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*e-mail: nata.revenko.70@mail.ru**RESTRICTIONS AND PROHIBITIONS IMPOSED ON THE ACCUSED
(SUSPECT) WHEN ELECTING HOUSE ARREST AS A MEASURE OF
PRESTRESSION****Abstract.**

The article provides an analysis of the restrictions and prohibitions imposed on the accused (suspect) when choosing house arrest. The problems arising during the application of this preventive measure are revealed, foreign experience is investigated, as a result of which the author proposes additions and amendments to the criminal procedure law.

The measure of procedural coercion in the form of house arrest is most adequate to the socio-economic level of development of society, corresponds to the principle of individualization of the application of preventive measures, taking into account data on the personality and nature of the committed act, provides prerequisites for the lawful behavior of the subjects of criminal procedural legal relations subject to criminal prosecution.

The affiliation of house arrest to preventive measures in criminal proceedings makes it dependent on the general goals of this institution. Consequently, house arrest as a preventive measure primarily ensures the proper behavior of the accused (suspect) in the criminal process.

In our opinion, house arrest is a synthesis of several types of preventive measures, the origins of which should be sought in the theory of criminal procedure.

A scientific analysis of the legal relations arising from the application of house arrest leads to the conclusion that it is necessary to reform not only the norm governing house arrest, but also the entire set of norms of the criminal procedure law. In this regard, the procedural procedure for the use of investigative actions – listening and recording of negotiations, interception of messages, including the procedural mechanism for transmitting the results of the interception by the contractor to the body carrying out the criminal process, are subject to improvement.

Key words: preventive measure, house arrest, suspect, accused, citizens' rights, restriction, prohibition.

Introduction.

The affiliation of house arrest to preventive measures in criminal proceedings makes it dependent on the general goals of this institution. Consequently, house arrest as a preventive measure primarily ensures the proper behavior of the accused (suspect) in the criminal process.

Some authors reasonably associate the goals of preventive measures with the objectives of the entire criminal process and see them in preventing such behavior of the accused (suspect) which would hinder the achievement of the objectives of criminal proceedings. In relation to the ultimate goals of the proceedings, such a place of the goals of preventive measures is beyond doubt.

Thus, the general purpose of house arrest is to ensure the proper behavior of the accused (suspect) in the criminal process directly to solve the tasks of criminal proceedings.

Taking into account the variety of preventive measures, as well as their difference from each other, let us say that house arrest has its own specific purpose, the implementation of which is directly related to this preventive measure. In our opinion, the special purpose of the use of house arrest as a preventive measure is the possibility of leaving the accused at liberty by preliminary

restriction of his freedom and personal inviolability without prejudice to the interests of the body conducting the criminal process.

At the same time, by “the possibility of leaving the accused at liberty” we mean the existence of such conditions when complete isolation of a person is not necessary or impractical, taking into account age, health status, marital status and other circumstances, that is, it applies only to a certain category of accused persons. By the interests of the body conducting criminal proceedings, we mean not just solving the tasks of criminal proceedings, but solving them by optimally restricting the rights of the accused (suspect) from illegal and unjustified coercion. After all, the realization of the constitutional rights of the individual in the criminal process takes place by setting the limits of the inevitable by the body conducting the criminal process.

To achieve the goals of criminal proceedings, the criminal procedure law allows the use of state coercive measures. In particular, a person accused or suspected of committing a crime may be subject to preventive measures that limit his rights and freedoms. So, in part 7 of Art. 107 of the Code of Criminal Procedure of the Russian Federation establishes prohibitions and restrictions that the court can establish when it comes to the conclusion that it is possible not to apply a preventive measure in the form of detention, but to choose house arrest.

The court may restrict the following rights and freedoms:

the accused (suspect) may have a limited right or be completely prohibited from leaving the residential premises in which he lives;

a person may be limited in communication with participants in criminal proceedings in the case, especially with other suspects and accused, as well as with witnesses (to avoid influence on them, for example, to refuse to give evidence or to change it), victims (also to prevent unlawful influence on them) and their representatives, with experts and witnesses; among such persons, among others, there may be relatives, friends, work colleagues, if there is evidence that with their help the accused (suspect) can oppose the investigation;

the accused or suspect may be limited in the right to communicate using means of communication: receiving and sending mail; using a telephone, including a mobile phone, the Internet, etc.

Depending on the severity of the charge and the actual circumstances of the criminal case, the court may decide to subject the accused (suspect) to all the prohibitions and (or) restrictions listed in Part 7 of Art. 107 of the Code of Criminal Procedure of the Russian Federation, and individual of them. During the application of house arrest, the court may change the imposed restrictions and prohibitions at the request of the investigator or interrogating officer in charge of the criminal case, or at the request of the accused, suspect or his defense attorney. At the same time, changes may aggravate the position of the accused (suspect) or soften the regime of execution of the preventive measure in the form of house arrest [1].

The theoretical aspect of house arrest as a preventive measure was not subjected to special dissertation research in the countries of the Commonwealth of Independent States, despite the fact that during the period of socialist construction, house arrest was reflected in the Code of Criminal Procedure of the RSFSR, adopted in 1922 and in force until 1958.

Today, the old, but absolutely new institution of house arrest has been revived for us. As a result, in the theory of criminal procedure of both the former USSR and the current post-Soviet states, the concept of house arrest is not defined, the purposes of its application are not studied, the grounds and conditions for the application of this preventive measure are not considered.

If we turn to the etymological meaning of the concept of “house arrest”, then it is defined as “an order not to leave the house”, “a prohibition to leave the house as a form of punishment, suppression of activity”. It should be noted that both of these aspects are applicable to the measure of restraint under consideration.

In our opinion, house arrest is a measure of procedural coercion, consisting of preliminary restriction of the freedom of the accused, and in exceptional cases of the suspect, applied if there

are grounds and following the procedure provided for by the Criminal Procedure Law, to ensure the proper behavior of these persons, while limiting their integrity and leaving them in conditions of “soft” isolation, that is, the maximum possible satisfaction of inalienable natural rights.

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The general purpose of house arrest and its modification in the form of its special purpose are aimed at ensuring the normal course of the criminal process at the stages of preliminary investigation, main trial and execution of the sentence.

Materials and methods of research.

The methodological basis of the study was the dialectical method as a universal method of scientific knowledge of legal phenomena. General scientific, special scientific and special methods of knowledge were used, such as historical, comparative legal, logical and legal, statistical, sociological.

Results and its discussion.

Despite the disclosed provisions of the criminal procedure law, we note that in the legal literature there is no consensus on what exactly may be the prohibitions and restrictions applied when choosing house arrest as a preventive measure. So, V.A. Mikhailov points out that the isolation regime associated with restricting the rights and freedoms of the accused (suspect) within a residential premises may differ in severity, namely, it may be associated with a ban on leaving the home during the entire period of application of the preventive measure, as well as a ban on visiting work, educational institution, or the regime of stay may be associated with the right of short-term exits, isolation at home is also possible only at night (from 22 to 6 o'clock), etc. [2].

In turn, V.M. Bykov and D.A. Liskov write that the prohibitions and restrictions that are associated with the use of a preventive measure in the form of house arrest and are aimed at restricting the freedom of movement of the accused (suspect) should not force him to abandon his usual activities and everyday affairs. Thus, prohibitions and restrictions cannot apply to work or visiting an educational organization, as well as certain places necessary for life: shops, markets for

purchasing food, pharmacies for purchasing medicines, clinics, etc. Restrictions and prohibitions should be aimed at visiting places of recreation and entertainment by specified persons: restaurants and bars, discos, cinemas and theaters. In turn, restrictions aimed at the right to communicate may be associated with visiting relatives and friends. At the same time, exceptions are possible here, for example, the accused or suspect can visit his elderly parents who need his support, care and assistance. At the same time, according to the authors, it is advisable to prohibit the accused (suspect) from leaving his place of residence for more than three hours [3].

Y.G. Ovchinnikov, in turn, believes that a special feature of such a preventive measure as house arrest is that it ensures the proper behavior of the accused (suspect) with the abandonment of the face in conditions of “soft isolation”. A person to whom house arrest has been applied as a preventive measure retains the right to live in his house (apartment) with the imposition of certain prohibitions and restrictions. Thus, the author distinguishes two forms of house arrest: the first form is associated with the complete isolation of the accused (suspect) and with the appointment of guards; the second form is associated with incomplete isolation and does not involve the appointment of guards [4].

The main issues about prohibitions and restrictions related to the use of house arrest should be regulated by law in order to eliminate excessive freedom and corruption-related factors in the activities of subjects of criminal proceedings. In particular, the criminal procedure law should establish the grounds and conditions for allowing or restricting walks in the fresh air or playing sports outside the home, etc. Now, providing such an opportunity to the accused (suspect), in respect of whom a preventive measure in the form of house arrest has been chosen, is within the competence of the court that applies it. Therefore, for example, the constitutionally guaranteed right to health care and other civil rights may be unreasonably limited.

Based on this, we fully support the opinions available in the legal literature on the need for legislative regulation of the identified issues, in particular the proposal to supplement Art. 107 of the Code of Criminal Procedure of the Russian Federation, part 1.1 as follows: “When choosing a preventive measure in the form of house arrest, the court resolves the issue of the possibility of providing the accused (suspect) with time for walks and physical exercise within two hours a day, with the right to leave his place of residence during this period according to in agreement with the investigator (inquiry officer) and the supervisory authority of the places visited for these purposes” [5].

The next constitutionally guaranteed right, which is limited when applying house arrest, is the right to work, its realization in conditions of house arrest, and as a result - the stabilization of the financial situation of the suspect and his family. In our opinion, strict isolation of working people is not always advisable. The loss of a suspect's workplace (the main source of income) calls into question the expediency of his complete isolation from society. Proceeding from this, it should be noted that issues related to resource provision (food, medicines, necessities, etc.) and the ability of persons to work for whom house arrest has been chosen also require additional legislative regulation.

When authorizing a preventive measure in the form of house arrest, it is necessary to pay attention to the personal characteristics of the suspect, the nature of his activities and official position and, taking into account all this, allow the suspect to carry out work activities.

When applying the preventive measure in question, it is important to take into account that, despite its “softer” nature compared to detention, a long stay under house arrest significantly limits the constitutional rights of the accused (suspect), in particular the scope of the right to work and, as a consequence, his financial situation. Based on this, we can note that additional legislative regulation requires still unresolved problems related to the ability to work, with material support for persons under house arrest (things, food), with the ability to take care of their health (visiting a clinic, hospital, purchasing medicines, etc.). Although we may be objected to. Thus, in the legal literature there is an opinion that that house arrest and the right to work are incompatible (except

in cases where it is possible to take work home). The accused does not attend his work for good reasons, and he is not paid wages [6].

However, in our opinion, the preventive measure in question may well provide for the opportunity to work and provide for oneself and one's family.

Please note that the abolition of individual or all restrictions or prohibitions imposed by the court related to the election of house arrest in relation to the accused (suspect) is the exclusive prerogative of the court. The investigator or inquiry officer, if he comes to the conclusion that it is necessary to cancel the previously appointed restrictions and prohibitions, must make a corresponding decision, coordinate it with the head of the investigative body or the prosecutor, and then go to court, presenting the materials of the criminal case in support of the petition, which confirm this need. In our opinion, this procedural procedure limits the ability to quickly respond to possible changes in the circumstances of the criminal case, to changes in the situation related to financial situation, health, etc. the accused (suspect) himself. In addition, this procedure unreasonably burdens the courts, preliminary investigation bodies, inquiries and criminal-executive inspections, as a result of which the majority of procedural scientists propose to apply in the situation under consideration the procedure provided for in Part 3 of Art. 110 of the Code of Criminal Procedure of the Russian Federation, which allows the investigator, with the consent of the head of the investigative body, and the interrogating officer, with the consent of the prosecutor, to make a decision to cancel the preventive measure. If the investigator and the interrogating officer have the right to cancel all or certain restrictions and prohibitions appointed by the court while the accused (suspect) is under house arrest, this will lead to procedural savings of time, effort and money.

Inquiries and penal inspections, as a result of which the majority of procedural scientists propose to apply in the situation under consideration the procedure provided for in Part 3 of Art. 110 of the Code of Criminal Procedure of the Russian Federation, which allows the investigator, with the consent of the head of the investigative body, and the interrogating officer, with the consent of the prosecutor, to make a decision to cancel the preventive measure [7].

A study of foreign experience in the use of house arrest led to the conclusion that the restrictions and prohibitions that are imposed when using house arrest as a preventive measure can be differentiated depending on the establishment of certain levels of severity in serving this preventive measure. For example, in the United States, a person subject to house arrest must remain in his home for the entire duration of the specified preventive measure, and only for a while he can leave it. The severity of the conditions for serving this measure of restraint depends on how often a person under house arrest can leave his place of residence. There are three levels of severity: at the first level, a person is required to stay at home only during specific periods of time; at the second level, the accused (suspect) is required to remain at home constantly, while the admissibility of visiting the place of work and study, the ability to leave the place of stay when called by a lawyer or the court, as well as the ability to visit other places are separately determined; the third level provides for constant stay at home and leaving it only on a court summons or for events ordered by the court, as well as to medical institutions for medical reasons. Monitoring compliance with certain prohibitions and restrictions is carried out in the form of home inspections, as well as through the use of electronic monitoring. If the imposed restrictions and prohibitions are violated, house arrest may be lifted, in which case a more severe preventive measure may be applied.

Expanding the possibilities of ensuring the rights of third parties when choosing a preventive measure in the form of house arrest, the legislator obliged the withdrawal of written consent of persons living with the suspect (family members, landlords). Note that according to the Rules, the check is carried out at any time of the day at the place of residence of the suspect, no more than twice during the day and no more than once at night. Therefore, we believe that even with the consent of the persons living with the suspect, their rights are also limited, since they will have to

endure inconveniences associated with inspections. We believe that in such cases it is advisable to practice a wider use of electronic means of tracking the suspect (electronic bracelets).

An electronic bracelet is a special electronic device attached to the suspect's leg. The device has protection against unauthorized removal and a warning system. In addition, it is certified in terms of toxicity and complies with safety protocols, its weight is approximately 80 grams. Any attempt to remove the electronic bracelet or mechanical impact on it leads to the activation of the system and automatically sends a signal to the dispatcher. The main feature of such devices is the ability to verify the persons connected to the system. In cases where it is necessary to find out the location of the subject, the dispatcher can give a signal, after which a message comes to the phone of the controlled person about the need to verify himself by face, or by voice, or by fingerprints within 5 minutes. If the suspect needs to go beyond the permitted perimeter, the system administrator can designate a contour and determine its route by which the person can arrive at the destination without registering the violation.

Conclusion.

To summarize the study, it should be noted that in the Russian criminal procedural legislation there are still gaps and problems in the legal regulation of issues related to the regulation of prohibitions and restrictions imposed on the accused (suspect) in connection with the use of house arrest. Thus, the issues of walking, playing sports and spending time in the fresh air of the accused (suspect), issues of supplying him with basic necessities and food, as well as issues of attending work and performing work duties remain unresolved. To solve these problems, it is important to supplement Art. 107 of the Code of Criminal Procedure of the Russian Federation, part 1.1 with the previously indicated content, as well as, implementing foreign experience.

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ШЕКТЕУЛЕР МЕН ТЫЙЫМ САЛУЛАР БҰЛТАРТПАУ ШАРАСЫ РЕТІНДЕ ҮЙ ҚАМАҒЫН САЙЛАУ КЕЗІНДЕ АЙЫПТАЛУШЫҒА (КҮДІКТІГЕ) САЛЫНАДЫ

Андатпа.

Мақалада айыпталушыға (күдіктіге) үй қамағын тағайындау кезінде қойылған шектеулер мен тыйымдардың талдауы келтірілген. Осы бұлтартпау шарасын қолдану кезінде туындайтын проблемалар анықталды, шетелдік тәжірибе зерттелді, нәтижесінде автор қылмыстық іс жүргізу заңнамасына толықтырулар мен түзетулер ұсынды.

Үйде қамауға алу түріндегі іс жүргізу мәжбүрлеу шарасы қоғам дамуының әлеуметтік-экономикалық деңгейіне барынша сәйкес келеді, жасалған іс-әрекеттің жеке басы мен сипаты туралы деректерді ескере отырып, бұлтартпау шараларын қолдануды дараландыру қағидатына сәйкес келеді, адамның заңды мінез-

құлқының алғышарттарын қамтамасыз етеді. Қылмыстық қудалауға жататын қылмыстық-процестік құқықтық қатынастар субъектілері.

Үй қамауының қылмыстық сот ісін жүргізудегі бұлтартпау шараларына жатуы оны осы институттың жалпы мақсаттарына тәуелді етеді. Демек, үйді қамауға алу бұлтартпау шарасы ретінде, ең алдымен, қылмыстық процесте айыпталушының (күдіктінің) дұрыс мінез-құлқын қамтамасыз етеді.

Біздің ойымызша, үйді қамауға алу – бұл қылмыстық процестің теориясынан бастау алу керек бірнеше алдын алу шараларының синтезі.

Үй қамауын қолдануға байланысты туындайтын құқықтық қатынастарды ғылыми талдау үй қамағын реттейтін норманы ғана емес, сонымен бірге қылмыстық іс жүргізу заңнамасының барлық нормаларын реформалау қажеттілігі туралы қорытындыға әкеледі. Осыған байланысты тергеу әрекеттерін қолданудың іс жүргізу тәртібі – келіссөздерді тыңдау және жазу, хабарламаларды ұстап алу, соның ішінде орындаушының ұстап алу нәтижелерін қылмыстық процесті жүзеге асыратын органға берудің іс жүргізу тетігі жетілдірілуге жатады.

Негізгі сөздер: бұлтартпау шарасы, үй қамағына алу, күдікті, айыпталушы, азаматтардың құқықтары, шектеу, тыйым салу.

ОГРАНИЧЕНИЯ И ЗАПРЕТЫ, НАЛАГАЕМЫЕ НА ОБВИНЯЕМОГО (ПОДОЗРЕВАЕМОГО) ПРИ ИЗБРАНИИ ДОМАШНЕГО АРЕСТА В КАЧЕСТВЕ МЕРЫ ПРЕСЕЧЕНИЯ

Аннотация.

В статье приведен анализ ограничений и запретов, налагаемых на обвиняемого (подозреваемого) при избрании домашнего ареста. Раскрываются проблемы, возникающие в ходе применения данной меры пресечения, исследуется зарубежный опыт, по результатам чего автором предлагаются дополнения и изменения в уголовно-процессуальный закон.

Мера процессуального принуждения в виде домашнего ареста наиболее адекватна социально-экономическому уровню развития общества, соответствует принципу индивидуализации применения мер пресечения с учетом данных о личности и характера совершенного деяния, обеспечивает предпосылки правомерного поведения подвергаемых уголовному преследованию субъектов уголовно-процессуальных правоотношений.

Принадлежность домашнего ареста к мерам пресечения в уголовном процессе ставит его в зависимость от общих целей этого института. Следовательно, домашний арест как мера пресечения в первую очередь обеспечивает надлежащее поведение обвиняемого (подозреваемого) в рамках уголовного процесса.

По нашему мнению, домашний арест представляет собой синтез нескольких видов мер пресечения, истоки которого надо искать в теории уголовного процесса.

Научный анализ правоотношений, возникающих при применении домашнего ареста, приводит к выводу о необходимости реформирования не только нормы, регулирующей домашний арест, но и всего комплекса норм уголовно-процессуального закона. В этой связи совершенствованию подлежат процессуальный порядок применения следственных действий – прослушивание и запись переговоров, перехват сообщений, в том числе процессуальный механизм передачи исполнителем результатов перехвата органу, осуществляющему уголовный процесс.

Ключевые слова: мера пресечения, домашний арест, подозреваемый, обвиняемый, права граждан, ограничение, запрет.

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ТРАСОЛОГИЯ В РАСКРЫТИИ ПРЕСТУПЛЕНИЙ

Аннотация.

В борьбе с преступностью большое значение имеет достижения науки криминалистики и раскрытие преступления. Новые криминалистические технологии и методы раскрытия преступлений, некоторые актуальные проблемы использования, организованность, профессионализм, вооружение новой техникой в изучении криминалистической науки, т.е. к изучению новых передовых компьютерных технологий новых методических рекомендаций по профилактике, расследованию преступлений, требует внедрения новых подходов. В последние годы криминалисты раскрывают преступления, в том числе уголовные в автоматизации в проведении экспертных исследований достижения компьютерных технологий широко используются в автоматизации. Это позволяет эффективно менять работу во многих направлениях в области криминалистики и способствует упрощению работы криминалистов.

В статье рассмотрены теоретические аспекты трасологии, изучающей следы механических воздействий и особенностей механического воздействия на контактирующие (контактные) объекты и следов.