European Scholar Journal (ESJ)
Available Online at: https://www.scholarzest.com
Vol. 2 No. 4, April 2021,
ISSN: 2660-5562

IMPROVING THE JUSTIFICATION FOR REASONABLE SUSPICION OF A PERSON COMMITTING A CRIME AS A STANDARD OF PROOF IN THE CRIMINAL PROCEEDINGS

Mavlanov Kamoliddin Tuychiyevich,
Tashkent State Law
University, lecturer
Tashkent, Uzbekistan
E-mail: kamoliddinmavlanov@gmail.com

Article history:

Received: 22th March 2021
Accepted: 6th April 2021
Published: 20th April 2021

Abstract:

This article discusses the nature of a suspect in criminal proceedings, its relevance to the prosecution, the grounds for involving a person as a suspect in criminal proceedings, the concept of "reasonable presumption" in criminal proceedings, the importance of suspicion in the application of coercive procedural measures, the difference between detention and suspicion were analyzed. The article also presents the existing problems and shortcomings in the practice of involving a person as a suspect in a criminal case, as well as substantiated proposals to address them.

Keywords: Suspicion, suspected, reasonable presumption, detention, investigating judge, indictment, procedural guarantee, standard of proof.

It is clear from the content of Article 47 of the Code of Criminal Procedure that although there is information that a suspect has committed a crime, this information is not sufficient to involve him in the case as a defendant. The difference between the probability level of the suspect and the charge depends on the evidence. According to Petruxin I.L., the change of a person's status from a suspect to a defendant depends on the degree of proof of guilt. [1]. In general, both suspicion and accusation are probabilistic. The court will make a final decision on this issue. Even in the Anglo-Saxon legal system, reasonable suspicion is considered the standard of proof in criminal proceedings. [2]. Reasonable suspicion includes circumstances that give rise to a person being detained or searched, i.e., a law enforcement officer must have clear, impartial, fair, and reasonable facts to suspect someone of a crime. In other words, a suspect is a presumption about the subject of a crime and is an incomplete knowledge of a fact or circumstance. [3]. The concepts of "suspicion" and "suspected" are so closely intertwined that they cannot be imagined separately.

According to Article 48 of the Criminal Procedure Code of the Republic of Uzbekistan, a suspected has the right to know what he is suspected of. The decision of the inquiry officer, investigator or prosecutor to involve a person as a suspect in a criminal case must indicate which crime the person is suspected of committing (Article 360 of the CPC). If a person is detained before a criminal case is instituted, it is the duty of the officers in charge to inform the suspect that he or she has been arrested on suspicion of committing a crime (Article 224 of the CPC). The detention report must also indicate what crime the person is suspected of having committed (Article 225 of the CPC). It is clear from the content of these norms that the law explains side by side the measure of coercion of suspicion and detention. Our legislation does not specify what information can be used to suspect a person of a crime. Commenting on the suspicion, A.A. Teregulova said that it was a reasonable assumption that the investigator had committed a crime. [4]. The author sought to explain that any assumption cannot be a basis for suspicion. The European Court of Human Rights has defined a "reasonable presumption" as the existence of facts and information that can convince an impartial observer that an individual has committed an act. [5]. It follows that a person may be involved or detained as a suspect only if there is a reasonable suspicion that he has committed a crime.

Suspicion was not formed as a separate function in criminal proceedings. According to proceduralist scientist Enikeev Z.D., the function of criminal prosecution begins simultaneously with the initiation of a criminal case [6]. Suspicion is seen as the first step in criminal prosecution. This is due to the emergence of the subject as a suspect in the early stages of the investigation. By the opinion of procedural scientist Khaydarov N.N., if the suspicion is confirmed by the factual information obtained as a result of investigative actions or operational search activities, the inquiry officer, investigator, prosecutor may suspect a person of a crime [7]. We can see a similar idea in other literature that the factual information indicating a person's involvement in a crime is the basis for suspicion. [8]. Procedural scholar U. Rakhimova states that the truth in a criminal case cannot be determined without determining

the subject of the crime and the standards of proof. [9]. Suspicion, unlike indictment, is based on a set of evidence that a person is involved in a crime. The inquiry officer or investigator will have to rely on the adequacy of the evidence before engaging the person as a defendant.

In the course of the investigation, persons and objects involved in the crime or possessing signs of a crime shall be identified, which will be under the suspicion of the investigator or inquiry officer, investigator or prosecutor who carried out the investigation prior. The direct involvement of these individuals in the crime is determined by any investigative action or search operations. An analysis of our legislation reveals that the "grounds for suspicion" are not clearly stated. We also argue that this concept should not be applied in a broad sense, i.e. that decision-making should not be based on abstract assumptions. Therefore, we consider it expedient to include in the Code of Criminal Procedure a provision stating that *"Suspicion is a duly executed reasonable assumption of the participants in the criminal case about the involvement of a person in the crime".*

A person arrested and detained in connection with a crime should be brought to court or to another body established by law. This law enforcement agency must immediately examine the legality and validity of the detention. It is the responsibility of the prosecution to verify the legality and validity of detention in our national law, and the court does not have the authority to independently investigate this type of restriction of liberty. The Code of Criminal Procedure does not establish a procedure for mandatory verification of the validity of a detention on remand. This situation does not meet international standards. Uzbek scientist B. Muminov also commented on this. According to him, the court's ruling should state that the investigating authorities have sufficient information about the person's involvement in the crime, and the judge's failure to examine and assess the validity of the suspect's involvement in the crime should be considered a serious violation of criminal procedure law. [10] Similarly, procedural scholar H. Mamatkulova suggested that the court examine the validity of the suspicion that led to the arrest of the person in the application of the above precaution. [11]. In many developed foreign countries, when a person is suspected of committing a crime, they go to court before being arrested. If the police can convince the judge that the detention is justified, they will receive a warrant from the court. There is no such procedure in the criminal procedure legislation of the Republic of Uzbekistan, ie the consent of the court is not required for the detention of a person. Court permission is required only when certain precautions (arrest or house arrest) need to be applied. This practice does not comply with international human rights standards and may lead to abuse of power by investigators. *Habeas Corpus* standards guarantee that every person deprived of his or her liberty has the right to sue for the legality and validity of his or her detention. This rule is reflected in the eighth commentary of the UN Human Rights Committee. The mandatory assessment of the legality of detention by a court ensures the right of an individual to inviolability and drastically reduces the number of cases of unjustified restriction of freedom in criminal proceedings. Therefore, it is necessary to support the introduction of the institution of *"investigating judge" in our national criminal procedure legislation, which will carry out judicial control in the pre-trial period, and to give this judge the authority to study the legality of detention and detention of the suspect.*

Only if there is an exact suspect will the suspect appear in the criminal proceedings, and this suspicion may exist even before the criminal case is instituted. In accordance with the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan dated December 19, 2003 No. 17 "On case law on the application of the law on protection of the suspect and accused", a person is detained on the grounds specified in Article 221 of the Criminal Procedure Code, although, a person is determined to be registered after being brought before a police or other law enforcement agency, he or she is considered a suspect from the moment his or her right to freedom of movement is restricted in practice. It is from this moment that the detained person uses all the rights granted to the suspect, including the right to receive a defender, to call or send a message to his close relatives or his lawyer, to refuse to give testimonies, as well as to know that the testimonies he gives can be used as evidence against him in the criminal case. Therefore, in such cases, he may not be interrogated as a witness, the decision on his involvement in the criminal case as a suspect may not be announced to him, and the relevant rights and obligations may not be explained to him. It can be concluded that a person may be a suspect even before a decision is made to prosecute him.

The grounds for suspecting a person of a crime are set out in Article 359 of the CPC. According to him, if a person is detained on suspicion of committing a crime on the grounds provided for in Article 221 of the CPC, or if the case contains information that gives him grounds to suspect a crime, he will be involved in the criminal case as a suspect. Article 221 of the CPC sets out the grounds for apprehending a person suspected of having committed a crime: 1) if the person has been arrested for a crime or directly after its commission; 2) witnesses of the crime, including the victims, directly identify him as the person who committed the crime; 3) there are obvious traces of the crime committed on him or on his clothes, near or at home; 4) there is information that a person has grounds to suspect in the commission of a crime, if he intends to flee or has no permanent residence or his identity has not been established. However, Article 359 does not specify "the information that gives rise to a suspicion of a crime in the case", i.e. exactly what information is the basis. However, Article 82 of the CPC clearly states the grounds for accusing a person. Therefore, we believe that it is necessary to clarify the grounds for suspicion with a separate article in our criminal procedure legislation. In our opinion, it would be appropriate to add Article 821 to this Code, that shows: "Reasonable assumption is a standard of proof required for the conduct of investigative actions, restriction of a person's constitutional rights or application of coercive procedural measures in the manner".

BIBLIOGRPHY:

1. Petrukhin I.L. Theoretical basis of the reform of the criminal process in Russia. M. 2004. 224 p.
2. Reasonable Suspicion. https://www.law.cornell.edu/wex/reasonable_suspicion
3. Melnikov V.Yu. Arrest of a suspect. Dissertation. – Krasnodar, 2004.
4. Teregulova A.A. The legal status of a suspect in a criminal procedure in Russia: Dissertation. Chelyabinsk, 2008.
5. Judgment of the European Court of Human Rights from 30.08.1990 «Дело «Fox, Campbell and Hartley v. the United Kingdom» (complaints № 12244/86, 12245/86, 12383/86). [Electronic resource]. URL: europeancourt.ru/.../foks-kempbel-i-xartli-protiv-soedinennogokorolevs... (date of the application: 16.04.2015).
6. Yenikeyev Z.D. Problems of criminal prosecution in modern Russia // Materials International scientific-practical conference – Yekaterinburg, 2005, 277 p;
7. Khaidarov N.N. Criminal suspect. Dissertation. T.:2000.
8. Makhmudov S.A. Some aspects of terminating a criminal case without resolving the issue of guilt // Lawyer herald. No 6 (2020), 114 p.
9. Rakhimova, U. (2020) "Cybercrime subject and limits of proof", TSUL Legal Report International electronic scientific journal, 1(1). –P.103.Available at: https://legalreport.tsul.uz/index.php/journal/article/view/17
10. Muminov B.A. Judicial control over pre-trial criminal proceedings. Dissertation. -166. https://tsul.uz/files/avtoreferat/muminov.pdf
11. Mamatkulova Khosiyat Ural qizi. Some Issues of Ensuring of Procedural Guarantees of Participants of the Criminal Process of the Republic of Uzbekistan. International Journal of Recent Technology and Engineering (IJRTE) ISSN: 2277-3878, Volume-8 Issue-4, November 2019
12. Suyunova D.J. Issues of improving the institution of the Bar - today's realities and the necessary changes // Modern Russian law. – 2020. – №. 6 (15). –4-9 p.
13. Khidoyatov B. Stages Of Legal Regulation Of Inquiry In The Republic Of Uzbekistan. The American Journal of Political Science Law and Criminology. 2020 Nov 30;2(11):179-86.
14. Mavlanov K. In the legislation of some developed foreign countries, the state of protection of the suspect in the commission of a crime. Society and innovation (inscience.uz, 1 (2021))
15. Khudaybergenov B.K. Some questions of the stage of initiation of a criminal case in the criminal process // Domestic jurisprudence. – 2020. – №. 1 (40).