

OFFICIALS OF THE STATE BORDER GUARD OF UKRAINE AUTHORIZED TO DETAIN PERSONS SUSPECTED IN COMMITMENT OF A CRIME

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Problem. On the 20-th of November, 2012 the Criminal Procedural Code of Ukraine (hereafter as CPC of Ukraine) [1], adopted the same year on the 13-th of April, came into force, which made large changes to the order of realization of the criminal proceeding in Ukraine.

The main task of the criminal proceeding is determined: human, society and State protection from criminal offences, protection of rights and freedoms and State interests of participants of the criminal proceeding as well as providing speedy, full and impartial investigation and trial in order to provide that every person who committed a criminal offence has been brought to the responsibility according to its guilt, any innocent has not been accused or convicted, no person has been subjected to unjustified procedural coercion and to provide that respective legal procedure has been used to every participant of the criminal proceeding.

In accordance with the Constitution of Ukraine [2] the highest social value is inviolability of human being and human rights and freedoms, its guarantee determine the content and direction of the State activity. The Article 29 of the Main Law also covers that that no one shall be arrested or held in custody other than pursuant to a substantiated court decision and only on the grounds and in the manner prescribed by law. In the Convention on the Protection of Human Rights and Fundamental Freedoms of 1950 [3] an exhaustive list of reasons is determined, which afford grounds for deprivation of liberty, such as bringing a person before the competent judicial authority if any reasonable suspicion in committing an offense by this person; if the person reasonably consider that it necessary to prevent a committing an offense; preventing the escape of the person after the commission of the offense. Taking into account the mentioned provisions the legislator slightly changed the procedure of detention of a person on suspicion of committing a crime.

The purpose of the article is determination of the scope of persons, authorized to detain a person suspected in committing a crime as well as an order of their actions in the light of requirements of the new CPC of Ukraine.

Analysis of recent research and publications. Institution of detention of a person, suspected in commitment of a crime, long ago exist in the criminal procedure, attention to determination of its distinctions is paid by such scientists as V. Goncharenko, S. Zaika, V. Maliarenko, V. Matviychuk, M. Mikheienko, V. Nor, V. Tertyshnyk, O. Tyshchenko, V. Shybiko and many others. Studying a problem

of implementation of this measure of proving the criminal proceeding within new legislation is started by V. Popeliushko, S. Soroka, O. Tatarov, V. Farynnyk and others.

Key research findings. Due to content of the Articles 176, 208–211 of the CPC of Ukraine the detention of a person, suspected in committing a crime, is a temporary measure of restriction which has a number of such distinctions.

I. Detention, which can be carried out without decision of an investigative judge or court.

In accordance with point 1, Article 207 CPC of Ukraine nobody can be detained without decision of an investigative judge, court, excluding cases, covered by the CPC of Ukraine. Full list of cases, under which a person may be detained on suspicion of committing a crime, covered by the Article 208 of the CPC of Ukraine and provides the following two main groups of vestiges:

1) Vestige that proceed from the sanction of a crime in committing which the person is suspected:

– the punishment in the form of deprivation of liberty is fixed in the sanction of the Article of the Criminal Code of Ukraine (hereinafter referred to as the CC of Ukraine);

– the main punishment in the form of penalty in the size of more than three thousand non-taxable income, only if the suspected person has not fulfilled obligations imposed on him during electing the previous measure of restriction, is fixed in the sanction of the Article of the CC of Ukraine.

2) Vestige of reflex of criminal actions of a person:

– a person is caught during the commission of a crime or attempt to commit it;

– immediately after the committing a crime a witness, including the victim, or a set of obvious signs on the body, clothes or scene indicate that especially this person has just committed a crime.

II. Detention could not be more than 72 hours.

A person detained on suspicion on committing a crime without a decision of an investigative judge or court can't be detained more than 72 hours from the moment when he/she by force or because of conquest to the order is bound to stay near the authorized official or in the areas, designated by the authorized official.

Also it is necessary to take into account that such a person no later that in 60 hours from the moment of the detention, has to be brought to the investigative judge or court for election of an respective measure of restriction. In case if this bringing is not carried out because of reasons, for example: uncomfoting of suspicion of the person in committing a crime or information on suspicion is not registered in the Consistent register of pre-trial investigation, a person has to be released. In this content it is not possible to agree with a point of view of O. Tatarov that such release has to be carried out by the reasoned decree of the investigator or prosecutor [4, p. 521]. After the ending of 60 hours term of detention in accordance with the requirement of the point 3 of the Article 212 of the CPC of Ukraine a person, who is responsible for detention of the detained person, is obliged to release

this detained person after the end of the ground of the detention or expiration of term of detention. Because of it in this case the decree of the investigator or prosecutor is not necessary condition for release of a person.

III. Detention is carried out by the authorized official.

In accordance with the point 3 of the Article 207 of the CPC of Ukraine it is strictly determined that authorized official is a person, who is by the law given a right to carry out detention of a person. With a view of it the thought of S. Soroka that legislator does not give a definition on who is an authorized official, is mistaken [5, p. 153]. Also it is not possible to agree with a point of view of O. Tatarov that authorized officials are representatives of the such law-enforcement agencies as the State Customs Service of Ukraine, the State Penitentiary Service of Ukraine [4, p. 516], so as these authorities are given a right to detain persons especially because of committing an administrative offense.

The analysis of the Ukrainian legislation is showed that nowadays a right to detain a person, who under suspicion in committing a crime, is given only to the State Border Guard of Ukraine as well as to the authorities of the pre-trial investigation. So to the police, in order to fulfill its duties, is given a right to detain and to held in specially designated areas for that persons, suspected in committing a crime, covered by the point 5 of the Article 11 of the Law of Ukraine "On Police" [6]. A right to detain persons who committed offenses covered by the Article 350.2 of the Tax Code of Ukraine [7] and is given to respective officials of the tax police. A right to prevent a crime, prosecute and detain persons who suspected in its commitment is given to the Security Service of Ukraine, its bodies and representatives, covered by the point 6 of the Article 25 of the Law of Ukraine "On Security Service of Ukraine" [8].

Concerning the authorized officials of the State Border Guard – a right to detain persons who committed crimes and are subject to criminal responsibility according to the Ukrainian legislation with further transferring these persons to the authorities of pre-trial investigation, is determined by the point 5 of the Article 28 of the Law of Ukraine "On State Border of Ukraine" [9].

With the aim to determine an order of actions of the officials of the bodies (subdivisions) of guarding of the State border during detention of persons, suspected in committing a crime without a decision of an investigative judge or court as well as to determine an order of further cooperation of bodies (subdivisions) of guarding of the State border with authorities of pre-trial investigation in the State Border Guard of Ukraine, the Instruction on an order of such actions is considered. This Instruction is validated by the Order of the Administration of the State Border Guard of Ukraine dated 14.11.2012 № 931 and is registered in the Ministry of justice of Ukraine on the December 5, 2012, № 2033/22345 [10]. It is necessary to note that the Instruction is approved by the Prosecutor General's Office of Ukraine, Ministry of Interior of Ukraine and Security Service of Ukraine. This regulatory legal act fills some legislative gaps concerning an order and grounds of detention during carrying out guarding of the State border by the staff of the State Border Guard of Ukraine of persons, who are suspected in committing a crime.

Particularly, the Instruction specifies that border guard has rights to detain persons suspected in committing crimes in the sphere of guarding of the State border. To our mind such crimes could be smuggling (Article 201 of the CC of Ukraine), smuggling of narcotics, psychotropic substances or their analogues or precursors (Article 305 of the CC of Ukraine), the use of a knowingly forged document (point 4 Article 358 of the CC of Ukraine) and illegal movement of persons across the state border of Ukraine (Article 332 of the CC of Ukraine) as well as in a sort human trafficking in human beings and other illegal transfer deals in respect of a human being (Article 149 of the CC of Ukraine). But it is necessary to underline that detention of a person for committing a crime, covered by the point 4 of the Article 358 of the CC of Ukraine, on the base of the Article 208 of the CPC of Ukraine is not possible because of the sanction of this Article which does not cover deprivation of liberty.

Also the officials who authorized to conduct the detention of the suspected persons in the committing a crime are concentered in the Instruction. Such persons, excluding the operative workers to which this right is given by the CPC of Ukraine, are determined: officials of a body (subdivision) of guarding of the State border which directly fulfill a task on guarding of the State border of Ukraine.

Herewith in accordance with the requirement of the Article 104 and point 5 of the Article 208 of the CPC of Ukraine a right to execute a process-verbal have the officials are determined by the head of the division of the Border Guard among the officer or sergeants corps.

In less than two months of the new CPC of Ukraine more than 100 notifications on fact of finding and termination of criminal offenses (crimes) on the state border, among them more than 70 % with detention of a person, have been sent by the bodies and subdivisions for guarding State borders of Ukraine.

Conclusions. Taking into account the aforesaid, it is possible to make a conclusion that authorized officials, which have a right to detain persons, suspected in committing a crime, are officials of the Security Service of Ukraine, Ministry of Interior of Ukraine, State Tax Service of Ukraine and Border Guard of Ukraine.

Making conclusion we underline that Border Guard of Ukraine, in spite of some changes in the legal field, continues to fulfill one of the tasks assigned to them concerning fighting against organized crime on the State border of Ukraine and was able to adjust its work quickly and effectively in the sphere of the reformation of the criminal justice.

Covered by the CPC of Ukraine provisions are based on the experience of work of the international law-enforcement authorities and included more democratic among them. Of course, especially further practice will show efficiency and rationale under Ukrainian conditions.

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Kuryliuk Y.B. Officials of the State Border Guard of Ukraine authorized to detain persons suspected in commitment of a crime

In the article the provisions of the new Criminal Procedure Code of Ukraine concerning definition of authorized officials, which are given right to detain persons, suspected in commitment of a crime, are studied. It is determined that such persons, excluding officials of the investigative bodies, are the staff of the State Border Guard of Ukraine.

Keywords: *detention of a suspected person, authorized officials, border guard.*

Курилюк Ю.Б. Посадові особи Державної прикордонної служби України як уповноважені на затримання осіб, підозрюваних у вчиненні злочину

У статті досліджено положення нового Кримінального процесуального кодексу України щодо визначення уповноважених службових осіб, яким надано право затримувати осіб, підозрюваних у вчиненні злочину. Визначено, що такими особами, окрім посадових осіб слідчих органів, є персонал Держприкордонслужби України.

Ключові слова: *затримання підозрюваного, уповноважена службова особа, прикордонна служба.*

Курылюк Ю.Б. Должностные лица Государственной пограничной службы Украины как уполномоченные на задержание лиц, подозреваемых в совершении преступления

В статье исследовано положение нового Уголовного процессуального кодекса Украины относительно определения уполномоченных служебных лиц, которым

предоставлено право задерживать лиц, подозреваемых в совершении преступления. Определено, что такими лицами, кроме должностных лиц следственных органов, является персонал Госпогранслужбы Украины.

Ключевые слова: *задержание подозреваемого, уполномоченные служебные лица, пограничная служба.*

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