



SOME ASPECTS OF ENSURING THE RIGHTS OF THE SUSPECT WHEN APPLYING A PROCEDURAL COERCIVE MEASURE IN THE FORM OF DETENTION

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Abstract. The article presents a scientific analysis of the provision of procedural rights of the suspect when applying detention as one of the procedural coercive measures. Based on the study of the Constitution of the Republic of Uzbekistan and the norms of criminal procedural legislation, individual issues related to the protection of the rights of the suspect are examined, and suggestions for their resolution are proposed. In addition, important issues that responsible subjects should consider when applying detention are highlighted.

Keywords: detention, suspicion, rights, crime, procedural coercion, duty, evidence.

As is well known, detention is a special criminal procedural process based on objective information about the commission of a criminal act by the suspect, in which personal freedom is restricted for a short period of time. In jurisprudence, although the restriction of an individual's freedom is carried out based on certain decisions, sanctions, or judicial verdicts, the application of detention in urgent cases and the need to solve a crime based on hot pursuit excludes the necessity of obtaining prior sanction or issuing a procedural decision.

In some cases, this can lead to the unjustified detention of a person as a suspect, the restriction of their constitutional freedoms for a certain period, as well as the fact that the application of detention in judicial and investigative practice is not always justified. According to scientific studies by the scholar B.A. Saidov, the examination of criminal case materials and judicial-investigative practice shows that the constitutional rights and freedoms of the suspect are violated during their detention on suspicion of committing a crime, during the preliminary investigation, conducting investigative and other procedural actions regarding the person, involving them as a suspect, and conducting interrogation [1].

According to analytical data, in 2022, in the republic, the procedural coercive measure of detention was applied to suspects in 13,740 cases. Of these, in two cases, the detainees were released due to the lack of confirmation of the suspicion, and in 560 cases, the suspects were released due to the lack of necessity for applying a preventive measure in the form of detention.

In the first seven months of 2023, the procedural coercive measure in the form of detention was applied a total of 6,843 times, of which 257 detainees were released due to the lack of necessity for applying a preventive measure in the form of detention.

These figures indicate that ensuring the rights of the suspect when applying the procedural coercive measure of detention is one of the urgent tasks.

According to criminal procedural norms, the procedural coercive measure of detention is carried out by temporarily restricting an individual's rights and freedoms for a short period and placing them in a specialized detention facility. In this regard, in our view, the application of detention as a procedural coercive measure, based on initial suspicions and assumptions

about the criminal event, as well as subsequent procedural actions, requires special attention in terms of the potential violation of constitutional rights and freedoms.

Therefore, the initial stage of applying detention, i.e., the procedural process before the actual detention of the individual, should be based on specific data regarding the criminal event, and the reliability of this data is crucial. According to the law, the temporary restriction of a person's freedom based on detention is carried out solely to establish their actual involvement or lack of involvement in the crime. Clearly defining the grounds for detention is a priority of modern legislation and is viewed as an additional guarantee for the protection of the rights, freedoms, and legitimate interests of the individual.

According to Part 4 of Article 27 of the Constitution of the Republic of Uzbekistan, when a person is detained, their rights and the grounds for detention must be explained to them in a language they understand[2]. In this regard, M.D. Botayev noted that an officer of the internal affairs authorities or another authorized person is obligated to explain the detained person's procedural rights, including the right to call a lawyer or a close relative, the right to a defender, the right to remain silent, and to inform them that any statements they make may be used against them as evidence in the criminal case. Furthermore, the detaining person must introduce themselves and, at the request of the detained individual, present a document confirming their identity[3].

It should be noted that the untimely explanation of the detainee's right to defense at the time of their actual detention, as well as the inability to immediately notify a lawyer or close relatives, is an important issue. After all, providing the suspect with such an opportunity immediately after their actual detention has psychological significance: by notifying a lawyer or relatives, the suspect will confidently await legal assistance and be able to testify in the presence of a defender, which will make them feel more secure in case of an unjustified detention.

This aspect can be linked to the principles of the "Miranda rights," according to which the detained person is informed of their rights and the grounds for their detention in a language they understand. Moreover, this issue was further regulated in the Decree of the President of the Republic of Uzbekistan No. PF-6041 of August 10, 2020, "On Measures to Further Strengthen the Guarantees for the Protection of the Rights and Freedoms of the Individual in Judicial and Investigative Activities." According to this decree, if a person has been actually detained, the operational activity related to their detention at the crime scene has been completed, or they have officially been informed that they are recognized as a suspect, they must be given the opportunity to meet privately with a lawyer before any procedural actions are taken with them[4].

In this context, particular attention should be given to such an important aspect as explaining to the individual, at the time of their detention, their rights and the grounds for their detention in a language they understand. This problem is, on the one hand, related to the fact that over 130 nationalities and ethnic groups live in our republic, on the other hand, to the proficiency of the detaining subject in the language spoken by the detained person, and thirdly, to the fact that detention is often carried out in urgent situations.

In our opinion, the availability of pocket guides for law enforcement officers containing the rights of the suspect in the most commonly spoken languages plays an important role in the timely explanation of the detainee's rights at the moment of actual detention. Additionally, the skills of law enforcement officers in using modern technologies, such as artificial

intelligence, the internet, and Google Translate, are also relevant for ensuring the constitutional and criminal procedural rights of the detained individual.

In the process of studying the criminal procedural norms related to the procedural coercive measure of detention, it should also be noted that there are some gaps in the legislation. It is well known that Article 224 of the Criminal Procedure Code establishes the procedure for detention before the initiation of a criminal case, which includes five stages. If an officer of the internal affairs authorities or another authorized person has directly or based on witness testimony established the existence of one of the grounds specified in Article 221 of this Code, they are obliged to:

1. Introduce themselves and, at the request of the detainee, present their identification;
2. Inform the suspect that they are detained on suspicion of committing a crime;
3. Explain the detainee's procedural rights, including the right to call a lawyer or a close relative, the right to a defender, and the right to remain silent;
4. Inform the detainee that their statements may be used against them as evidence in the criminal case;
5. Require the detainee to proceed with them to the nearest internal affairs office or another law enforcement facility [5].

In this procedure, notifying the suspect that they are detained on suspicion of committing a crime, in its current form in criminal procedural legislation, is a controversial and debatable issue.

In our opinion, the lack of an obligation for the officer executing the detention to inform the detainee about the specific crime they are suspected of may lead to a deviation from the general principles of proving a case and a violation of the rule of law.

Firstly, establishing the procedure for notifying the suspect about the specific case they are detained for is crucial from the standpoint of the right to defense. Secondly, this aligns with Article 48 of the Criminal Procedure Code, according to which the suspect has the right to know the nature of the suspicion against them.

Based on this, we believe it would be advisable to change the wording of the provision in Article 224 of the Criminal Procedure Code concerning the procedure for detention before the initiation of a criminal case, from "inform the suspect that they are detained on suspicion of committing a crime" to "inform the suspect about which criminal case they are detained on suspicion of committing a crime."

In April 2020, significant changes and additions were made to the criminal procedural legislation of the Republic of Uzbekistan regarding the procedure for applying the procedural coercive measure of detention. According to the amendments, it became mandatory to record all procedural actions related to the detention of a person on video [6].

If the detention was not recorded via video, the internal affairs officer or another authorized person is required, after delivering the detainee to the nearest internal affairs unit or another law enforcement facility, to explain their procedural rights using video recording. This recording must be shown directly to the detainee.

According to the members of the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan, these changes aim to ensure the supremacy of the Constitution and laws,

enhance public control over the activities of law enforcement agencies, and improve legal awareness and culture among the population [7].

The introduction of mandatory video recording of the detention, in our opinion, plays a key role in ensuring the principles of legality, objectivity, and impartiality at the stages of preliminary investigation, inquiry, and pretrial investigation, and serves as an additional guarantee for protecting the rights and freedoms of the suspect.

According to the requirements of criminal procedural legislation, the procedural coercive measure of detention must be revoked if the circumstances that justified its application are not confirmed. In other words, if the initial suspicion regarding the person's involvement in the crime is not confirmed, if the information provided by victims or witnesses is found to be incorrect, or if the person has no connection to the criminal event in question, such a person must be immediately released.

The legal acts of the Republic of Uzbekistan contain a direct indication that the activities of the internal affairs authorities, which restrict the rights, freedoms, and legal interests of citizens, must be immediately terminated in cases where:

The legal goal has already been achieved;

Further restriction of the rights and freedoms of citizens is not necessary to achieve the stated goal;

Achieving the goal is impossible or unacceptable through the restriction of rights and freedoms[8].

The isolation of an individual from society during detention, and their confinement in special isolated premises, can negatively affect their mental state and health. Based on this, researchers in this field, analyzing the practice of judicial and investigative activities and citizens' appeals, note that mechanisms for ensuring guarantees for the protection of individual rights and freedoms in criminal proceedings are still not fully utilized [9].

On this issue, Yu. Sinelshchikov also emphasizes that under the pretext of applying procedural coercive measures, unjustified restrictions on constitutional rights, freedoms, and legal interests of citizens are not allowed, and that any law enforcement official must refrain from actions that unjustifiably limit or degrade the rights and freedoms of individuals[10].

Undoubtedly, detention, as one of the procedural coercive measures, plays an important role in the swift and complete disclosure of crimes, ensuring just punishment for those guilty, strengthening the rule of law, preventing crime, as well as protecting the interests of the individual, the state, and society.

However, under the pretext of applying such a measure as detention, unjustified restrictions on constitutional rights, freedoms, and legal interests of citizens are not allowed. Any law enforcement officer is obliged to refrain from actions that unlawfully limit or degrade the rights and freedoms of individuals, or prevent such actions.

Based on the above considerations regarding certain aspects of ensuring the rights of the suspect when applying the procedural coercive measure of detention, the following conclusions can be formulated:

The right to defense of a person detained as a suspect in the commission of a particular socially dangerous act is reflected in the Fundamental Law — the Constitution, which indicates their exceptional importance, and is enshrined in criminal procedural norms;

Explaining to the detained individual what exactly they are suspected of — that is, which specific crime they are suspected of — at the moment of detention is crucial for ensuring their right to defense;

At the moment of detention, explaining the rights and grounds for detention in a language understandable to the individual implies that authorized personnel should have proficiency in foreign languages, carry reference materials regarding detention in the most widely spoken languages, and possess skills in using modern technologies, such as artificial intelligence, the internet, and Google Translate, which plays an important role in fully ensuring the rights of the suspect;

If the initial suspicion of committing a crime is not confirmed, or if the information provided by victims or witnesses regarding the detained individual is incorrect, or if the detained individual has no connection to the criminal event, they should be immediately released.

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