

The Conformity of a Detention Procedure of a Criminal Suspect in the Criminal Procedure Code of the Russian Federation to the Recognized International Standards

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Abstract: This article considers the problematic issues of the Criminal Procedure Code of the Russian Federation established detention procedure of a person suspected in committing a crime. The author compares the relevant regulations of national criminal procedure legislation and the requirements of recognized international standards in this area. A special attention is paid to the necessity of obtaining a court decision to confirm the legitimacy and validity of the detention of a criminal suspect. *The* necessity of the revealed legal deficiencies and lacunas elimination in the regulation of a person detention according to the Russian criminal procedure legislation is justified in the given article. That is done with the aim of establishing additional guarantees of the right of a detained person, in conformity with the requirements of international legal norms. The author also makes appropriate proposals in order to somehow change the existing Criminal Procedure Code of the Russian Federation.

Key words: Detention • Detained person • Detainee • Criminal suspect • International legal norms • The Criminal Procedure Code of the Russian Federation

INTRODUCTION

The leading role in the system of procedural criminal restraint measures is given to detention, which is a short-term deprivation of freedom for criminal suspects and the accused without a court decision. This activity takes place under the conditions of enhanced conflict situation and confrontation. Overcoming the resistance, law enforcement officers often exceed the legal statutory limits enforcing restraint, which raises numerous mistakes and violations of detainees' rights [1].

It is quite natural that a detention procedure is placed under constant control by the norms of international and Russian law. However, the results of our study show that, in Russian legal practice, the provisions of international and domestic legal acts, which establish basic standards and guarantees of personal immunity and the permissible limits of their withdrawal whenever detention procedures take place, are not always coherent and concerted actions. And such inconsistent actions evoke a wide response when initial procedural actions are being fulfilled.

These initial procedural actions are connected with the detention of persons suspected of a crime, including the stage of commencement of prosecution and also at a very early stage of criminal proceedings, when the body of evidence of a suspect's supposed guilt in committing a crime is being collected [2].

It is fair to say that for the last years the Russian legislation has been brought with the norms of international law. This entailed changing the matter and orientation of criminal proceedings in the direction of the maximum possible accordance with human rights and freedoms. The generally recognized principles of international law in the field of arrest and detention regulation are reflected in the Criminal Procedure Code of the Russian Federation. They are keeping in secret the fact of detention in the interests of the preliminary investigation, the right to a meeting of a detainee with a defense lawyer, a mandatory notification of the legal representatives of a minor about the detention, the requirements for a protocol of detention and some others). However, the taken measures on the

modernization of the Russian criminal procedural legislation in the given field of legal regulation cannot be considered sufficient.

So, the Criminal Procedure Code of the Russian Federation, clearly defining the conditions, grounds and motives and the terms of the coercive measures application, currently does not require a court decision to confirm the legality and validity of a suspected person detention. That does not conform to item 3 of article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms [3].

Which Says: “Everyone detained or taken into custody... shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial”[4]. Provided that Russia, by ratifying the Convention, expressed a reservation specifying that the provisions of the Convention do not prevent the provisional application of the established order of arrest, detention and keeping in custody of persons suspected of committing a crime by the procedural criminal legislation, we should state that the legal investigation process with a detained person suspected of a crime as specified in the Convention is only under implementation now in the domestic legislation of Russia [5].

“A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority” - this rule is defined by the Principle #11 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment in any manner whatsoever, of the 9 of December, 1988 (further as the text goes-Body of Principles, 1988) [6].

A significant drawback of the Criminal Procedure Code of the Russian Federation is considered to be the lack of procedural form of actual arrest and delivery of persons to the investigator or body of inquiry, which is well-grounded for abusive practice by law enforcement bodies at the fixation of the initial period of detention. In fact, before the moment of making up a protocol the suspected person may be actually detained for more than an hour. As rightly been noted by the Russian processualists, detention at any stage of its application must be the unity of the actual content and legal form, i.e. as actual deprivation of a person's freedom clothed with the respective legal act [7].

The solution for this problem lies in the procedural rules perfection. These rules must include the prompt delivery of persons detained on suspicion of committing

a crime on the grounds specified in article 91 of the Criminal Procedure Code of the Russian Federation to the body of inquiry or to the investigator to draw up a report of detention and for the registration of a detainee. There must be obligatorily fixed the moment of a person's delivery to the body of inquiry or to the investigator in real-time mode by capturing audio and video evidence. In addition, following the requirements of item “b” of principle #12 of the Body of Principles, 1988, a detention report, besides the information indicated in paragraph 2 of article 92 of the Criminal Procedure Code of the Russian Federation, must include the time when a detainee was delivered to the place of custody as well as the time of the first appearance before the investigator or the body of inquiry.

One should make changes in paragraph 3 of article 96 of the Criminal Procedure Code of the Russian Federation. Those changes concern granting right to detained foreign citizens for communication, including personal meetings with an authorized representative of the Consulate, a diplomatic mission or international organizations (Principle #16 of the Body of Principles, 1988).

The rules of notification of immediate relatives about the detention require a particular version. So, the Criminal Procedure Code of the Russian Federation does not contain normative prerequisites for keeping the fact of detention in secret from immediate relatives, if a detainee himself insists on this. Investigators (interrogating officers) are obliged to notify them (immediate relatives) about the application of the given coercive measures. Notification is not made in the interest of the investigation initiated by the investigators (interrogating officers) provided that the Public Prosecutor consents to it (paragraph 4 of article 96 in the Criminal Procedure Code of the Russian Federation). The legislator does not consider the interests of a suspect in this context. However, a detained person may have many reasons for his/her detainment not to be discussed in the bosom of his/her family [8]. The above said is in a contradiction with the Declaration about the protection of all persons from enforced disappearance of December 18, 1992 [9] and part 1 of principle #16 of the Body of Principles, 1988, which gives detainees the right to determine the appropriateness of informing the members of their families about the corresponding measures of coercion. The above indicates that paragraph 1 of article 96 in the Criminal Procedure Code of the Russian Federation needs to be improved, it is necessary to create the obligation to notify immediate relatives about the detention not later

than 12 hours from the moment of detainment only when requested by a detained person, the latter should determine addressees of such notification.

The current Criminal Procedure Code of the Russian Federation does not provide the possibility of participation of an interpreter at a stage of commencement of prosecution. Considering the fact that the initial actions associated with the detention of a person often take place prior to the commencement of prosecution, in such a situation the absence of guarantees of ensuring detainees' rights to having an interpreter and also the impossibility of appeal of officials' actions in their native language, are contrary to the principle #14 of the Body of Principles, 1988. Hence we propose to formalize in legislation, as is provided in the above-mentioned principle #14 of the Body of Principles, 1988, the right of the detained persons to having the assistance of interpreters, free of charge if necessary [10].

Clearly, the rights of detainees to receive information about the grounds for their detention and their rights prior to the commencement of prosecution are not fully guaranteed. So, principle #13 of the Body of Principles, 1988 prescribes that "any person, at the beginning of detention... or soon after this shall be informed about his rights and his rights shall be explained to him and how these rights may be exercised by the body responsible... for the detention". "Everyone who is arrested shall be informed promptly, in a language which he understands, about the reasons of his arrest and of any charge against him", reads paragraph 2 of article 5 of the European Convention of 1950. It should be stated that to a greater extent, the rule establishing the duty of officials to explain the motives and reasons for the detention of a person suspected of committing a crime and his rights directly at the moment of actual detention and not when the protocol of detention is being made up, meets the requirements of international legal documents, as provided by article 92 of the Criminal Procedure Code of the Russian Federation [11].

Article 91 of the Criminal Procedure Code of the Russian Federation defines certain grounds for detention of a person suspected of committing a crime, whilst the grounds for the detention contained in international treaties being not listed. It turns out that according to article 466 of the Criminal Procedure Code of the Russian Federation the person who committed a crime in the territory of a foreign country, cannot be detained, but against him can be imposed a pre-trial restraint-custodial placement if a request is received from a foreign state

about the extradition of a person. In this case, criminal procedure rules of the Russian Federation come into collision with international legal norms [12]. It would be correct to specify "any information indicating that a person has committed a crime entailing his extradition upon the request of a foreign state" in the Criminal Procedure Code of the Russian Federation (articles 91, 97) among other grounds for detention and imposing pre-trial restraint.

CONCLUSION

Thus, the current Criminal Procedure Code of the Russian Federation does not include all the international standards protecting the rights of humans and citizens regarding a detention procedure of a person suspected of committing a crime. That, in turn, allows defining perspective directions for the Russian criminal justice process development.

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