ISSUES OF POSSIBILITY OF APPLICANT PROCEEDING MEASURES UNDER THE INVESTIGATION OF THE INVESTIGATOR

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This article discusses the issues of procedural, criminal procedural coercion under the judicial control of the investigator and the possibility of its application. The analysis of the main provisions of the Constitution and articles of the Criminal Procedure Code of the Republic of Kazakhstan concerning the investigator's proceedings was also carried out.
Key words: investigation, investigator, office management, detention in custody, measures of Criminal Procedural coercion.

Improving the forms and methods of pre-trial investigation will force foreign criminal prosecution agencies to pay attention to the practice of criminal procedure, which they believe is useful for improving the quality of criminal investigations. In particular, this applies to coercive measures of criminal procedure, which are subject to unconditional reform, based on the requirements of the Constitution of the Republic of Kazakhstan, which legally affects the current level of development of our society and state.

The study of criminal procedural coercive measures has a long tradition in domestic jurisprudence. In this area N.Akhpanov, I. Gutkin, A. Guliaev, Y. Livshitsa The work of domestic and foreign procedural scholars, such as and others, is relevant.

Coercion in criminal proceedings is one of the types of state coercion. This method of legal regulation, ensuring the detection, investigation and prosecution of crimes, now requires a detailed development of new, non-traditional principles, involving law enforcement practice, as well as past experience of developed foreign countries.

At the same time, based on the requirements of international law, the institution of criminal procedural coercive measures should be reconsidered in such a way that the mechanism of its application prevents human rights violations and at the same time ensures the inevitability of punishment.

The Constitution of the Republic of Kazakhstan creates a legal framework for the development of the institute of procedural coercive measures (Articles 13, 14, 16) [1].

From the current procedure of application of coercive procedural measures provided by the Constitution, the institute of judicial review of the legality and validity of extensions of pre-trial detention and custody at the pre-trial stage has been active since 1998. In the course of the work of this institute, a number of issues have arisen that require careful study.

Consideration of the optimal combination of state coercion with other, moral methods of legal regulation is even more relevant today.

The possibility of using the power of state power to achieve the goals of justice is one of the foundations of criminal proceedings. A law of criminal procedure that is not enforced would be completely ineffective and incapable of enforcement. In the development of the law of criminal procedure, the desire of any government (representative, executive or judicial) to minimize the scope of coercion can lead to serious social consequences. Thus, the removal of coercion from criminal proceedings is not nec-

essary, but the creation of a socially justified and optimal system of coercive measures.

In our opinion, the current criminal procedure law should include provisions on procedural coercion, which represent a modern and reliable system of legal provisions, based on the provisions of the Constitution.

The Code of Criminal Procedure regulates the legality and validity of custody or the extension of custody, which is an active legal institution that contributes to the strengthening of the rule of law in the pre-trial investigation phase.

Investigators shall send the materials of the criminal case on the complaint to the court within the established period. Upon consideration of these materials, the court shall issue a resolution taking into account all the circumstances of the case, the gravity of the charges and the identity of the complainant, which prevents unjustified release from custody.

However, these measures are not enough, in our opinion, the revision of these norms is an important task of criminal procedural science in this area, where there is an opportunity to effectively address this issue [4, p. 37-39].

The application of coercive procedural measures that infringe on the constitutional rights of the individual should be carried out only by the decision of the judiciary, which allows the investigator to expedite the application of coercive procedural measures, including bail, search and others. In this case, it is necessary to provide for public judicial control over the investigator's application of coercive procedural measures that violate the constitutional rights of the individual.

By entrusting the court with resolving issues related to the application of coercive procedural measures at the stage of preliminary investigation, it should be limited to the constitutional framework, without imposing on the court the non-specific tasks of mass control over the investigation and inquiry carried out by the prosecutor's office. According to the court's decision: as a measure of restraint, a search of a house, custody of correspondence in a post and telegraph office, hearing of negotiations, examination or placement in a psychiatric institution for the purpose of medical coercive measures should be carried out.

The same procedure as for other measures of procedural custody must be observed: by order of the investigator, if necessary with the sanction of the investigating judge.

It is necessary to consider a simplified procedure for the court's decision to impose a measure of restraint. The investigator should be able to appeal this decision directly to the judge without resorting to the prosecutor's office, as many instances create bureaucracy and divide the responsibility for the decision among several officials, which is fundamentally contrary to the principles of preliminary investigation.

In our opinion, it is appropriate for a judge to consider the issue of pre-trial detention of the accused in a closed court session within 24 hours from the moment the investigator submits the decision on custody and relevant materials to the court.

If a person is detained as a suspect, the materials must be submitted to the court before the end of the detention period to resolve the issue of detaining the person in custody, and then the person must wait for the judge's decision. The decision on the application of these coercive measures may be considered by the judge individually within 24 hours from the date of receipt of the materials. According to the investigator's decision, it is necessary to provide for the possibility of conducting a search and expeditious hearing of the negotiations, with subsequent notification to the court.

Criminal-procedural coercion is not uniform in its composition and methods of influencing legal relations. At present, it is generally recognized that coercive measures of criminal procedure are only one form of coercive legal influence on the participants in criminal proceedings. The peculiarity of coercive procedural measures is that the basis for their application, as a rule, is not a procedural violation by the participant in the proceedings, but the need to address the tasks of preliminary investigation using these measures [2, p. 285].

There is no doubt that each investigative action is enforced, but the degree of coercion in conducting different investigative actions is not the same. Therefore, in the theory of criminal procedure it is very appropriate to distinguish a special group of investigative actions – procedural coercive measures, which are qualitatively

different from others by a special coercive force. In carrying out these investigative actions, coercion guarantees that they will achieve their intended purpose. In our opinion, the main criterion that allows to classify this or that investigative action as a measure of procedural coercion is twofold:

1) the possibility of forced execution by legal means;

2) the significance of the legal restrictions that arise. A detailed study of the basis for the application of procedural measures can be concluded that coercion is a means of obtaining evidence, and they themselves can be based on information obtained from non-procedural sources. The application of coercive procedural measures in connection with the investigator's assumptions about the existence of circumstances relevant to the case is legitimate, but these assumptions must be based on solid evidence.

Exceptions are preventive measures applied on the basis of the investigator's assumptions about possible future events.

According to the CPC, measures of restraint are preventive measures, and the basis for their use is predictive. The need to make assumptions about what might or may not happen, rather than what actually exists, poses a significant challenge when choosing a measure of restraint.

The problem is that the concept of Article 139 of the CPC contains a mixture of grounds and purposes for the application of measures of restraint. Undoubtedly, the purpose of this article is to take preventive measures. However, it is doubtful that such circumstances should be presented as a basis for the application of preventive measures, as they require the investigator to make accurate assumptions based on facts that have not yet occurred.

It would be appropriate to present these circumstances as the purpose of preventive measures, and the basis for their application is to develop and formulate them differently, clearly indicating them so as not to create a ground for violation of the law and different interpretations of the rule of law.

Experience has shown that the structure of the grounds for the application of a measure of restraint, especially in relation to arrest, must include evidence that exposes the accused for a crime or allows a person to be suspected of having committed a crime. Unjustified custody is very common if the evidence of the accusation or the validity of the suspicion is not taken into account as an important factor in the arrest.

When the investigator applies for a warrant for the custody of an accused or suspect, the prosecutor shall first determine whether there is evidence that the person has committed a crime. Often, the prosecutor refuses to authorize custody because he concludes that there is insufficient evidence to prove involvement in the crime.

It is necessary to establish a formal relationship between the severity of the charges against the law and the measure of restraint chosen. The severity of the charge must be determined by the size of the sanction of the proposed criminal law.

Restricting the investigator and the court in the choice of the measure of restraint, the law prevents their arbitrariness and guarantees the right to a fair measure of restraint in connection with the actions of the accused. At the same time, in this case, the basis for the application of preventive measures will be clear, which will lead to uniformity of the practical approach to the application of preventive measures, which is a guarantee of legitimacy. It also allows not only to register arrests and not to leave anywhere, as now, but to actively carry out all preventive measures [3, p. 46].

According to statistics, the number of complaints filed with the court in accordance with Article 104 of the CPC, as well as the number of people released from custody as a result of the investigation of these complaints is growing every month. Currently, every fifth complaint of a detainee is satisfied.

In order to quickly and expeditiously eliminate violations restricting the freedom and inviolability of the individual, there is a reduced period for consideration and preparation for consideration of complaints against illegal, unjustified custody, extension of custody. If the complaint is submitted to the court, the judge shall demand the case from the criminal prosecution body. The investigator, the person conducting the inquiry shall be obliged to submit the case to the court within 24 hours after receiving the request of the judge.

It is difficult to consider this situation in the

short term: it is necessary to file a criminal case in court. If the case is a group, multi-episode, it will take a long time to prepare the materials. There may be difficulties in bringing the materials to court in another locality. In addition, the shortened period of preparation of the materials on the complaint disrupts the planned work on criminal cases in the proceedings of this investigator [5, p. 158].

In practice, the indefinite period of appeal or extension of custody causes procedural and organizational difficulties. Within 7-10 days from the date of notification of the accused, to set a period for appealing for custody or extension of custody:

first, the accused and his defense counsel are given sufficient time to assess their situation and file a complaint;

secondly, the pre-trial investigation would allow the court to quickly and expeditiously eliminate the violations committed by the investigative bodies;

thirdly, in the event that the court rejects the complaint, it provides the investigator with confidence in the correctness of his actions and the stability of the chosen measure of restraint.

The motives and content of the complaints filed with the court on the extension of the period of illegal, unjustified custody are different. In most complaints, there are a number of reasons why the complainant considers the application of the measure of restraint to be illegal and unjustified.

Complaints without instructions on the illegality and unreasonableness of custody are, in essence, petitions to change the measure of restraint, which can be resolved by a prosecutor, investigator or inquiry officer in accordance with Article 107 of the CPC. However, at present such complaints are sent to court and make up the majority of all cases considered under Article 108 of the CPC, which cannot be considered valid. As a procedural document, the complaint must meet the minimum requirements for such a document: it must be clear that the complainant considers the application of the measure of restraint illegal and unjustified, and what justifies its position.

In our opinion, in order to unequivocally prove the legality and validity of the use of custody as a measure of restraint in court, the investigator should be given the right to carefully determine the composition and volume of materials sent to court. Submit the materials to the court in copies. If necessary, copies of interrogation witnesses, expert opinions and other documents in the criminal case may be sent to the court in copies, if they confirm the participation of the accused in the crime.

In addition, the investigator may list the evidence in the written explanation sent to the court together with the case materials, indicating why it is impossible to present any procedural document.

Confidentiality of pre-trial investigation is a condition for ensuring rapid and complete detection of crimes. Early disclosure of information obtained by the investigator may pose a significant obstacle to resolving this issue.

In any case, the examination and evaluation of the evidence of the validity of custody and the indifference between the same actions in respect of the evidence on which the accusation is based are not possible. The minimum amount of factual evidence against which a charge against a person is unfounded, unfounded, and, accordingly, the arrest itself, must be thoroughly examined in the course of the trial.

REFERENCES

1. The Constitution of the Republic of Kazakhstan. – URL:http://adilet.zan.kz/en/docs/K950001000.

2. *Dubinsky A.* Termination of the criminal case at the stage of preliminary investigation. M., Science. 1998. 285 p.

3. Guidance for witnesses / Ed. Selivanova, B.A. Snetkova. M., 1998. 46 p.

4. *Patsaev U.* Preliminary investigation in the Republic of Kazakhstan: problems and possible ways to increase the role of the investigator. Almaty. 2010. PP. 37-39.

5. *Toleubekova B., Kapsalyamov K., Shnarbekov B., Bekishev D.* Criminal-procedural law of the Republic of Kazakhstan (part Ososbennaya). Dosudebnye stages. Almaty, 2002. 158 p.

ПРОБЛЕМЫ ВОЗМОЖНОСТИ ПРИМЕНЕНИЯ ПРОЦЕССУАЛЬНОГО ПРИНУЖДЕНИЯ СЛЕДОВАТЕЛЕМ ВО ВРЕМЯ ДОСУДЕБНОГО РАССЛЕДОВАНИЯ

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В данной статье рассматриваются вопросы процессуального, уголовно-процессуального принуждения под судебным контролем следователя и возможности его применения. Также проведен анализ основных положений Конституции и статей Уголовно-процессуального кодекса Республики Казахстан, касающихся производства следователем.
Ключевые слова: расследование, следователь, делопроизводство, содержание под стражей, меры уголовно-процессуального принуждения.