedural coercion. Because detention as a measure of procedural coercion is aimed at: preventing a person suspected of committing a crime from engaging in criminal activity; preventing the person from fleeing, hiding or destroying evidence; ensuring that the hooligan is held accountable and the punishment is inevitable.

In our view, scientists included in the second group assess detention as both a procedural coercive measure and as an investigative action, procedural detention, when a person is arrested for a crime, when there are sufficient grounds to assume that the person has a weapon or intends to escape from evidence that reveals that he committed a crime, allows us to make a reasonable conclusion that a personal search or seizure, which is a logical continuation of procedural detention, but by its legal nature is not part of the detention, may be provided for, and its results may be

The legislator refused to recognize detention as an investigative action, as detention of a detainee for up to 48 hours is not related to the need to obtain evidence (for example, in the process of tracking and recording telephone conversations), but is primarily related to achieving the goals characteristic of the coercive measure, in particular, to prevent the suspect from hiding, continuing criminal activity, threatening witnesses, or otherwise hindering the proceedings.

The results of the study of the practice of hooliganism cases showed that detention protocols are very rarely indicated as one of the evidence confirming the guilt of the accused in the indictments, and then in court judgments. In our opinion, the following typical errors can be attributed to this: detention without a personal search; instead of a detention protocol, other protocols on "seizure," "inspection," administrative detention (Article 288 of the Code of Administrative Offenses), which do not meet the requirements for the process of obtaining evidence in criminal proceedings, or video recording of a person during detention based on Article 91, Part 4, Clause 5 of the Criminal Procedure Code.

However, a properly compiled protocol reflecting the process and results of detention and personal search is one of the important evidence in a criminal case. This is because Article

91, Part 4, Clause 5 of the Criminal Procedure Code of the Republic of Uzbekistan defines detention as a type of recording of evidence, and detention of a person should be recorded on video when applying a measure of procedural coercion (Parts 1 and 2 of Article 224 of the Criminal Procedure Code).

However, in the practice of investigating hooliganism, video recording is not always carried out during the detention of a person. In particular, the investigator of the criminal case in which the preliminary investigation was carried out by the investigation department under the Chilanzar district DIA under Article 277, Part 2, Clauses "a,b" of the Criminal Code, made a decision to detain the accused J.B.E. without canceling the previously applied bail measure, and the detention process was not recorded on video.

In our opinion, the following tactical principles should be followed when detaining a person suspected of hooliganism:

the sudden occurrence of detention implies its implementation at a time when the person who committed the hooliganism has not yet managed to get rid of the evidence, is not ready for active physical resistance. A person, as a rule, can be distracted for a while, even if he is waiting to be arrested. For example, to avoid resistance, it was determined not to tell the detainees the real reasons for its transfer, but to give misleading excuses - cross the street in the wrong place, check the passport regime, control the civil passport regime, as well as not to tell the detainees the real reasons for its transfer [5];

ensuring the safety of the detainees, others, as well as the detainee. The sudden occurrence of a detention largely guarantees not only its success, but also the safety of its participants and others.

necessary measures should be taken to properly identify and seize the material traces of the crime. It is necessary to prevent the destruction of traces of the crime next to the detainees, primarily weapons or objects used as weapons.

Detention should be tactically competent not only in accordance with the requirements of the law, but also in accordance with forensic recommendations, which include:

if the situation allows (video camera, mobile phone with camera; there is an employee who is not directly involved in the apprehension of the suspect), the detention of a person (persons) and subsequent seizure of dangerous items must be recorded using video recording.

separate the detained person from witnesses and other persons who should be at a sufficient distance from the victim, and do not leave the scene until information is clarified and explanations are given about the circumstances of the incident.

in case of detention of a person as a result of direct detection of hooligan acts by internal affairs officers, immediately (by radio station, mobile phone) call an investigative team, wait for its arrival, ensure the security of the situation at the detention facility.

it is advisable to carefully remove the weapon and other objects from the detained person, not destroying any possible traces on them; the seizure and packaging of the identified material objects should be carried out by a forensic expert.

proper packaging of the received items (not destroying possible traces of packaging; it should not touch possible places of traces on the object; it must be signed and sealed by the relevant persons).

it is important to indicate that forensic techniques were used in the detention protocol, as well as the packaging of the seized items and the inscriptions attached to them.

at the end of the holding, it is recommended to view the video recording, enter the received comments into the protocol; if necessary, satisfy the specified requests; attach the video recording to the protocol (CD, DVD, flash card), pack it and seal it.

It is necessary to fulfill the requirement of Article 18 of the Law "On Internal Affairs Bodies," that is, to speak by phone to the detained person or inform his lawyer or a close relative about his detention and place of stay, to give him the right to have a defender (advocate) from the moment of detention, as well as other rights in accordance with the law.

from the moment of actual detention, it is necessary to grant the person the right to receive legal assistance from a lawyer [6].

Often, hooligan acts are detected and suppressed by employees of the patrol and post service of the internal affairs bodies, whose charter, in particular, provides for the following procedure for detaining persons suspected of committing a crime: Paragraph 215 defines the place of detention of a criminal taking into account the situation, threats to the life and health of citizens and employees of the internal affairs bodies, as well as other factors limiting the possibility of concealment of the offender. The PPH detachment approaches the detainee cautiously without being detected, "STOP. He gives the command "HOLD YOUR HAND" and announces his arrest. Paragraph 216 states that in exceptional cases, in order to prevent resistance from the detainee, the reason and purpose of the detention are not disclosed to him, and misleading arguments (violation of public order, crossing the road in an unspecified place, checking compliance with the rules of passport regime, quarantine, etc.) are invoked... In paragraph 220 of this article, the patrol officer who brought the arrested person to the internal affairs bodies reports with a notice to the head of the internal affairs department [7].

However, this procedure, which is applied in practice, does not provide for the use of technical and forensic means for determining the course and results of the seizure of dangerous objects, explaining the rights of the detained person, as well as drawing up a detention protocol. Accordingly, there is a high probability that the detention carried out in this way will not have the appropriate procedural formalization, and the obtained results, including the confiscated weapons, will not be used as relevant material evidence in the criminal case.

In such cases, we emphasize the expediency of conducting a personal search or seizure with the participation of witnesses, in accordance with the requirements of part 2 of Article 224 of the Criminal Procedure Code of the Republic of Uzbekistan, by an operational officer or other authorized entity of the duty part of the internal affairs bodies, and according to the result, issuing a detention protocol.

Detention of a person is regulated by various regulatory documents. In our view, there are still serious shortcomings in the legislative regulation of detention procedures. The existing procedure in administrative and criminal proceedings is so different that it does not allow the results of administrative arrest to be used in criminal proceedings. It is clear that in the case of actual detention, especially in the process of direct detection and suppression of hooligan acts, law enforcement officers are not always able to accurately qualify them as a crime or an administrative offense.

In this regard, the detention procedure should be uniform and meet the requirements and needs of administrative and criminal proceedings. Article 18 of the Law "On Internal Affairs Bodies" defines the grounds and procedure for detaining individuals by internal affairs bodies [8], which states that detaining individuals who have committed crimes is carried out

in the manner prescribed by the Criminal Procedure Code. In our view, this norm is a promising step towards the universalization of the retention process. Although the process of administrative detention is not recorded on video, as is criminal procedural detention.

After bringing the detained person to the internal affairs body or other law enforcement agency, the duty officer or other law enforcement officer must immediately draw up a detention protocol at the direction of the head (Article 225 of the Criminal Procedure Code of the Republic of Uzbekistan) and specify in it: the place and time of its preparation; the identity of the detained person, by whom, when, under what circumstances, on what grounds specified in the law, the detention was carried out; whether the detained person is suspected of committing hooliganism; whether The protocol is signed and certified by the employee of the internal affairs body or other law enforcement agency who compiled the protocol of detention, the detained person and the witnesses.

References:

1. Ўзбекистон Республикаси Президентининг “2022—2026 йилларга мўлжалланган янги Ўзбекистоннинг тараққиёт стратегияси тўғрисида”ги ПФ-60-сон Фармони – 28.01.2022 йил

2. Мельников В.Ю. Задержание подозреваемого как мера принуждения: от подозрения к подозреваемому // Правоведение. 2005. № 2. С. 94-104; Безлепкин Б.Т. Уголовный процесс России: Учеб. пособие. 2 изд. перераб. и доп. М.: Проспект, 2004. С. 157; Ольшевский А.В. Задержание подозреваемого как мера уголовно-процессуального принуждения: Дис. ... канд. юрид. наук. М., 2006. С. 29; Григорьев В.К Задержание подозреваемого. М., 1999. С. 65-68 и др.

3. Ўзбекистон Республикаси ЖПК 226-модда. Электрон манба. https://lex.uz/docs/111460

4. Ефимичев СП. Сущность и содержание уголовнопроцессуального задержания // Российский следователь. 2006 № 5 (СПС КонсультантПлюс); Комментарий к Уголовно-процессуальному кодексу Российской Федерации / Отв. ред. Д.Н. Козак, Е.В. Мизулина. 2 изд., перераб. и доп. М.: Юрист, 2004. С. 257; Уголовный процесс России: Учебник I А.С. Александров, КН. Ковпгун, М.П. Поляков, СП. Сереброва. Науч. ред. В.Т. Томин. М: Юрайт-Издат, 2003. С. 242; Исламов М.Э. Правовое регулирование задержания лица по подозрению в совершении преступления в российском уголовном процессе: Дис. ... канд. юрид. наук. Тюмень, 2008. С. 94 и др

5. Ўзбекистон Республикаси ИИВнинг 18.04.2018 йилдаги "Ички ишлар органлари патруль-пост хизмати саф бўлинмаларининг уставини тасдиқлаш ҳақида"ги 111-сонли буйруғининг 216-банди.

6. Ўзбекистон Республикаси Конституцияси 25-моддаси, Ўзбекистон Республикасининг 16.09.2016 йилдаги "Ички ишлар органлари тўғрисида"ги ЎРҚ-407-сон. 18-моддаси, Ўзбекистон Республикаси ЖПКнинг 224-моддаси.

7. Ўзбекистон Республикаси Ички ишлар вазирининг 18.04.2018 йилдаги "Ички ишлар органлари патруль-пост хизмати саф бўлинмаларининг уставини тасдиқлаш ҳақида"ги №111-сонли буйруғи. 215, 216 ва 220-бандлари.

8. Ўзбекистон Республикасининг "Ички ишлар органлари тўғрисида"ги ЎРҚ-407-сон қонуни, 16.09.2016 йил. 18-моддаси.