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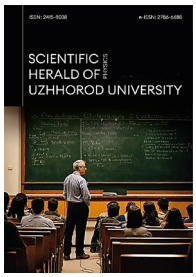

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Police administrative detention

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Abstract

Relevance. The research relevance is predefined by the need to study the legal problems of police administrative detention and, subsequently, to create an effective administrative and legal regulation of this area.

Purpose. The research aims to evaluate the legal situation in the field of legislative regulation of police use of administrative detention in the Republic of Kazakhstan and to develop recommendations for improvement of legislation in this area.

Methodology. To reach the aims, such methods as dialectical, comparative-legal, method of induction and deduction, analysis and synthesis, and functional method were used.

Results. The features of administrative-legal regulation of administrative detention in the Republic of Kazakhstan were revealed. The legal problems in the practice of administrative detention were analyzed. The term "administrative detention" is distinguished from the related legal terms such as "delivery", "administrative arrest", and "criminal law detention". Scientific provisions for improving the legal regulation of the procedure for administrative detention have been formed. Examples of different countries in the field of legislative regulation of administrative detention have been analyzed. The need to detail in the administrative legislation the procedure for administrative detention, including regulating the mechanism of detention in special premises of persons without a fixed place of residence, with certain types of diseases, as well as the procedure for the detention of minors is highlighted.

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Conclusions. It is concluded that the introduction of round-the-clock video surveillance in the premises where detainees are held is of great importance for the protection of their rights. The importance of balancing the public interest in security with the individual's rights to liberty and the security person is highlighted in the use of administrative detention by the police. Recommendations for improving legislation, increasing the efficiency of the practice of administrative detention, as well as the effectiveness of protection of the rights of detainees have been developed. The research results develop administrative and legal science and contribute to solving practical issues regarding the application of administrative detention by police officers.

Keywords: immunity; offender; freedom restriction; protocol; coercion measures.

Introduction

Administrative detention is one of the most common measures of administrative coercion applied by authorized officials and involves a restriction of a person's constitutionally guaranteed freedom. Thus, Article 16 of the Constitution of the Republic of Kazakhstan [1] provides for the right of everyone to personal liberty. At the same time, this article establishes the possibility of administrative detention and provides that its duration without court authorization may not exceed seventy-two hours. It is common for a person to experience severe emotional distress during detention, including feelings of infringement of their honor and dignity. Therefore, to avoid inflicting moral damage and based on the legal nature and objectives of administrative detention, it is important to minimize restrictions on the rights of the detainee. This objective is pursued by the legislator through detailed regulation of the grounds and procedure for detention, which should be applied in the practice of officials responsible for administrative detention.

At present, the Republic of Kazakhstan has developed a legal framework governing administrative legal relations arising during the application of administrative detention. But at the same time, this issue has not ceased to be relevant, because the problem of legislative regulation of administrative detention covers a huge list of issues: establishing a high level of legal protection for a detainee, finding a balance between ensuring the right to personal liberty and security of citizens, ensuring proper judicial control, participation of a lawyer, etc. [2-5]. The relevance of administrative detention research is predefined by the need to eliminate violations of the right to liberty and personal immunity, including by preventing unlawful detention by the police. The study of the problem of administrative detention is also important to simplify the law enforcement practice of the police in bringing persons to administrative responsibility and to increase the level of legality in the sphere of procedural actions.

Notably, researchers have not studied the problem sufficiently in recent years. Thus, Kazakhstan's studies are mainly devoted to the study of the issue of detention within the framework of criminal law. For example, A.S. Sarsenbayev [6] studied the issue of detention of a suspect in criminal proceedings in comparison with administrative detention and drew attention to the need to strictly distinguish them. Separate issues of legislative regulation of the application of administrative detention have been raised in administrative-legal science, but in our time have not been considered systematically. Thus, E. Li [7] studied the correlation of different measures of administrative coercion and concluded the need to clearly distinguish such measures as administrative detention and arrest. Peculiarities of the application of administrative detention for offenses in the field of family and domestic relations were determined by A.U. Seidakhmetova [8]. G. Kobegenova [9] studied the legal nature and place of administrative detention among measures of administrative security. Problematic issues of applying administrative responsibility to detainees were studied by S.V. Korneychuk [10].

The conducted study of the scientific literature confirms that the problems of administrative detention have been addressed in few if any, modern studies in Kazakhstan and are mostly fragmented. At the same time, most of the previous studies are outdated due to the adopted amendments to the administrative legislation. There is no consensus in administrative law scholarship on the legal nature and issues of administrative detention. In addition, for the improvement of the legislation of the Republic of Kazakhstan, the comparative analysis of the legislation of the state and other countries of the world in the field of application of administrative detention by the police is very important, which also causes the relevance of this article.

The research aims to provide a comprehensive analysis of administrative law and legal relations in the field of administrative detention and to develop scientific provisions to improve the effectiveness of legal regulation in this area.

Materials and Methods

General scientific as well as special scientific methods, those of the legal sciences, were used. The dialectical method contributed to the study of the issue of the application of administrative detention in its development in the science and practice of law enforcement. The problem of legislative regulation of administrative detention was examined through the prism of dialectics of interrelation of different legal factors, as well as different interests of society and the detained person, considering their contradictions. The study of the problems of regulation of the institute of administrative detention was also conducted using the dialectical method. The experience of different states on this issue was studied using the comparative-legal method.

Scientific studies and legal acts in the field of application of administrative detention have been analyzed. Such normative legal acts as the Constitution of the Republic of Kazakhstan [1], Code of the Republic of Kazakhstan “On Administrative Offenses” [11], Criminal Code of the Republic of Kazakhstan [12], and Law of the Republic of Kazakhstan No 199-V. “On the Internal Affairs Bodies of the Republic of Kazakhstan” [13] were used. The study of normative legal documents of Kazakhstan, as well as the development of scientific provisions was carried out using general scientific methods

of logic, such as analysis and synthesis, induction, and deduction. Thus, in the study of such a legal institute as administrative detention, as well as its legislative regulation in Kazakhstan and other countries the method of analysis was used to study the chosen topic in depth. The functional method helped to reveal the peculiarities of the subject of research and reveal its essence, as well as the state of legislative regulation in Kazakhstan.

The synthesis method helped to identify legislative regulation of legal relations based on the commission of administrative offenses and entail the application of administrative detention not only in Kazakhstan but also in other states, to investigate in detail certain legal aspects of the problem under study, which allowed to form a holistic picture of the regulation of administrative detention and to analyze its effectiveness. The analysis and synthesis method were used in combination, as a result of which the legal nature of this measure of administrative coercion was established. The main scientific trends regarding the legal approach to the issue of administrative detention, the effectiveness of the protection of the rights of the detainee, the specifics of the application of detention to certain categories of persons, as well as its legal regulation in different countries, the research results and the achieved results are described through the description.

The systemic principle, as well as the complexity, allowed a broader consideration of the problem from all sides, to update the problems of police use of administrative detention, clarify the main directions of work on the improvement of administrative legislation, to provide a generalized description of them. Using the method of induction, the research results were summarized and scientific conclusions were drawn, as well as opinions of scientists from different countries were investigated using this method. The research was conducted on the principle of objectivity, scientific material, and legal acts. The use of the above-mentioned methods made it possible to solve the research objectives. Thus, the state of scientific development of the chosen topic was determined, research sources were selected, the effectiveness of legislative regulation of the use of administrative detention by the police in Kazakhstan was evaluated, as well as its impact on improving the rule of law in society, and conducted a comparative analysis of legislation in this area in different countries of the world.

Results

The study of administrative detention in the administrative and legal science of the Republic of Kazakhstan began in the 60s of the XX century and aimed to improve the current legislation in this area. Despite the long period of the scientific study of this legal institute, problems, and controversial issues in the legal regulation of administrative detention still exist [14-16]. International standards require countries to ensure guarantees of human security and integrity, personal freedom, and prevention of unlawful encroachments on their rights, as well as to improve national legislation to enhance the protection of citizens' rights, including in matters of application of administrative detention. For example, in 1945 the right to personal liberty was enshrined in Article 9 of the Universal Declaration of Human Rights, which also introduced a ban on the arbitrary detention of a person [17]. The positive point is that the right, which is written in a concise form in this article, allows for its further broad interpretation. A similar rule is provided in Article 9 of the International Covenant on Civil and Political Rights [18]. Proceeding from the need to comply with international standards in the improvement of administrative legislation, including in the application of administrative detention, the priority should be the protection of human rights and freedoms.

Administrative detention effectively restricts an individual's right to freedom for a short period. O.E. Musina [19] notes that administrative detention should be considered a demonstration of the legal relationship between the official and the offender, the basis of which is the restriction of movement of the latter. E. Cunniffe [20] defines administrative detention as a measure that has no punitive nature and is applied by an administrative body by restricting freedom for the possibility to apply other procedures provided for by law. The science also considers administrative detention as defined by administrative legislation actions of participants of administrative and legal relations regarding the implementation of the right to restrict a person's freedom for a short period [14; 21-23]. This measure of administrative restraint embodies the principle of legality in law enforcement work of authorized bodies, including the police, by suppressing an administrative offense; establishing its circumstances; bringing to administrative responsibility; compliance with norms of administrative legislation. In general, it can be concluded that the role of administrative detention is to carry out procedural actions on the administrative case at the stage of its initiation and ensure the collection of evidence.

According to Article 785 of the Code of the Republic of Kazakhstan “On Administrative Offenses” [11], administrative detention of a person is one of the measures to ensure proceedings on an administrative offense. Article 787 of the Code of the Republic of Kazakhstan “On Administrative Offenses” provides for two purposes of administrative detention: to suppress an offense or to ensure proceedings in a case. Thus, administrative detention has a dual nature: it serves both to suppress unlawful actions and to bring an offender to justice. The basis for the application of administrative detention is the presence of a legally defined corpus delicti of an administrative offense. In particular, the police use detention in case of administrative offenses which fall within their competence. Such powers are bestowed upon the police under Article 6 of the Law of the Republic of Kazakhstan No 199-V. “On the Internal Affairs Bodies of the Republic of Kazakhstan” [13]. In cases expressly provided by law, the police may detain an offender to process procedural documents, carry out procedural actions and check the detainee. Mostly detention takes place to establish the circumstances of an administrative offense. Thus, if the offense has already been committed, it is not possible to fulfill such an objective as the suppression of an illegal act. In addition, the detention requires certain procedural actions, including the qualification of the offense and the bringing of the person to administrative responsibility.

Due to the specific nature of administrative detention as a measure to ensure proceedings, the Code of the Republic of Kazakhstan “On Administrative Offenses”

[11] mostly describes and regulates the procedure and duration of detention, how it is recorded, and the detainee's detention. For example, no later than three hours from the time of administrative detention an individual is entitled to make one telephone call to a relative to notify them of detention and to inform them of the whereabouts. Such a telephone call, at the request of the detained person, may be made by a police officer. According to Article 788 of the Code of the Republic of Kazakhstan "On Administrative Offenses", a report must be issued by an official and signed by both the official and the detainee. This protocol is one of the guarantees protecting the rights of the detainee. If the detainee refuses to sign the protocol of administrative detention, the officer makes an appropriate note. The protocol of administrative detention indicates the identity of the police officer and the detainee, the date, place, and time of its signing, and the grounds stipulated by law for the detention of the person. As pointed out by Sh. Zhumakova [14], it is important to distinguish the grounds and motives for detention. Thus, the commission of an administrative offense is the reason for the detention of a person by the police, while additional circumstances constitute the motives of detention, such as the need to bring him to the police department.

Administrative detention restricts the right to liberty and security of a person for the shortest possible period, which is three hours and counts up to minutes from the moment of actual detention. The exception applies to a person who is intoxicated – in this case, the period of administrative detention is calculated from the moment a medical worker registers soberness. Exceptions also relate to certain types of administrative offenses provided for by paragraphs 2, and 3 of Article 789 of the Code of the Republic of Kazakhstan "On Administrative Offenses" [11], in case of which the period of administrative detention may last up to forty-eight hours. The restriction of the detainee's liberty does occur from the moment of actual detention. For example, in the case of a road traffic offense, a driver apprehended by the police is deprived of his or her freedom of movement until a report has been made, the vehicle has been inspected and the scene of the accident has been examined.

As noted by E.H. Abishev [24], the question of the duration of administrative detention is controversial in administrative and legal science. It should be noted that even though administrative detention is aimed at bringing the perpetrator to justice, a problem is the detention of a detainee for a long time without conducting procedural actions. In this way, the constitutional principle of the person's immunity and several constitutional rights may be violated. Thus, it is typical that in some situations one hour would be sufficient to carry out the necessary procedural actions with the offender. At the same time, the legislator cannot provide for all situations that may arise when detaining a person, so the three hours have been enshrined in the Code of the Republic of Kazakhstan "On Administrative Offenses" [11] as the shortest possible time for the implementation of administrative-legal norms on detention. Based on the analysis of legislative norms it can be concluded that in the Code of the Republic of Kazakhstan "On Administrative Offenses" there is no clear mechanism of application of this measure of administrative coercion. Thus, the actions of the police are not prescribed in detail and a police officer is always faced with the question of deciding a detainee: to carry out procedural actions at the place of administrative offense or to take a detainee to the police and subsequently keep him there until the end of the procedural actions. This decision is made by an authorized person based on the qualification of the offense committed by the offender.

In the context of research on the application of administrative detention, attention should be devoted to the duty of a police officer to explain to a detainee his rights, such as the right to legal assistance, the services of an interpreter from the moment of detention, the right to a telephone conversation with relatives, as well as the right to refuse to give explanations [14; 25; 26]. If a minor is detained, the police are obliged to inform his or her parents or guardians. Furthermore, while the Code of the Republic of Kazakhstan "On Administrative Offenses" [11] does not assist the detainee, the police are required to provide first aid, eliminate threats to the life and health of the detainee, and deal with the care of the detainee's children, such as transferring them to relatives, maintaining the detainee's property and home, and reporting the detention to their employer, if necessary. Furthermore, the legislation does not fully address the issue of detention of different categories of detainees, such as those who have diseases such as tuberculosis, as well as the detention of persons with no fixed place of residence. Due to the disease prevention needs among detainees, administrative legislation should stipulate the detention order of the abovementioned persons in separate premises [2].

It should be noted that the public official can be held liable for the harm caused to the detainee. In addition, the application of administrative detention can be appealed under the procedure established by Chapter 44 of the Code of the Republic of Kazakhstan "On Administrative Offenses" [11]. As noted by J. Goldsmith and N. Katyal [27], the appeal of administrative detention in the country and even abroad through appeal to a court as a neutral, disinterested person, and subsequently making it a legal and reasonable decision should increase the confidence of citizens in the issue of administrative detention. In this regard, increasing the knowledge and experience of judges in administrative detention cases is important. The role of a lawyer is also of great importance in protecting the rights of a detainee and ensuring the principle of adversarial trial during the consideration of a case on administrative detention [17].

Regarding the issue of improving the use of administrative detention in Kazakhstan, it is important to study the experience of legal regulation of this legal institution in various countries around the world. For example, in the United States of America, there are special units that take detainees to designated centers. Each detainee is subject to fingerprinting and photographing. Current regulations provide access to a lawyer, a medical officer, regular meals, and the temporary confiscation of belongings. The detention center is monitored by video surveillance to ensure that complaints about the detention are dealt with objectively. Detailed rules on the detainee's rights and the detention procedure and the officer's obligations are laid down in the instructions on temporary detention issued by the police, which is also duplicated on the websites of the United States police departments [28;

29]. Similarly, a detainee in the United Kingdom (UK) is taken by a special unit to a detention center, photographed, fingerprinted, and identified under a prescribed procedure. Records of detainees are kept on a nationwide database. The UK also encourages civilian scrutiny of the conditions of detention of citizens in police establishments under the Detainee Independent Visiting Procedure Instruction [30].

Under Austrian law, administrative detention is a measure of last resort, applied by public security officials in cases of unidentifiable identification, when it is suspected that a person is trying to escape from prosecution, as well as to suppress an administrative offense. Thus, if a person is detected at the scene of an offense, they are subject to detention by the competent authority only if the offender fails to provide provisional security [31; 32]. In Canada, administrative detention is ordered by the designated executive authority in cases of non-criminal offenses in areas such as child protection, immigration, as well as refugee, and mental health issues. For example, detention of a person on grounds of mental disorder is possible if several conditions are met: identification of the disorder by the competent authority based on a medical examination; persistence of the mental disorder; and justification of the detention of the person by the nature of the mental disorder. Under Canadian law, administrative detention is also used for administrative inquiries if the detainee cannot be identified [33]. Based on the research of the legislation of various countries, a conclusion has been reached that it is advisable to apply in the practice of police work in the Republic of Kazakhstan the example of police work in the United States of America in terms of installing video surveillance in premises where detainees are held, which will help to reduce cases of violations of the rights of these persons and more effectively address their complaints about administrative detention.

Discussion

In various studies, different approaches to understanding the legal nature of administrative detention are described. For example, O.E. Musina [19] defines administrative detention as a manifestation of the relationship between a police officer and offender, which results in the restriction of the movement of a detainee. A.U. Seidakhmetova [8] considers administrative detention not only as a measure of administrative coercion but also as a measure of individual prevention. At the same time, based on the study of scientific works and administrative legislation you can conclude that administrative detention is understood as one of the measures to ensure proceedings on a case on an administrative offense, which, in turn, is one of the types of administrative coercion measures, and short-term restriction of freedom of a detainee becomes the essence of administrative detention. At the same time administrative detention, if necessary, may be applied simultaneously with other measures to ensure proceedings in a case of an administrative offense. As pointed out by M. Waxman [34], the introduction of the right of an authorized state body to apply administrative detention in the legislation always involves a risk of violation of both the right to liberty of a detainee and the right to safety of others citizens. Reducing the risks should be at the expense of reasonable legislative regulation with ensuring the guarantees of protection of the rights of a detainee. As pointed out by U. Sunata and S. Erduran [35] administrative detention should be used exceptionally to detect illegal actions and with due care for the person to whom the measure is applied.

It should also be noted that following A.U. Seidakhmetova [8] the three-hour period of administrative detention provided for by Article 789 of the Code of the Republic of Kazakhstan “On Administrative Offenses” [11], is insufficient for the practice of its application. Thus, the researcher notes that, for example, in rural areas, such a short period may end even before the moment of taking a detainee to police premises, due to which the purpose of such measure of administrative coercion as administrative detention will not be achieved, and therefore the researcher makes a proposal to extend this period in the Code of the Republic of Kazakhstan “On Administrative Offenses” to 48 hours. In connection with this proposal, the following should be noted. So, indeed, legislative provisions cannot consider all the circumstances and events in a particular situation arising from the commission of an administrative offense and application of administrative detention by the police. At the same time, it should be noted that the time limit of 3 hours was set by the legislator to minimize restrictions on the constitutional rights of citizens and its extension may lead to abuse of power by an official as well as deliberate prolongation of administrative detention of a person. In addition, Article 789 of the Code of the Republic of Kazakhstan “On Administrative Offenses” [11] already provides for exceptions when the time limit can be extended up to 48 hours.

The issue of the definition of unlawful detention of a person is also controversial in administrative law. While considering unlawful detention in the narrow sense as one that is contrary to the requirements of the law, it is worth noting other views on this issue, which encompass a broader understanding of unlawful detention. For example, G. Alfredsson and A. Eide [17] understand it to include arbitrary and unjust detention as well as cases where detention is both unjust and unlawful. S J. Silverman and R. Hajela [36] indicate that unlawful detention should also be understood as measures that do not comply with international legal standards and also have the characteristics of detention. The distinction between administrative detention and other types of state coercive measures is also a matter of debate. Thus, by its nature detention is similar to administrative arrest. This statement is confirmed by the norm of part 3 of Article 789 of the Code of the Republic of Kazakhstan “On Administrative Offenses” [11], according to which administrative detention may be applied in case of offenses, for which administrative detention is envisaged as a punishment. As pointed out by M. Nowak [18] the difference between them is that administrative detention means restriction of freedom by an authorized officer, at the same time the decision to arrest may only be taken by a competent court. E. Li [7] focuses on the need for a clear distinction between administrative detention and arrest, expressing the view that considering them exclusively through the prism of punitive nature may lead to a merging of the two concepts, which will hinder the verification of the legitimacy of the application of administrative detention or administrative arrest.

It is also important to distinguish between different measures of administrative coercion: administrative detention and removal. Administrative detention is a broader concept and includes taking a person to court. It is also characteristic that administrative detention does not always require delivering a person, so it is possible to apply them separately from each other. This statement confirms the fact that the legislator regulates separate delivery and administrative detention, defining different purposes and grounds for them. And even when administrative detention and delivery are applied simultaneously, they should be considered independent measures of administrative coercion [19]. Thus, if administrative detention and extraction are considered as a whole, the distinction between them is excluded. At the same time, all actions performed by the police as a result of an administrative offense committed by a person are interdependent and act as measures to ensure the proceedings on an administrative offense. Police custody and detention have common features – limitation of human freedom, suppression of an offense, establishing the circumstances of the violation of the law, and the involvement of the detainee in it [37-39].

The detention of a person and his detention by the relevant authority can only be applied when it is not possible to clarify all the circumstances on the spot. Such circumstances include the inability to carry out procedural actions on the spot; failure to identify the detainee; the need for an administrative investigation; and preventing the person from establishing the circumstances of the offense. As practice shows, it is not always necessary to take a person into custody, so they can be applied separately. Therefore, the legislator has not accidentally allocated administrative detention and delivery as separate measures of administrative coercion [11]. Despite the similarities, administrative detention should also be distinguished from criminal detention. The latter can only be applied in cases where a crime is believed to be committed. In practice, however, there may be no grounds for instituting criminal proceedings because not enough work has been done to solve the crime so criminal procedural detention cannot be used. In such a case, it is advisable to use administrative detention, which provides grounds for conducting procedural actions and subsequent detection of the offense [40-42]. In this regard, some researchers, such as S. Yan'an [43] propose to provide among the grounds for the application of administrative detention the commission of an act containing elements of a crime, as well as actions that do not contain elements of an offense or crime, but dangerous to health or life. At the same time, this proposal is controversial and may lead to a blurring of the boundaries between administrative and criminal procedural detention, and abuse by police of their powers.

The issue of administrative detention of children requires separate and detailed consideration. Each country has its list of grounds and purposes for such detention. In the United States of America, for example, the purposes of administrative detention of minors are defined as providing treatment for children with mental health problems, drug and alcohol abuse, the commission of criminal offenses by a person under the age of criminal responsibility, the protection of homeless children, and the protection of children from abuse [44-46]. As C. Hamilton et al. [47] in the case of administrative detention the rights of the child are always at risk and therefore the legislator needs to develop additional guarantees for the protection of these rights. Thus, the analysis of the practice of administrative detention of children around the world, conducted by the International Commission of Jurists, confirms numerous violations of the rights of minors in the application of this coercive measure [48]. As for the Republic of Kazakhstan, under Article 788 of the Code of the Republic of Kazakhstan “On Administrative Offenses” [11] juveniles are detained in separate, special premises. Also, as mentioned above, police officers are obliged to notify them of their detention. At the same time, to avoid violations of the rights of minors, it is advisable to improve and specify in more detail the procedure of their administrative detention, including the obligation of police officers to hand over minors to their parents or persons who substitute them, based on the documents they present after conducting the necessary procedural actions.

Conclusions

Administrative detention is a measure of administrative restraint, the essence of which is the restriction of a person's freedom for a short period provided for by administrative law. Administrative detention is applied by an authorized official in exceptional cases defined by the Code of the Republic of Kazakhstan “On Administrative Offenses” to suppress the offense or to ensure the proceedings in the case. At the same time, administrative detention is multifaceted in terms of its legal nature and may be used for such purposes as gathering evidence, classifying a person's actions, and making him administratively liable. The Constitution of the Republic of Kazakhstan, by guaranteeing the right to personal liberty, the right to the assistance of a lawyer, and the establishment of a maximum period of detention, provides the basis for protection from unlawful administrative detention, which is broadly in line with international standards. The Code of the Republic of Kazakhstan “On Administrative Offenses” regulates the grounds and procedure for administrative detention.

At the same time, the legal regulation of administrative detention requires specification of the mechanism of application of this measure of administrative coercion, including regulating the detention of various categories of persons, homeless and sick people, and fixing the obligation of police officers to transfer minors upon completion of detention to parents or persons in loco parentis. In addition, to improve the practice of administrative detention in Kazakhstan and make the protection of detainees' rights more effective, it would be advisable to introduce constant video surveillance in places where detainees are held. The concept of administrative detention should be distinguished from related concepts of administrative and criminal law, such as delivery, administrative detention, and criminal procedural detention. In applying administrative detention, it is important to balance the public interest in ensuring security and the individual's rights to the liberty and security of a person. Prospects for further research could include a study of the specific features of protecting the rights of minors when applying for administrative detention to them in the Republic of Kazakhstan.

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Conflict of Interest
None.

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Адміністративне затримання поліцією

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Анотація

Актуальність. Актуальність дослідження зумовлена необхідністю вивчення правових проблем поліцейського адміністративного затримання і, як наслідок, створення ефективного адміністративно-правового регулювання цієї сфери.

Мета. Метою дослідження є оцінка правової ситуації у сфері законодавчого регулювання застосування поліцією адміністративного затримання в Республіці Казахстан та розробка рекомендацій щодо вдосконалення законодавства у цій сфері.

Методологія. Для досягнення поставленої мети були використані такі методи, як діалектичний, порівняльно-правовий, метод індукції та дедукції, аналізу та синтезу, функціональний метод.

Результати. Виявлено особливості адміністративно-правового регулювання адміністративного затримання в Республіці Казахстан. Проаналізовано правові проблеми практики застосування адміністративного затримання. Проведено відмежування терміна "адміністративне затримання" від суміжних правових термінів, таких як "доставлення", "адміністративний арешт", "кримінально-правове затримання". Сформовано наукові положення щодо вдосконалення правового регулювання процедури адміністративного затримання. Проаналізовано приклади різних країн у сфері законодавчого регулювання адміністративного затримання. Наголошено на необхідності деталізації в адміністративному законодавстві процедури адміністративного затримання, зокрема врегулювання механізму тримання в спеціальних приміщеннях осіб без визначеного місця проживання, з певними видами захворювань, а також порядку затримання неповнолітніх.

Висновки. Зроблено висновок, що запровадження цілодобового відеоспостереження в приміщеннях, де тримаються затримані особи, має велике значення для захисту їхніх прав. Підкреслено важливість дотримання балансу між суспільним інтересом у безпеці та правами особи на свободу і особисту недоторканність при застосуванні поліцією адміністративного затримання. Розроблено рекомендації щодо вдосконалення законодавства, підвищення ефективності практики застосування адміністративного затримання, а також ефективності захисту прав затриманих осіб. Результати дослідження розвивають адміністративно-правову науку та сприяють вирішенню практичних питань застосування адміністративного затримання працівниками поліції.

Ключові слова: недоторканність; правопорушник; обмеження свободи; протокол; заходи примусу.