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Problems of Realization of the Sovereignty of the Institute "Habeas Corpus Act" in the Criminal Procedure

Jinoyat Protsessida “Habeas Corpus Act” Institutining Tatbiq Etilishini Takomillashtirish Masalalari

Проблемы Совершенствования Реализации Института «Habeas Corpus Act» В Уголовном Процессе

Bozorov Maqsudali Maxmudovich
Toshkent davlat yuridik universitetining
Ixtisoslashtirilgan filiali Jinoyat-huquqiy
fanlar kafedrasi o`qituvchisi
Abdiaxatov temur Rovshan o’g’li
Toshkent davlat yuridik universitetining
Ixtisoslashtirilgan filiali
3-kurs talabasi

A B S T R A C T

This article discusses the institution of habeas corpus, its concept, content, history of origin and development, the role of habeas corpus intitu in criminal proceedings, as well as the issues of improving the application of the institution of habeas corpus to improve criminal procedure law, reforms to improve the sector, suggestions and recommendations to address their problems and shortcomings.

A R T I C L E I N F O

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K E Y W O R D S: habeas corpus, habeas corpus ad subjiciendum, criminal proceedings, imprisonment, sanction, precautionary measure.

Annotatsiya. Ushbu maqolada habeas corpus instituti, tushunchasi, mazmun-mohiyati, uning paydo bo`lish va rivojlanish tarixi, jinoyat-protsessida habaes corpus intituning tutgan o`rni, shuningdek jinoyat protsessual huquqini takomillashtirish borasida habeas corpus institutini qo`llashni takomillashtirish masalalari haqida so`z yuritilgan bo`lib, sohani takomillashtirish yo`lida olib borilayotgan islohotlar, ulardagi muammo va kamchiliklarni bartaraf qilish yuzasidan taklif va tavsiyalar bayon qilingan.

Kalit so`zlar: Habeas corpus, habeas corpus ad subjiciendum, jinoyat protsessi, qamoq, sanksiya, ehtiyot chorasi.

Аннотация. В данной статье рассматривается институт habeas corpus, его понятие, содержание, история возникновения и развития, роль habeas corpus intitu в уголовном судопроизводстве, а также

вопросы совершенствования применения института habeas corpus для совершенствования уголовно-процессуального права, реформы по улучшению сектора, предложения и рекомендации по устранению их проблем и недостатков.

Ключевые слова: habeas corpus, habeas corpus ad subjiciendum, уголовное судопроизводство, лишение свободы, санкция, мера предосторожности.

In the development of society, the issue of human rights and their equality has steadily attracted people of advanced thinking. It is clear to everyone that the pages of history have sealed many remarkable events and facts on the issue of human rights, the aspirations and actions of the people. The history of human development testifies in such a way that wherever democracy takes root, the issue of human rights and equality of citizens in that place acquires special relevance [1].

The role of Europe in the formation of human rights is certainly significant, a number of documents adopted in the continental states have had an excellent positive effect on the formation of human rights, including in England The “Great Charter of freedom”, adopted in 1215, embodied a number of rules aimed at preventing the abuse of the rights of ordinary citizens of power and officials [2].

The direct struggle of the people of England on the issue of human rights and the adoption of the above-mentioned documents as a logical result of these struggles were of great importance for that time. The actions taken in England regarding human rights can be compared, in our opinion, only with the contribution of such states as the United States, France to the development of democracy and Human Rights. It should be said that the ideas that gave life to the formation and development of democracy and Human Rights in these great states were expressed in the political and legal views of ancient Greek philosophers, the high humanistic ideas of Eastern scholars, the progressive opinions of representatives of the Enlightenment period and natural-legal views.

The concept of "Habeas corpus Act “ is derived from Latin” Habeas corpus ad subjiciendum“, which is formed from the combination of the words” you are obliged to deliver a person" that is, (the formula of the court decision on the delivery of an arrested person)-means.

In English constitutional law, it means" to act in the form of better human freedom and to prevent incarceration by sea."

In the United States, the Habeas Corpus procedure began to be used as early as the colonial period, after independence it was enshrined in the US Constitution of 1787 and the constitutions of the individual states. According to the Constitution, this guarantee can only be suspended on the side of Congress, but such a right is granted to the president, formally, if it is required from the point of view of national security, that is, in almost any case containing a number of legal guarantees of the inviolability of the individual [3].

The Habeas Corps Restoration Act of 2007, a bill called conditional No. 185, was passed by the U.S. Senate justice committee on Thursday 7 June 2007.

The bill's sponsor is Democrat senator Patrick Lee and (former) Republican senator Arlen Specter. Spectrum supported the bill that joined the Democrats, with the committee accepting it without discussing it with 11 votes against 8. The bill would restore habeas corps access to the U.S. judicial system of prisoners in Guantanamo prison, a right that had been derived from them.

At the official level, the Constitution of our country enshrines a new model of relations between man and state in the Republic of Uzbekistan. Now human rights and freedoms are recognized as the highest value, and their observance and protection is now defined as the obligation of the state. Today, judicial law reforms are carried out in stages, aimed at ensuring the priority of this principle in law enforcement practice. Among the positive results achieved, it is permissible to recognize the adoption of the current CPC that meets international standards, the equality of state and individual relations is achieved through the liberalization of criminal penalties, the right to allow the application of a number of procedural coercion and precautions is transferred to the courts, the right to protect a person by improving the At the same time, a number of positive works were carried out in our country aimed at the rule of law and its provision. The rule of law is the basic principle of the legal state. It presupposes the strict dominance of the law in all spheres of life. Before the law, everyone is equal. The rule of law states that the main social, first of all, economic

relations are regulated only by law, while all its participants are responsible for violating the norms of law without any exception.

Article 19 of the Constitution of the Republic of Uzbekistan states that "the rights and freedoms of citizens enshrined in the Constitution and laws are inviolable, no one has the right to deprive them of them without a court decision or limit them" [4]. It must be recognized that this constitutional rule is also reflected in generally accepted international legal standards. In particular, according to Part 3 of Article 9 of the International Covenant on Civil and Political Rights, adopted in 1966, it is noted that "every person imprisoned or apprehended on criminal charges is brought to the judge or another official with the right to exercise judicial power under the law, and the accused has the right to demand that his case be [5]

At the same time, in certain cases, certain procedural coercion and precautionary measures may be applied to persons who have committed a crime on the grounds and in the manner established by law. During the period of pre-trial proceedings and court proceedings of the Republic of Uzbekistan in accordance with the CPSU, the suspect, defendant and defendant are subject to careful measures in order to prevent inquiry, preliminary investigation and evasion, to put an end to their further criminal activities, to prevent their attempts to determine the truth in the case, to ensure the execution of In addition to the grounds provided for by Article 236 of the CPC, the inquiry officer, investigator, prosecutor, court must also take into account the severity of the guilt committed, the person of the accused, the type of training, age, health, marital status and other circumstances in solving the issue on which to apply the precautionary measures. This opinion was adopted on July 11, 2007 on the basis of the decree of the president of the Republic of Uzbekistan dated August 8, 2005 "on transferring the right to sanction to imprisonment to courts", when the Republic of Uzbekistan has found a legal solution with the law "on amendments and additions to certain legislative acts of the Republic of Uzbekistan in connection, Developed by the law of the Republic of Uzbekistan "on amendments and additions to certain legislative acts of the Republic of Uzbekistan in connection with the further reform of the judicial system"of September 18, 2012 (it was established that the removal of the accused from office and the placement of a person in a medical institution is carried out on the, also continued its development with the law of the Republic of Uzbekistan "on amendments and additions to certain legislative acts of the Republic of Uzbekistan"of September 4, 2014 (a new house arrest precaution was introduced in the CPC and the procedure for its application was established with the permission of the court). It should be noted that the fact that now in our country the right to sanction the application of the above measures is exercised by the courts serves as a criterion of justice and law in the fair protection of human rights. In accordance with Chapter XXII of the Constitution of the Republic of Uzbekistan, justice in our country is carried out only by the court and the establishment of emergency courts is not allowed. Today, during the preliminary investigation, the right to apply a precautionary measure in the form of imprisonment belongs only to the courts. Currently, for the application of a precautionary measure in the form of imprisonment, a petition is issued by the prosecutor, with the consent of the prosecutor, and the court considers it in the manner prescribed by Article 243 of the CPC.

Imprisonment is the most severe precaution, severely limiting the rights and freedoms of a citizen, as well as one of the most fundamental rights–the rights of personal freedom and inviolability. Therefore, other precautions in the form of imprisonment are used only when it is not possible to ensure the proper behavior of the accused (suspect)and prevent punishment evasion. At the moment, it should not be forgotten that non-use or untimely use of custody precautions in relation to persons who have committed serious and very serious crimes can lead to the commission of new crimes. According to Article 242 of the CPC, imprisonment as a precautionary measure can be applied in the Criminal Code for crimes committed intentionally, which involve punishment in the Criminal Code for imprisonment for a period of more than three years, as well as in cases of negligence, for which the Criminal Code provides for punishment in the field of imprisonment for more than five years. As a precautionary measure, imprisonment consists in the obligatory separation of the accused (in some cases–the detained suspect) from society and its maintenance in a special institution in order to ensure the process of preliminary investigation and consideration of a criminal case in court and the execution of punishment. The following signs are characteristic of a prison-style precaution:

a) it is applied to the accused, and in some cases–to the detained suspect, while in relation to other participants in the proceedings it is never applied;

b) it can only be applied to the neck of a criminal case initiated;

C) to apply it, it is necessary to have evidence that confirms the person's participation in the commission of a crime;

g) it is not considered a means of proof in a criminal case, and the application of this measure will not be evidence that a person in his own right has committed a crime;

d) only one precaution can be applied to the individual at a time. A precautionary measure in the form of imprisonment is not a punishment for a crime committed, but its main task is to prevent offenses, since they are used not for committing a crime or violation of the procedural rule, but to ensure that the accused (suspect) fulfills procedural obligations, and to prevent him from committing new crimes, hiding from the investigation and Along with the above, a precautionary measure in the form of imprisonment, in exceptional cases, can be applied in cases of intentional crimes committed with the provision of punishment in the field of imprisonment for a period of not more than three years, as well as in cases of crimes committed as a result of recklessness, for which punishment in the field of imprisonment. In individual cases, this precaution can also be applied as an exception to the above requirements:

1. When the accused, the defendant, hid from the investigation and the court;
2. When the identity of the detained suspect is not identified;
3. The previously used precautionary measure is when the accused is violated by the defendant;
4. Detained suspect or accused when the defendant does not have a permanent place of residence in the Republic of Uzbekistan;
5. It is indicated that the crime was committed during the period of serving the sentence in the prison or imprisonment sect. It is advisable to comment on the concepts of “legality” and “validity” of the application of precautions in this regard. Legality requires the investigating authorities to clearly fulfill the rights and obligations that the law imposes on them. The inextricable connection of procedural rights and obligations is a specific aspect of the legal status of the investigator. For example, according to the CPC, the investigator has the right to initiate a criminal case in the event of grounds. At the same time, this is also his direct obligation. Failure to comply with this obligation is assessed as a violation of legality and service duty [6].

Speaking about the reforms in the field of judicial law, today a huge amount of work has been carried out in this regard. Decree of the president of the Republic of Uzbekistan dated 21.10.2016 PF-4850, decree of the president of the Republic of Uzbekistan dated January 6, 2019 “on the preparation of candidates for judicial positions, retraining of judges and employees of the judicial apparatus, measures to radically improve their professional development system”and the establishment of A Higher School of judges on its basis, the fact that only.

"Ensuring basic human rights and freedoms is the most important place in reforms in Uzbekistan. The principle of” Sustainable Development Goals for the period up to 2030 is implemented on the basis of the principle of " not to ignore anyone who intends to ensure the rights and legitimate interests of each person in our country." At this point, the speech is about the implementation of the national strategy for Human Rights, developed with the active participation of experts from the Department of the High Commissioner for Human Rights,”said Shavkat Mirziyoyev, President of the Republic of Uzbekistan.

At this point, it should be noted that the “substantiation” of imprisonment is such a broad concept that the person behind it can be delivered from the fact that he is a citizen of the Republic of Uzbekistan to the fact that fish are left unattended in the aquarium in the apartment of the offender and there is no person to feed them. At the same time, the complaint made by the court on the illegal detention of a person should be considered only from the point of view of “legality” and based on the rules introduced in the law. That is, if, in the process of checking the detention ruling, the detention precaution is applied illegally, contrary to the requirements of the CPC, it is necessary to release the person, if the requirements of the CPC are met, if a request is legally included, the arguments that the detention of the person is “inappropriate for the purpose” or “not based” should not be taken into account.

At the same time, in the case of knowingly intentional crimes committed by officials or by persons who exercise their authority, the procedure for filing a complaint against the illegal application of the procedural coercive measure of detention in the current Criminal Procedure Code and the introduction of the procedure for its consideration should apply this type of precautionary measure without exception And it is also worth mentioning that, from now on, no leadership positions should be placed through which he must know that the power of the court and the punishment for the act committed can be severe.

In addition, it would be advisable to take into account the presumption of innocence when the preventive measure of imprisonment is applied and establish that it must be released on the basis of the guarantees of close relatives and some restrictions.

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