



ENSURING THE IMPLEMENTATION OF ADMINISTRATIVE DETENTION AS A FORM OF PUNISHMENT

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Annotation: This article theoretically analyzes the reforms being carried out in our country to ensure the execution of administrative detention, examines foreign experiences, and presents proposals and recommendations developed by the author.

Keywords: administrative detention, punishment, administrative punishment, internal affairs.

Analysis of legal sources shows that the concept of "detention" is used in different senses. According to the explanatory dictionary of the Uzbek language, "qamoq" means a place (detention center, prison) where people deprived of freedom and prisoners are kept. It is also used in the sense of the process of serving a sentence of imprisonment (punishment).[1]

According to Professors J.Kh. Yuldashev and B. Adilov, the dictionary approaches the concept of detention from a criminal law perspective. Its administrative functions related to the temporary isolation of an individual from society were not taken into account. The essence of the verb "to detain" is not discussed. Based on this, it is important to focus on the effectiveness of its application and implementation.[2]

Analysis of 19th-century legal literature shows that police arrests had different meanings. According to Professor A. Trifonova, administrative coercive measures of the police are divided into two types: coercion to perform an action or to stop it.[3]

Professor I. Tarasov emphasizes that there are three types of detention:

- 1) judicial detention for the purpose of administrative justice;
- 2) preventive or judicial-police detention (applied in crime prevention or for security purposes);
- 3) police detention aimed at eliminating the threat or possibility of committing a crime or administrative offense.[4]

In our opinion, it would be correct to say that the penalty of judicial detention, which is applied for the purpose of administrative justice, is currently a reflection of the penalty of administrative detention provided for in Article 29 of the Code of the Republic of Uzbekistan on Administrative Responsibility.

Administrative detention, along with other types of punishment, implies the restriction of personal rights. The results of scientific analysis show that this legal restriction measure has its own quantitative and qualitative characteristics (properties). According to the quantitative characteristic, the term of administrative detention is a factor of the intensity of the impact of the punishment on the offender, while the qualitative characteristic manifests itself in the mandatory temporary restriction of a person's physical freedom (freedom). At the same time, the offender himself may be isolated from society and subject to forced labor.[5]

According to I.P. Dolgich and E.A. Suponin, the characteristics of administrative detention are manifested in the following:

- 1) this type of punishment serves as the only type of punishment applied to certain segments of the population (petitioners, homeless people, unemployed). This is especially important if it takes into account the need for the return of punishment.
- 2) administrative detention shall be appointed only by judicial bodies. This excludes the possibility of abuse of official authority or manipulation (cheating) by other bodies dealing

with administrative offenses. The reason is that the judge is independent from departmental and other influences and has the opportunity to decide the application of punishment on the basis of fairness and objectivity;

3) this type of punishment can be established only by federal law (not by other types of normative legal acts);

4) can only be applied as the main type of punishment. In this way, the legislator created an opportunity to ensure the severity and self-sufficiency of this type of punishment;

5) the legislator clearly defines the circle of persons for whom this penalty cannot be applied;

6) In exceptional cases (severe illness, the death of a close relative, etc.), the court may suspend or abolish this type of punishment.[6]

In our view, this approach does not correspond to the new legal theory of today. Because administrative detention is not applied only to complainants. Furthermore, the main purpose of applying this penalty in our country is to prevent this person from committing repeated offenses.

According to G.V. Ogrina, administrative detention is a type of punishment that is imposed for certain types of administrative offenses for up to 15 days (for certain types of offenses up to 30 days) and consists of the formation of the offender in conditions of separation from society, and it can be understood in two ways. In a narrow sense, administrative detention means the restriction of the perpetrator's right to free movement, while in a broad sense, it implies his separation from society. Therefore, this type of punishment requires special attention from its users.[7]

The aforementioned tariff for administrative detention corresponds to today's legal theory. In particular, in our legislation, administrative detention is applied for a period of three to fifteen days, and in the conditions of the state of emergency, for encroachment on public order - up to thirty days. Administrative detention is determined by the district (city) court on criminal cases, and in the event of an emergency, as well as by the military commandant or the head of the internal affairs body.[8]

In our opinion, in the practice of applying administrative detention, in the context of the state of emergency, as well as by the military commandant or the head of the internal affairs body, it is somewhat incorrect, because, as R. Otajanov correctly stated, we believe that administrative detention should be imposed only by the court, because Article 27 of the Constitution of the Republic of Uzbekistan[9] states that detention, arrest, and detention are allowed only by a court decision.[10]

Therefore, it is proposed to make the following changes to the following regulatory legal acts:

Article 29, Part 1 of the Code of the Republic of Uzbekistan on Administrative Responsibility:

"Administrative detention shall be applied for a period of three to thirty days. Administrative arrest is determined by the district (city) court on criminal cases.

Article 5 of the Law of the Republic of Uzbekistan dated January 9, 2017 No. ZRU-420 "On the Procedure for Conducting Administrative Arrest" should be stated as follows:

Article 5. Basis for serving administrative detention

The decision of the judge of the district (city) court on criminal cases shall be the basis for serving an administrative sentence.

In addition, individuals subject to administrative arrest are charged with expenses related to detention in a special reception in accordance with the decision of the judge of the district (city) criminal court, and in the conditions of the state of emergency, as well as the military commandant or the head of the internal affairs body, in the amount of 15% of the base calculation per day[11]. This issue is considered relevant today, and there are cases where persons serving administrative prison sentences are slow to pay these payments or do

not pay them at all. In particular, only 4 billion 495 million 226 thousand 169 soums were recovered from the funds of 11 billion 93 million 196 thousand 931 soums determined by the decisions of the judicial authorities to recover the costs of maintenance from persons under administrative arrest.[12]

Furthermore, in B. Adilov's research, the absence of liability for abandoning special reception centers, escaping from them, or evading administrative detention in practice during the execution of this penalty significantly affects the effectiveness of this type of punishment. An analysis of the legislation of the CIS countries shows that there is a unique solution to the issue under discussion. Specifically:

1) in the Code of Administrative Offenses of the Russian Federation (Article 20.25). It is established that voluntary abandonment of places of administrative detention or evading serving administrative detention shall result in administrative arrest for up to 15 days or compulsory community service for up to 50 hours.

2) The Code of Administrative Offenses of the Republic of Kazakhstan (Article 914), somewhat differently defines the consequences of evading administrative detention. According to it, if a person under administrative arrest voluntarily leaves the place of serving the sentence before the end of the sentence, the expired term may not be fully or partially counted as the execution term by a judge's decision. In this case, the judge resets the beginning of the term of imprisonment. In accordance with the above, it is advisable to supplement the Code of the Republic of Uzbekistan on Administrative Responsibility with a separate article of the following content:

"Article 2051. Evading administrative detention

Self-abandonment of places of administrative detention or intentional evasion of serving administrative detention is punishable by administrative detention for up to fifteen days or compulsory involvement in paid community service for up to sixty hours." [13]

During the research of Zh.Kh. Yuldashev and B. Adilov, the following specific problems were observed when studying the activities of special receptions intended for the detention of persons detained in administrative detention:

1) The small number and capacity of special reception rooms, inconsistency with the number of persons sentenced;

2) The need to bring convicted persons from distant districts (cities) to special receptions;

3) The material and technical base of special reception centers does not meet today's requirements.

In our view, the following is proposed to address these issues in the execution of administrative imprisonment:

first, taking into account the small number and capacity of special receptions, inconsistency of the number of persons sentenced to punishment, the courts determine this punishment in agreement with the internal affairs bodies;

secondly, the allocation of special vehicles by the internal affairs bodies to eliminate the need to bring convicted persons from distant districts (cities) to the Special Reception Offices. However, there are cases where prevention inspectors use public passenger transportation due to the lack of a personal car.

The problem of non-compliance of the material and technical base of special reception centers with modern requirements has been solved. Currently, new places of administrative imprisonment are being built.

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