

ҚЫЛМЫСТЫҚ ПРОЦЕСС ЖӘНЕ КРИМИНАЛИСТИКА УГОЛОВНЫЙ ПРОЦЕСС И КРИМИНАЛИСТИКА

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Pre-charge detention of individuals suspected of terrorism in the UK and Republic of Kazakhstan: comparative study

Abstract: The article deals with extended pre-charge detention of individuals suspected of terrorism in the UK and the Republic of Kazakhstan. In both states a person suspected of terrorism can be held in the custody without charge longer than for other offences to allow relevant evidence to be obtained, preserved, analysed and examined provided that the warrant of further detention is issued by a judge. The article considers whether or not the pre-charge detention longer than 14 days is applicable in the Republic of Kazakhstan. Furthermore, the author examines whether or not there are issue of incompatibility of extended detention with European Convention on Human Rights.

Key words: pre-charge detention, detention without charge, terrorism, Terrorism Act 2000, extension of detention, custody, human rights, the Republic of Kazakhstan, the UK.

In the Republic of Kazakhstan (RK) a person suspected of committing a crime is to be detained in accordance with Article 132 of Criminal Procedure Code (CPC). After 72 hours of detention a detainee must be released without charge or charged (released on bail or put in custody). Bill of New CPC (Article 129 (5)) also envisages 72 hours of pre-charge detention. In exceptional circumstances, if there are grounds for further detention of a suspect in a custody, a suspect is to be put in a custody up to 10 days for indictable offences and up to 30 days for certain type of offences (Articles 168, 169, 171, 233-237, 241 of the Criminal Code of the RK), including terrorism, until being charged [1]. If a suspect by 10 or 30 day is not charged he/she must be released (Article 142 (1) CPC). While in the UK (United Kingdom) the pre-charge detention up to 5 days (then it has been extended up to 14 days) is available since 1974 [2], in the RK the pre-charge detention up to 30 days became available in 2012. The reasons for extension relate to the specificity of investigation, the complexity of gathering and obtaining evidence with respect to terrorism offences [3]. Traditional 96 hours of detention in the UK and 72 hours in the RK may not be sufficient to gather evidence [4] as the gathering and obtaining of evidence is time-consuming involving considerable resources [5, 6], including enquires to be taken in different jurisdictions (the terrorist network is often international and enquiries taken in different jurisdictions are time-consuming as this involves translation and time to await response), establishment of a suspect's identity (terrorists often use forged or stolen identity documents for the purpose of conspiracy) [7], examination and decryption of vast data (terrorists use sophisticated encryption methods, such as steganography and cryptography) [8] and forensic examinations (the forensic requirements in modern terrorist cases are far more complex and time consuming than in the past, particularly where there is the possibility of chemical, biological, radiological or nuclear hazards) [9]. Although in most cases «arrests are likely to follow months of investigation and surveillance» [10, para 35], and thus sufficient evidence for charge without delay should be available and figures in the UK demonstrate that since 9/11 only eight [11] have been charged after 14 days, public safety and difficulties associated with gathering, analysing, preserving and obtaining the evidence remain the main justifications for extended pre-charge detention. In addition,

14 days pre-charge detention maintained by the PFA (Protection of Freedoms Act 2012) reflects anticipation of further development of terrorist threat as in the future 14 days detention might not be sufficient [12–14].

According to English law, while the pre-charge detention for non-terrorist offences is 96 hours after which a person must be either released on bail or charged [15, 16], for terrorist offences the pre-charge detention can be extended up to 14 days to allow relevant evidence against him/her to be obtained, preserved, analysed and examined [17, Schedule 8 para 32 (1a)]. The warrant of further detention after 48 hours is issued by a court, which may shorten the period of detention if satisfied that there are circumstances that would make it inappropriate for the specified period to be as long as seven days [17, Sch 8 para. 29 (3a)]. Unlike in the UK, in the RK a person after 72 hours expires must be either charged or released irrespectively the type of offence, however a charge may be delayed for terrorist offences up to 30 days. The warrant of further detention after 72 hours is issued by a court twice (second time — after a person is charged) (Article 142 (1) CPC).

To date, according to Home Office's figures since the 9/11 attacks the total number of arrests for terrorism-related offences is 2291 (under s. 41 of Terrorism Act and other related legislation [6]), among which 1230 (or 54 % approx.) suspects were released without charge [11], 512 (22 %) were charged with terrorism-related offences, 322 (14 %) were charged with non-terrorism related offences and 227 (10 %) were released on alternative actions (include cautions for non-terrorism offences, transfers to immigration authority, transfers to Police Service for Northern Ireland, those bailed awaiting charge and those dealt with under mental health legislation). Of the 512 charged with terrorism related offences 312 have been convicted [11]. The majority among 930 released (arrested under s. 41 of Terrorism Act 2000) without charge were held in custody during one day (509). Eight suspects were detained for up to 14 days and three suspects up to 28 days. Among those released only Mohamed Raissi's appeal against his arrest followed by detention (41 hour) succeeded on the grounds that there was no reasonable suspicion for arresting him under s. 41 of Terrorism Act (TA), yet no compensation was awarded [18, 19]. Among 559 charged after detention, 136 (the largest number) were charged after the first day of detention, 13 suspects on the fourteenth day, three after 20 days and three by the twenty eighth day of detention [11]. The data suggest that there is no urgent need for pre-charge detention for more than 14 days. The most (701 out of 1623) have been either released without charge or charged with terrorism-related offences on the first day of the detention. Of only 11 suspects since 9/11 who were held beyond 14 days, three were released without charge and eight charged with terrorism related offences as a result of Operation Overt [20].

In RK, unlike in the UK, there is no data on the pre-charge detention for terrorist offences. The Inter-agency Report on Investigation (Form 1-E) includes only the number of a detainee released without charge due to insufficiency of evidence to charge [21]. For instance, in 2009 and 2011 6 (3 each year) were released without charge, in 2010, 2012 and 2013 (from January to September) none released [21]. The vast majority were released due to absence of grounds for custody (Article 132 of CPC); in 2009 – 23 were released, in 2010 – 12, 2011 – 6, 2012 – 3, 2013 (from January to October) — 6 [21, 22]. To determine whether or not 30 days pre-charge detention is effective and proportionate in the RK due to absence of data on the number of persons detained for terrorist-related offences without charge is difficult task. By contrast, in the UK the pre-charge detention is subject to Parliament's and Human Rights organizations' (Liberty, Amnesty International) scrutiny. Being repeatedly the focus of the Counter-terrorism Review and constant critique of the Joint Committee on HR, the Equality and HR Commission [22], Liberty [23] and Amnesty International [24], the pre-charge detention has been subject to two extensions (from 7 to 14 and then to 28 days) and a reduction (from 28 to 14 days). In the aftermath of the 9/11 attacks, the period was doubled and grounds for the extension remained the same [17]. After the 07 July London bombings, 14 days increased to 28 days of detention [25, s. 23]. Finally, the period reverted to 14 days whilst introducing a power for the Secretary of State to increase the limit up to 28 days for a period of three months in circumstances where Parliament is dissolved [26, s. 57].

The issue arising out of application of extended pre-charge detention is its incompatibility with Article 5 of the European Convention on Human Rights (ECHR). While the pre-charge detention is compatible with Article 5(1), 5(2) and 5(3) the issue of incompatibility may arise regarding «closed materials». The analysis demonstrates that the pre-charge detention is compatible with Article 5(1), 5(2) of ECHR. Article 5(1) of ECHR prohibits deprivation of liberty except in certain cases and in accordance with due process prescribed by the national law. In other words, the detention of a person is permitted pursuant to Article 5(1)(c) of ECHR if there is reasonable suspicion that he has committed a crime, or it is necessary to prevent him from doing so. In this respect, the detention of a person reasonably suspected of being a terrorist followed

under s. 41 of TA without sufficient evidence necessary for charging is lawful. In *Brogan*, European Court on Human Rights (ECtHR) clarifies: «Article 5(1)(c) does not presuppose that the police should obtain sufficient evidence to bring charges, either at the point of arrest or while the applicants were in custody» [27, para 2]. Thus, the arrest and subsequent detention under Article 41 of TA is compatible with Article 5 (1)(c) of ECHR. In the light of Article 5(2) of ECHR (everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him), the police are required to inform a detainee of the reasons for his detention, about any charge if it is forthcoming [28]. Strasbourg jurisprudence clarifies that the detainee must be told «the essential legal and factual grounds for his arrest» [29, 30], allowing thereby for scant reasons provided to be sufficient [28, p. 236]. While being notified that the reason for detention is suspicion of involvement in terrorism might not be sufficient [28] itself as no detail is provided, full disclosure is not required and the Domestic court [31] and ECtHR [30, paras 76–7; 32, para 56] are unanimous on that, particularly regarding terrorist offences [33]. In *Chraidi*, for instance, ECtHR took into account «difficulties intrinsic to the prosecution of offences committed in the context of international terrorism», and partly for this reason did not rule against pre-trial detention for more than five years [28, p. 236].

While extended pre-charge detention is compatible with Article 5(1), 5(2) of ECHR the issue of incompatibility may arise due to non-disclosure of materials against a detainee. This challenge derives from the «sole and decisive rule» introduced by the Strasbourg Court in *Doorson* [34] in the light of A's Grand Chamber decision [35]. Although the application of «sole and decisive rule» is not appropriate for the common law system, the violation of ECHR might arise because there are insufficient procedural rights for a detainee to challenge closed materials. In *A* [35], the ECtHR (the Grand Chamber) ruled that the detention [36, s. 23] solely or to a decisive degree based on closed materials when the detainer is deprived an opportunity to challenge allegations against him/her within the meaning of Article 5 (4) of ECHR [37] is in breach of Article 5 (4) of ECHR. However, if a detainee had been given access to closed materials (specifically reflected on open materials) without revealing detail or sources of evidence on which allegations were based, he would have been able to challenge effectively reasonableness of suspicion against him [35]. This is the same position the House of Lords has taken in *AF v Home Secretary* [38] by ruling against non-derogating control orders solely based on closed materials. The decision appears reasonable not only because the decision to impose order on those suspected of terrorism was based on closed material, but also because the participation of the Special Counsel was not sufficiently effective to challenge allegation without instructions of a detainee who had no access to evidence and hence was not able to refute them [35]. However, although safeguards against arbitrary detention might not be sufficient, the non-disclosure of specified information in hearings regarding extension of pre-charge detention is compatible with Article 5 (4) of ECHR [12, 31, 39]; firstly, because a detainee is notified in advance about reasons for his/her further detention with or without revealing sensitive information which for instance may make apprehension, prosecution and conviction more difficult if a person is alerted [17, para. 34 (2)(d).], and thus a person by knowing grounds for extension of his/her detention can «make oral or written representations to the judicial authority about the application» [17, para 33(1)(a)]; secondly, although a detainee or his/her representative on application made by the police or CPS in accordance with Paragraph 34 Schedule 8 of TA may be excluded from the hearing regarding the extension of detention, a judge ensures that the withholding of information is absolutely necessary and an extension of detention should be granted [31, para 22]. In the light of *Rowe and Davis v UK* [40], judicial assessment procedure adopted in the UK as regards the necessity of the non-disclosure of «sensitive materials» provides sufficient procedural safeguard to ensure fairness and protection of the right of detainee.

Despite massive critique relating to Human Rights issues, In *Duffy*, the domestic court (England and Wales) ruled that extended pre-charge detention is compatible with the Convention [41] as Schedule 8 of Terrorism Act 2000 ensures that substantive and adjectival rights of a detainee enshrined in European Convention on Human Rights regarding his detention and further extension are observed. A detainee, firstly, must be released within 48 hours [17] after arrest under s. 41 of Terrorism Act 2000 unless his further detention is necessary to preserve, gather, obtain and analyse evidence [17, Schedule 8, para. 36 (3)]. Secondly, a detainee prior to the hearing regarding extension of his detention must be notified about the grounds and the time when the hearing takes place [17, Schedule 8, para. 31], and he, in this respect, has an opportunity to make «oral or written representations to the judicial authority about the application and to be legally represented at the hearing» [17, para. 33 (1)]. Although a detainee or a person representing him may be excluded from the hearing regarding «sensitive materials» [17, Schedule 8 para. 33 (3)], a judge critically assesses whether closed materials [28] should not be disclosed, what impact non-disclosure has on a detainee and public interests [17, Schedule 8, para. 34 (1)]. In the absence of a detainee, there are various tools available

for a judge to ensure adversarial procedure and equality of arms is preserved [41, para 35]. Finally, there is no authority that expressly supported that a detainee must be charged before 28 days [41, para 35]. ECtHR, for instance, in *Wemhoff* [42], did not rule against his detention without charge in excess of two years, thereby confirming that there is no relation between charging and the length of detention [42, para. 36]. The Committee on Legal Affairs and HR of the Parliamentary Assembly of the Council of Europe, despite «serious doubts» about compatibility of extended pre-charge detention, acknowledged [43] that «the Convention does not require a formal charge to be taken within a specific time, but only sets out procedural requirements that must be fulfilled during any detention prior to conviction» [43]. In addition, the comparison provided by Liberty criticising “unprecedented” length [44] of pre-charge detention among other states with similar threats of terrorism did not consider particularities of their national counter-terrorism law [41, para. 36] and thus cannot make a strong argument against extended pre-charge detention.

Although, Terrorism Act 2000, aimed to strengthen anti-terrorism law against international threat of terrorism, introduced judicial oversight as it required by the European Convention on Human Rights [17, s. 29 (3a) of Schedule 8], the judicial supervision does not provide sufficiently strong and adequate safeguard against arbitrary detention [45]. To date, three people held more than 14 days have been released without any charge [11]. For instance, P. who was arrested by the police on suspicion of involvement in an aircraft liquid bomb plot was released on the fourteenth day without charge with no disclosure of materials against him, explanation or apology [46]. The police, to carry out an arrest and further detention, are required to have only reasonable suspicions, which is certainly less reliable than evidence. However, the House of Lord in *Raissi* established higher requirements regarding reasonable suspicions than those under Prevention of Terrorism Act 1984, which certainly provide extra safeguards against arbitrary detention [19]. Nonetheless, a strict test for reasonable suspicions might not prevent the detention of the innocent as a judge is only required to be satisfied that further detention is necessary for gathering, analysing and preserving evidence and that an investigation is carried out expeditiously and diligently [17, s 32 (1)(b)]. In most cases, «it can be established even if a detainee is innocent» [46]. In Operation «Overt», for instance, five persons detained up to 28 days without charge were subsequently «cleared of any involvement of terrorism» [47]. Therefore, there is a need for both thorough judicial scrutiny when the warrant of further detention is authorised and compensation to be granted if a person is released without charge or on alternative actions, otherwise anyone is potentially under risk of being detained up to 14 days — particularly vulnerable are Muslims [48].

The analysis of extended pre-charge detention in the UK reveals arguments against and for extended pre-charge detention. Disproportionality and lack of adversarial procedure in terms of granting the extension are the main arguments against. Those criticising «unprecedented» length of extended pre-charge detention do not take into account that the European Convention on Human Rights is not concerned with the law itself rather how the law is applied [40, para. 31], whether or not the applicant’s rights in the light of ECHR are observed and guaranteed by the law [43, p. 241]. The Convention preserves the Contracting party’s right to legislate and determine the level of protection it deems appropriate provided that the rights enshrined in ECHR are observed. Therefore, the Convention does not specifically define the period of time within which a detainee can be held without charge, nor does the Strasbourg jurisprudence provide clear reference, thereby preserving a state’s margin of appreciation. In this respect, TA provides for substantive and adjective rights for the detainee as is required under ECHR. The detainee is informed about grounds for his detention (Article 5(2)) [41, p. 236], he is brought before a judge or other officer authorised by law within 48 hours after arrest (promptly as it is required by Article 5(3)) and he has the right to «make oral or written representations to the judicial authority about the application» [17, Schedule 8 para. 33(1)(a)] regarding the allegation against him and the extension of the detention. Although a judge may order withholding of «sensitive» information [40] which might undermine adversarial procedure of hearing regarding the extension of the detention and thus the detainee’s right to a fair trial (Article 6(1)), he ensures that withholding is absolutely necessary and the extension of detention should be granted. In this respect, ECtHR acknowledged that judicial assessment of necessity of non-disclosure ensures fairness and guarantees protection of the detainee’s (accused) rights [40]. In addition, a detainee, according to Schedule 8 of Terrorism Act 2000, has a right to legal advice [17, Schedule 8, para. 6 (2)(c)] as it is required by Article 6 (3)(c) of ECHR. Although an officer at rank of superintendant may authorise delay of access to a solicitor [17, Schedule 8, para. 8 (1) (b)], in the interests of the investigation, not drawing adverse inference from silence (failure to mention facts) by an accused prior to being legally assisted in accordance with the CJPOA guarantees fairness at the trial.

On the other hand, safeguards against the arbitrary detention are not sufficient as the detention of innocent people has had place. To date, five persons detained between 14 to 28 days in Operation «Overt» were

subsequently «cleared of any involvement of terrorism» [47]. The judicial involvement in this regard does not provide 100 % protection against the detention of the innocent as a judge is only required to be satisfied that further detention is necessary for gathering, analysing and preserving evidence and an investigation is carried out expeditiously and diligently [17, s. 32 (1)(b)]. In most cases, «it can be established even if a detainee is innocent» [46]. A judge relies on information provided by the police based on reasonable suspicions, which are not the same as reliable evidence and might be proved wrong after thorough examination and analysis. However, the detention of the innocent is unavoidable, particularly in respect to terrorism, when prompt and rapid arrest is vital for the prevention of the act of terrorism from occurrence in the name of national security at the expense of individuals' liberty even if suspicions are not sufficient. In this respect, there must be compensation paid if a person is released without charge; otherwise, the door is open for the abuse of power by the police.

To conclude, the comparative study demonstrates that both in the UK and the RK a person reasonably suspected of being terrorist can be detained without charge for longer period than a person for non-terrorist offences to allow relevant evidence against him/her to be obtained, preserved, analysed and examined. Analysis reveals proportionality of 14 days pre-charge detention provided that a detainee's rights are observed and the compensation is granted if a person released without charge. To consider whether or not 30 days pre-charge detention in the RK is proportionate and effective is difficult as there is no data on the number of detainee released without charge for terrorist related offences. In addition, terrorism is relatively new phenomenon in the RK compared with the UK. Nevertheless, the CPC provides for rights necessary to prevent detention of an innocent and abuse of power.

References

- 1 On amendments and additions to some legislative acts on the penal system, 2012 – Закон РК «О внесении изменений и дополнений в некоторые законодательные акты Республики Казахстан по вопросам уголовно-исполнительной системы» от 18 января 2012 г.
- 2 Prevention of Terrorism Act 1974 (Temporary Provisions) available at <http://www.legislation.gov.uk/ukpga/1974/56/contents/enacted> accessed 27 May 2013.
- 3 *Horne A., Berman G.* Pre-charge detention in Terrorism Cases // Library of House of Commons. — 2012. — P. 3–5.
- 4 *Summers J.* Comment: Down to the wire // Law Society Gazette. — 2008. — 7. — P. 21–23.
- 5 Select Committee on Home Affairs Minutes of Evidence, 11 October 2005 available at [www/publications.parliament.uk/pa/cm200506/cmselect/cmhaff/515/5101108/htm](http://www.publications.parliament.uk/pa/cm200506/cmselect/cmhaff/515/5101108/htm) accessed 27 May 2013
- 6 *Samuels A.* Public Protection and Personal Liberty: The Balance and Effectiveness of the Criminal Law // Criminal Law and Justice Weekly. — 2007. — 903 (51). — P. 2–7.
- 7 *Grossman G.* ID Cards – Exposing Criminality or Invading Privacy? // NLJ. — 2005. — 155 (7204). — P. 65–71.
- 8 *Ackerman B.* Before the Next Attack: Preserving Civil Liberties in an Age of Terrorism – CN: London: Yale University Press, 2006. — 120 p.
- 9 <http://en.academic.ru/dic.nsf/enwiki/1475797> accessed 27 May 2013
- 10 *Lord Lloyd B.* Inquiry into Legislation against Terrorism (1996), Cm 3240, 1, 35. London: HMSO; Liberty, Charge or Release: Terrorism Pre-Charge Detention available at www.liberty-human-rights.org.uk/policy/reports/comparative-law-study-2010-pre-charge-detention.pdf accessed 30 May 2013.
- 11 www.gov.uk/government/organisations/home-office/series/counter-terrorism-statistics accessed 23 June 2013
- 12 Review of counter-terrorism and security power, Home Office, 26 Jan. 2011 available at www.gov.uk/government/uploads/system/uploads/attachment_data/file/97972/review-findings-and-rec.pdf accessed 30 June 2013
- 13 *O’Cinneide C.* Controlling the ‘Gorgon’ of State Power in the State of Exception: A Reply to Professor Tushnet // International Journal of Law in Context. — 2007. — 3 (4). — P. 289–296.
- 14 Operation of police powers under the TA 2000 and subsequent legislation available at www.gov.uk/government/publications/operation-of-police-powers-under-the-terrorism-act-2000-and-subsequent-legislation-quarterly-update-to-september-2012-2 accessed 2 June 2013
- 15 Police and Criminal Evidence Act 1984 available at <http://www.legislation.gov.uk/ukpga/1984/60> accessed 1 June 2013
- 16 *Zander M.* The Police and Criminal Evidence Act 1984 – 5th edn – London: Sweet & Maxwell, 2005. — 460 p.
- 17 Terrorism Act 2000 as amended by Protection of Freedoms Act 2012 available at <http://www.legislation.gov.uk/ukpga/2000> accessed 1 June 2013
- 18 Police and Criminal Evidence Act 1984 available at <http://www.legislation.gov.uk/ukpga/1984/60> accessed 1 June 2013
- 19 *Raissi v MPC* [2008] EWCA Civ 1237 available at <http://legalresearch.westlaw.co.uk> accessed 27 May 2013
- 20 *Tornton S., Lucy M.* Community Cohesion in High Wycombe; A case study of Operation Overt // Policing. — 2007. — 1 (1). — P. 57–61.
- 21 Form 1-E Interagency report on investigation available at <http://pravstat.prokuror.kz/rus> accessed 22 October 2013
- 22 HR Review, 2012 available at www.equalityhumanrights.com/uploaded_files/humanrights/ehrc_hrr accessed 4 June 2013
- 23 www.liberty-human-rights.org.uk accessed 5 June 2013
- 24 www.amnesty.org accessed 5 June 2013
- 25 Terrorism Act 2006 available at <http://www.legislation.gov.uk/ukpga/2006/11> accessed 5 June 2013

- 26 Protection of Freedoms Act 2012 available at <http://www.legislation.gov.uk/ukpga/2012/9/contents> accessed 9 June 2013
- 27 Brogan v UK [1989] 11 EHRR 117 available at <http://legalresearch.westlaw.co.uk> accessed 7 June 2013
- 28 *Dickson B.* Article 5 of the ECHR and 28 – day pre-charge detention of terrorist suspects // Northern Ireland Legal Quarterly. — 2009. — 60 (3). — P. 231–241.
- 29 Fox, Campbell and Hartley v UK [1990] 13 EHRR 157 available at <http://legalresearch.westlaw.co.uk> accessed 7 June 2013
- 30 Murray v UK [1996] 22 EHRR 29 available at <http://legalresearch.westlaw.co.uk> accessed 8 June 2013
- 31 Ward v Police Service of Northern Ireland [2007] UKHL 50 available at <http://legalresearch.westlaw.co.uk> accessed 10 June 2013
- 32 *Dikme v Turkey* App No 20869/92, 11 July 2000 available at <http://legalresearch.westlaw.co.uk> accessed 10 June 2013
- 33 *Chraidi v Germany* [2006] 47 ECHR 47 available at <http://legalresearch.westlaw.co.uk> accessed 12 June 2013
- 34 *Doornon v Netherlands* [1996] 22 EHRR 330 available at <http://legalresearch.westlaw.co.uk> accessed 12 June 2013 accessed 14 June 2013
- 35 ECtHR (Grand Chamber) Case Analysis (2009) 49 EHRR 29; 26 BHRC 1 available at <http://legalresearch.westlaw.co.uk> accessed 13 June 2013
- 36 Anti-Terrorism, Crime and Security Act 2001 abolished by Prevention of Terrorism Act 2005 available at <http://www.legislation.gov.uk/ukpga/2001/24/contents/enacted> accessed 10 June 2013.
- 37 *Shops v Germany* App no 25116/94, judgement of 13 February 2001, citing *Brandstetter v Austria* App no 11170/84, judgement of 28 August 1991
- 38 *Home Secretary v AF (No. 3)*, [2009] UKHL 28; [2009] 3 All ER 643 available at <http://legalresearch.westlaw.co.uk> accessed 15 June 2013
- 39 *Sher v Chief Constable of Greater Manchester* [2010] EWHC 1859 available at <http://legalresearch.westlaw.co.uk> accessed 16 June 2013
- 40 *Rowe and Davis v UK* [2000] 30 EHRR 1 available at <http://legalresearch.westlaw.co.uk> accessed 20 June 2013
- 41 *In the Matter of an Application for Judicial Review by Colin Duffy and Other* [2011] NIQB 16 available at <http://legalresearch.westlaw.co.uk> accessed 20 June 2013
- 42 *Wemhoff v Germany* [1968] 1 EHRR 55 available at <http://legalresearch.westlaw.co.uk> accessed 23 June 2013
- 43 <http://assembly.coe.int/Main.asp?link=?/Documents/WorkingDocs/Doc08/EDOC11725.htm> accessed 13 June 2013.
- 44 Terrorism pre-charge detention. Comparative Law study available at www.liberty-human-rights.org.uk/policy/reports/comparative-law-study-2010-pre-charge-detention.pdf accessed 30 May 2013.
- 45 *Garty C.* 11 September 2001, Counter-terrorism and the Human Rights // Journal of Law and Society. — 2005. — 32. — P. 18–20.
- 46 *Bajwa A.L.* Pre-charge detention in terrorism cases // New Law Journal. — 2006. — 156 (7245). — P. 157–162.
- 47 *Bajwa A.L.* Public/Human Rights: Terrorising the innocent // New Law Journal. — 2010. — 160 (7412). — P. 159–162.
- 48 *Mythen G.* I am a Muslim, but I am not a Terrorist: victimization, risky identities and the performance of safety // Br J Criminol. — 2009. — 49 (6). — P. 736–739.

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Қазақстан Республикасы және Ұлыбританияда кінә тақпай лаңкестік әрекеттерге қатысқан тұлғаларды қамауға алу тәртібі: салыстырмалы талдау

Мақалада қазақстандық және ағылшын заңнамасы бойынша лаңкестік әрекеттерге қатысты тұлғаларды қамауға алу және қамауда ұстау процессуалдық тәртібі қарастырылды. Қазақстан Республикасында терроризмге күдіктілерді 14 тәулікке дейін қамауға алу бойынша ағылшын тәжірибесінің қажеттілігі мен тиімділігін анықтау мақсатында қылмыстық іс жүргізуші органдарының тәжірибесі талданды. Сондай-ақ осы норманың Адамдар құқықтары бойынша Еуропалық конвенциясына сәйкестігі зерттелді.

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Задержание лиц, подозреваемых в терроризме, без предъявления обвинения в Великобритании и Республике Казахстан: сравнительный анализ

В статье рассмотрен процессуальный порядок задержания и содержания под стражей лиц, подозреваемых в терроризме, по казахстанскому и английскому законодательству. Приведен анализ практики органов, ведущих уголовный процесс, с целью выявления целесообразности и эффективности применения в Республике Казахстан английского опыта по задержанию лиц, обоснованно подозреваемых в терроризме, сроком до 14 суток. Исследовано соответствие применяемой нормы требованиям Европейской конвенции по правам человека с целью выработки рекомендаций по совершенствованию порядка содержания под стражей лиц без предъявления обвинения в Республике Казахстан.