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# NATIONAL PERCEPTION OF THE LEGAL NATURE OF THE SUSPECT DETENTION

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## Abstract

The present article analyses the legal nature of the detention of a suspect, taking into account its perception by certain representatives of the Russian legal community. Despite relatively stable historical continuity in the criminal procedural framework, the topic under consideration remains ambiguous. Even the legislation has sought to put an end to this theoretical debate, but it keeps on steadily. It is caused by the fact that, being a criminal procedure element, the detention of a suspect, in its essence, quite often begins outside the field of criminal proceedings, giving rise to government intervention in the alleged criminal law conflict. It is this factor that makes the legal community stay focused on the questions, regarding the criminal law phenomenon shed light upon in this article. Having examined the national perception of the legal nature of the suspect detention, the authors finally trace the key prerequisite for the bulk of normative and applied problems, that force the legal community to pay attention to them.



*Keywords:* Detention of a suspect, coercive measures, investigative actions

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## 1. Introduction

The modern criminal process has a dual purpose. On the one hand, it aims at fulfilling the mission that arises from state obligation to citizens, to ensure the inevitability of punishment in case any crime is committed. On the other hand, the criminal process is designed to protect an individual's rights and freedoms, regardless of what relation this person has to the alleged or proven crime. These two areas are in constant confrontation, and the criminal procedure technology is designed to find a compromise between them, to ensure achieving a high level of judicial proceedings, without turning it into a mechanism of procedural repression and a means of a person's unjustified oppression.

The stated contradiction is especially acute and specific when it comes to the application of procedural coercion measures at the stage of suspecting a person of committing a crime. Lack of information and strict decision-making deadlines that tend to encroach on individual freedom, generate a significant number of applied problems and conflict situations.

It would seem that institutions regulating measures of procedural coercion have been verified by centuries of law enforcement practice, "polished" by decades of prosecutorial supervision and judicial control. However, criminal procedural coercion issues evolve and do not cease to amaze both practitioners and theorists. One of the primary positions in the list of such problems is assigned to criminal procedural detention of a suspect. At first glance, it is traced to the most stable system of criminal procedural requirements, steadily maintaining its procedural core throughout its history. At the same time, despite such an unshakable historical continuity in the procedural framework, detention of a suspect remains an object of heated discussions. Legislation has tried its best to put an end to this theoretical debate. However, the controversy arises all over again. The Code of Criminal Procedure of the Russian Federation, which has devoted its entire chapter 12 to regulating detention, is no exception. After its adoption and entry into force, discussions broke out with renewed vigour. They affect both the essence of detention as a whole and peculiarities tackling its separate elements.

At first sight, the legal nature of a suspect's detention looks like a simple pun. However, in reality, this aspect is a hidden source of regulatory and applied problems connected with improving the efficiency of criminal procedure detention and needs to be considered.

## 2. Problem Statement

First and foremost, the problem of understanding the essence of a suspect's detention lies in determining the "procedural-clan" affiliation with the concept of "investigative actions" or "measures of procedural coercion". Of course, the current Code of Criminal Procedure of the Russian Federation seeks to reduce the grounds for this issue to zero, turning it into a part of the legal science history. Thus, legally having enshrined the concept of detention through the prism of a procedural coercion measure in article 5 of the Code of Criminal Procedure of the Russian Federation, as well as placing chapter 12 "Detention of a suspect" into the fourth section, entitled "Measures of procedural coercion", the legislation clearly defined that detention should be classified as a measure of criminal procedural coercion. However, presenting detention of a suspect as an independent element in Section Four of the Code of Criminal Procedure of the Russian Federation. The legislation did not state its essence, as bringing this procedural

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element to the fore in chapter 12, it failed to ascribe detention to the hierarchy of either "preventive measures" or "other coercive measures. "In our opinion, it is this detail that does not allow the criminal procedure science unconditionally adopting the legislative statement that the detention of a suspect is only a measure of procedural coercion.

The circumstances indicated by us are a prerequisite for the idea that in reality, criminal procedural detention cannot be straightforwardly attributed to any of the procedural institutions.

## 3. Research Questions

The issue of transforming the national perception related to the legal nature of a suspect's detention is more relevant than ever, as has been testified to by recent publications by Alexandrov, Bulatov, Bezrukov, Grigoryev, Zaitsev, Kovtun, Popkov, Tomin, Tsokolova et al. Scientists are actively searching for new scientific approaches to this debatable and vague criminal procedural phenomenon and offer original solutions. In this connection, the subject of this article is determined by the study of:

3.1. Norms of criminal procedural law and existing law enforcement practice on the detention of a suspect;

3.2. Scientific literature studying the detention of a suspect from different angles.

## 4. Purpose of the Study

This work aims to study opinions on the national perception of the legal nature of a suspect's detention.

## 5. Research Methods

The methodological stem of the present study is rooted in a dialectical investigation of the surrounding reality based on many scientific methods (analysis and synthesis, the method of formal logic, induction and deduction, analogy and hypothesis, formal legal, logical and legal, systemic – structural methods).

## 6. Findings

The opinion that the detention of a suspect is an investigative action is still disputable. The reason for such discussions is the legislative position regarding the attribution of a suspect's detention to investigative actions, expressed in the text of Article 119 of the Criminal Procedure Code of the Russian Soviet Federative Socialist Republic (after this – the RSFSR), but not wholly forgotten. Art. 119 of the Code of Criminal Procedure of the RSFSR says:

If there are signs of a crime for which a preliminary investigation is necessary, the inquiry body initiates a criminal case and, guided by the rules of the criminal procedure law, carries out urgent investigative actions to establish and fix traces of the crime: inspection, search, seizure, examination, detention and interrogation of suspects, interrogation of victims and witnesses (Lebedev & Bozhiev,

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1997, p. 182). According to the extract above, detention of a suspect was attributed to the class of investigative actions, and its essence was therefore defined precisely from this angle (as put forth by the legislation).

Answering the question why legislation attitude towards the nature of detention has changed should perhaps be built on the essence of criminal proceedings, where the idea of protecting the rights and freedoms of an individual is attached vital significance today, so it must be assumed that its compulsory party should address the detention to the law enforcement practice.

Given this position of legislation, many scholars dared to point out that the discussion on the procedural nature of detention could be over (Popkov, 2007). However, such opinions did not find further support. Rossinsky (2015) claims that:

Today, because of the clear position of the legislator described above, including the detention of a suspect into the system of procedural coercive measures, this scientific discussion has lost its relevance to a certain extent. At sone point, we even attempted to make a somewhat harsh statement on this matter regarding referring to the detention of a suspect in terms of an investigative action as a clear anachronism. Nevertheless, further studies have led us to the belief that there is some truth in interpreting the detention of a suspect as an investigative action given the number of circumstances requiring deeper understanding (p. 77).

Considering the detention of a suspect as an investigative action, the authors advocating this approach distinguish searching and cognitive orientation in the range of activities characteristic of a suspect's detention, and connect the goals of the detention, primarily with collection and consolidation of the most crucial evidence.

Professor Shafer (2002) was convinced that "the determinant sign of an investigative action typifying detention is the implementation of cognitive activity and obtaining evidence-based information" (p. 91). He expressed his regret that the legislator ignored this circumstance by indicating that

The evidentiary value of a suspect's detention is that a person is frequently caught at the time the crime was committed and this evidence is recorded in the detention protocol as its basis, which results in the protocol acquiring evidentiary value. However, the Code of Criminal Procedure of the Russian Federation considers detention only as a measure of procedural coercion (Sheyfer, 2004, p. 37).

Kuznetsov and Kovtun (2004) points to the signs of an investigative action in the process of detention: Since the detention protocol indicates specific reasons for the detention, the results of a personal search of the detainee and his/her (possible) explanations, this protocol may well be perceived (including the court) as an admissible source of evidence in the case. In this regard, detention in the Russian criminal process is often characterized as an independent investigative action (p. 36). Professor Gulyaev has the same opinion on this issue (Verina & Mozyakova, 2004).

In addition to the given arguments, Kovtun contemplates the legal nature of detention in a dualistic projection, claiming that the detention of a suspect in the Russian criminal process is both a measure of procedural coercion, the essence of which is short-term deprivation of the suspect's freedom, and an investigation action aimed at collecting, checking and evaluating evidence in the case (Aleksandrov et al., 2003; Sushkin, 2005).

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Levy (1990) justifies the possibility of considering detention as a coercive measure from the criminal procedure and an investigative action for criminalistics (pp. 141–142). Other authors also admit the heterogeneity of the legal nature of a suspect's detention, noting that the real nature of the detention can be disclosed only for different legal sciences (Averyanova et al., 2013; Grigoryev, 1999; Smakhtin & Tolstoluzhinskaya, 2012; Troynina, 2018).

Rossinsky (2019) expressed the general essence of a suspect's detention in four different projections: under the restricted procedural approach, it is defined as a measure of criminal procedural coercion; under the broad procedural approach, it is defined as a procedural combination; under the forensic approach, the detention of a suspect is understood as a tactical operation; in the framework of the criminal executive approach, it is defined as a combination of security measures".

## 7. Conclusion

In our opinion, it is precisely the "multifaceted" nature of detention that brings about the bulk of normative and applied problems that occur at present when applying this criminal procedure element. Being a strictly criminal procedural phenomenon (for purposes, motives and fundamental procedural aspects), the detention of a suspect, in its essence, quite often begins outside the field of criminal proceedings, giving rise to government intervention in the alleged criminal law conflict. The point is that in the structure of criminal procedure detention there are provisions that poorly fit into the format of merely criminal procedural regulation because they appear in a different sphere and create premises for initiating a criminal case and preliminary investigation themselves.

That is why while, upon resorting to other procedural coercion measures, temporary peculiarities of shifting from factual relations between the coercing and coerced into purely jurisdictional relations might not be as strikingly noticeable. The latter is attached considerable significance to in terms of the criminal detention.

Moreover, the central part of the detention process in the area of other structures' responsibility other than the preliminary investigation bodies. Due to which the investigator and the inquirer find themselves in a sector bordering on various non-procedural branches that also show their ordered attitude towards the detention.

The existing up-to-date interpretation of a suspect's detention shapes a dualistic approach to handling its nature among the legal community, which hinders resolving many burning problems related to this legal institution.

These circumstances compel the legal community to repeatedly pay attention to the provision on the need for scientific research, which should ultimately resolve subtle regulatory and applied problems, increase the effectiveness, and put an end to the discussion on the legal nature of criminal procedure detention.

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