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Түйін

Аталған мақала ІІО қызметкерлерінің кәсіби денсаулығын сақтау мәселелеріне арналған. Онда оның жағдайына әсер етуші факторлар ашылады және аталған бағыттағы психологиялық жұмыстың тиімділігін арттыру бойынша ұсынымдар ұсынылады.

Resume

This article is devoted a problem of professional health of employees of law-enforcement bodies. In it the factors influencing professional health of employees are analyzed and recommendations of psychological work its conditions directed on preservation are presented.

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ABOUT THE REVISION OF THE CONCEPT OF PRE-TRIAL DETENTION IN CRIMINAL PROCEEDINGS THE REPUBLIC OF KAZAKHSTAN

Detention plays large role in the modern Kazakhstan concept of pre-judicial restriction of freedom. In development of the given institute the essential contribution have brought such Soviet and Russian scientists as: S. P. Bekeshko, E. G. Vasileva, I. A. Veretennikov, V. N. Grigoriev, A. P. Guljaev, I. M. Gutkin, A. A. Davletov, P. M. Davydov, B. A. Denezhkin, Z. D. Enikeev, A. A. Zhurauskas, V. V. Kalnitsky, L. M. Karneeva, Z. F. Kovriga, V. M. Kornukov, N. N. Korotky, V. G. Kochetkov, F. M. Kudin, A. M. Larin, I. A. Panteleev, I. L. Petruhin, V. A. Pohmelkin, I. A. Reyotjunsky, V. M. Savitsky, A. A. Sergeev, M. S. Strogovich, L. V. Frank, A. A. Chuvilev, S. A. Shejfer, P. P. Yakimov and others, and also the Kazakhstan authors: A. N. Ahpanov, A. JA. Ginzburg, S. M. Zhalybin, K. Z. Kapsaljamov, M. Ch. Kogamov, S. D. Ospanov, T. E. Sarsenbaev, A. L. Khan, M. K. Shagirova, and others.

Importance of a question is successfully underlined by professor M. Ch. Kogamov who notices that, unfortunately, in practice the stereotype concerning detention which is still considered as prevailing means for disclosing of crimes till now is not overcome. Mainly these can explain «the serious violations of legality caused by unmotivated detention of the person as the suspect»[1].

Detention can be broken into two kinds: short-term detention (it is characteristic for the countries common law families) and long detention. Having taken into account that detention as STOP corresponds to the Kazakhstan administrative detention, and as a whole is difficultly entered in the modern concept of the Kazakhstan criminal procedure.

Well first, it is necessary to make a reservation that such detention from the international point of view. In the resolution of 1991/42 Commissions of Human Rights[2] there is no determination of the term «detention». As

a result of it there were different interpretation of the given term, to avoid which it was possible thanks to accepting of the resolution of 1997/50 Commissions[3].

The international contracts about human rights protect the right to a personal liberty from what follows that nobody can be any way deprived of freedom. It means that imprisonment can be lawful, as, for example, imprisonment condemned or the persons charged of fulfillment of crimes. Can exist and other forms of imprisonment to which relevant organs, for example, for isolation of mentally sick persons resort. Besides, the right to a personal liberty can be subject to restrictions during the emergency state periods according to clause 4 of the International pact about the civil and political rights. In the latter case arrests are frequently authorized not judicial, but other authorities. At last, in some situations imprisonment is forbidden basically, as, for example, imprisonment for offences. It is necessary to make a reservation also that in the international contracts the same terminology for an imprisonment designation is not always used: To them there can be a speech about «arrest», «a capture under guards», «detention», «conclusion», «premises in prison», «imprisonment», «isolation» and other. For this reason the Commission of Human Rights in the resolution 1997/50[4] has supported use of the term «imprisonment» which excludes any distinctions in interpretation between various terms.

Thus, the international law recognizes detention (analogue the Kazakhstan criminal procedure detention) as pre-judicial «imprisonment». And in this sense the given action, it be recognized by the Kazakhstan process investigatory (clause 200 of CPC[5] RK) or enforcement measure (clause 132 of CPC RK is in head of enforcement measures), gets under action of the International pact about the civil and political rights, accepted by the resolution 2200 And (XXI) General Assembly from December, 16th, 1966.

The right to freedom and security of person, prohibition any and illegal arrests are proclaimed by clause 9 of the International pact about the civil and political rights. According to the given rate (clause 9): «person everyone arrested or detained on a criminal charge quickly is delivered to the judge or to other official who possesses under the law the right to perform judicial authority, and has the right to proceeding during reasonable time or exemption … belongs … to everyone the right to trial of its business in court that this court could take out urgently the right to freedom and security of person, prohibition any and illegal arrests are proclaimed by clause 9 of the International pact about the civil and political rights. According to the given rate (clause 9): «person everyone arrested or detained on a criminal charge quickly is delivered to the judge or to other official who possesses under the law the right to perform judicial authority, and has the right to proceeding during reasonable time or exemption … belongs … to everyone the right to trial of its business in court that this court could take out urgently the resolution concerning legality of its detention and dispose about its exemption if detention is illegal»[6].

It is necessary to specify also and the list of bases of production of detention. In the various countries it isn't identical. So, in France, during inquiry of obvious crimes the judicial police has the right to detain the person, «which can give necessary data», that is it is the same category of persons which can be exposed to simple interrogation (clause 63). During time initial inquiries the person in case of need if against it there are any proofs (clause 77) can be detained. The detention purpose, in opinion scientists, consists in necessity «to provide statements and answers of witnesses or suspects for what they are contained on hand police some time»[7]. Detention term constitutes 24 hours. Its prolongation is supposed in the presence of two conditions: 1) sanctions of the public prosecutor of republic; 2) probabilities of that the given person has committed a crime. However, last condition is necessary only during inquiry of obvious crimes (offences). Probability it agree clause 63 CPC is «availability of serious proofs». That circumstance that at initial inquiry it is not required for prolongation of term of detention, in a science speaks main principle of the given form of inquiry - absence of procedural compulsion. Considering, therefore, that the fact of detention can take place only; with the consent of detained[8].

For initial inquiry there is a special rule according to which to extend detention term it is possible, only delivering the arrested person to the public prosecutor. However, clause 77 CPC of France supposes that in exceptional cases prolongation can take place without this procedure. In the literature it is noticed that the exception became for a long time a rule, therefore term is prolonged usual by phone[9].

The German right differentiates detention on a scene of crime (in flagrante delicto) from detention under the court warrant[10]. There is no German copy of this kind of detention American in a kind «Stop». However, the German law authorizes police to take measures, for an identification suspected (or even in case of fulfillment of simple administrative violation). If the person of the suspect cannot be established at once, the suspect can be detained on so much, how many it is required to time for an identification. The maximum is in that case established at 12 o'clock. For the purpose of determination of the person of the suspect it can be looked through, at it can be «fingerprints»[11].

In clause 61 CPC the Peoples Republic of China determining bases for detention of the person, «bodies of public safety can detain previously the active criminal or suspected of business about a non-capital offence …».

Detention according to the code of penal procedure of the Peoples Republic of China probably:

- In case it (criminal) to be going to commit a crime, is in process of crime execution or is found out immediately after crime execution;
- If it is identified as the person who has committed a crime by the victim or the eyewitness;
- If the crime certificate is found on its body or in its house;
- If he tries to commit suicide, or to run away after crime execution or is the person who is taking cover from justice;
- If there is a probability of that it will destroy or will forge proofs;
- If he does not name the original name and the address and its person is not established;
- If there are serious bases to suspect about fulfillment of crimes by it in different places, repeatedly or as a part of criminal group.

Besides, the person can be caused and interrogated by means of the legal notification for term at 12 o'clock (clause 92 CPC the Peoples Republic of China). Besides, probably preliminary detention directed on suppression of criminal activity in case the person, tries to commit a crime, prepares, or in the course of crime execution, or immediately after crime execution, and also the committed crime is identified suffered as the person, or witnesses have directly specified in it, and also at it material «certificates» of a crime and etc. (clause 61 CPC the Peoples Republic of China) are found.

By a general rule, suspects can be detained «public security service» for term in ten days. There are also the exceptional circumstances, allowing to detain for the term up to 14 days. Moreover, if it is a question of «gang» or its separate members detention is possible for the term up to 37 days (clause 69 CPC the Peoples Republic of China).

From the told follows some rather important conclusions. First, detention, in that form in which it exists in national procedural law, should form an independent subject of the judicial control at pre-judicial stages of criminal procedure. That is the body leading criminal procedure is obliged in reasonable fast terms to bring the arrested person into court that last has taken out urgently the resolution «concerning legality of its detention».

Secondly, term in which limits the given action should be performed, despite «rationality» instructions, should be as much as possible small. And from these positions, term at 72 o'clock, provided by the Kazakhstan legislator is not entered in the specified requirements which, by the way, for the Kazakhstan legislation are obligatory owing to taking place ratification.

Here it is necessary to note, what even criminal procedure law of pre-revolutionary Russia ordered to deliver within 24 hours the arrested person to the investigator who should to interrogate during the following of 24 hours to (interrogate) it on the substance of the arisen suspicion and detention. The exception was supposed for the remote districts. However in practice, as a rule, these terms were not observed. So, the gendarmerie at emergency measures on protection of the railways had the right of detention suspected for the term up to two weeks on affairs about the high treasons breaking works of the railway, an accessory to illegal societies[12].

Special research concerning criminal procedure detention has been conducted by M.K.Shagirova[13]. However and she has not considered necessary to bring into accord with international law of the requirement of the national legislation on an object of research, having limited to «backward» procedural collisions and blanks. Owing to limitation of volume of the present research we did not find possible to enter polemic with the specified author. We will notice that in its work term at 72 o'clock an axiom also as well as detention bases. If last (bases) of the phenomenon estimate and connected with the current legislation at least partly regarding term position develops the intolerant.

Conducted comparative research has shown that abroad such point of view (the point of view of the Kazakhstan legislator regarding detention and non-presentation terms (automatic) before court (a subject - legality of detention)) is not welcomed, and the Kazakhstan legislation ignores the specified requirements.

Considering resulted, we believe pertinent detention term to limit to 48 hours. The resulted offer makes sense, if is bound with some other our offers about which we will specify more low under the text. It is necessary to carry to their number and that to the body leading criminal procedure, more it is not necessary to bring accusation till the moment of application of a preventive punishment, including arrest, and some other.

In the specified term, suspected should be brought into court for this purpose that the court would consider legality of its detention. The specified action optimum to co-ordinate with the moment of reception of the sanction of court on preventive punishment applications if that is selected. There is no necessity considering prejudicial declaration the Kazakhstan criminal procedure of everyone suspected to bring into court. If the preventive punishment, selected bodies leading criminal procedure does not demand the court sanction, legality of detention can be checked up court only under the complaint of the arrested person that basically is not limited and acting legal designs and consequently do not demand special instructions.

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Түйін

Мақалада автордың қылмыстық іс жүргізудегі ұстау концепциясын қайта қарау қажеттілігіне қатысты пікірі мазмұндалады. Осыған орай аталған іс жүргізу әрекетін халықаралық құқық пен сот ісін жүргізуді оңтайландыруға сәйкес міндеттеу құралы арқылы реформалау ұсынылады.

Резюме

Настоящая статья отражает мнение автора относительно необходимости пересмотра концепции задержания в уголовном процессе. Предлагается реформировать указанное процессуальное действие посредством придания ему черт обязательных, согласно международному праву, и продиктованных оптимизацией досудебного производства.

Б. Ғ. Нұрмағамбетов, ҚР ІІМ Б. Бейсенов атындағы Қарағанды академиясының жалпы білім беретін пәндер кафедрасының доценті, социология ғылымдарының кандидаты, полиция подполковнигі

ҚАЗАҚСТАНДАҒЫ ҚАЗАҚ АЗАМАТТАРЫНЫҢ ҰЛТТЫҚ САНАСЫНЫҢ ҚАЛЫПТАСУ МӘСЕЛЕЛЕРІ

Өткен тоталитарлық жүйенің Қазақстандағы ұлттық сананы құлдықта ұстағаны тарихтан белгілі. Тәуілсіздік алғанымызға 20 жыл уақыт өтті. Осы уақыт ішіндегі қазақтардың ұлттық санасының қалыптасуы қандай жағдайда?

Ұлттық сана мен қадір-қасиеттің қалыптасу процесі мемлекеттің дамуының, әлеуметтік-саяси жағдайларымен өзара тығыз байланысты болғандықтан оны зерттеу қажеттілігі мынадай жағдайлармен сипатталады:

– Қазақстанның егемендігінің қалыптасуы жағдайында ұлттық санаға мемлекеттің ұлт саясатының әсері күшейе түседі;