PROCEDURAL ORDER USING PRECAUTIONS TO MINORS

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Summary

The article considers features of procedure of the application of preventive measures, that apply to minors and are appointed to help prevent crime and at the same time to ensure correct teenagers. Author analyzes practice application of preventive measures to minors. The article explains features of the application of detention for minors. Author examines special precaution in the form of placement in distribution of children, that can be applied to minor who have committed acts which fall under the signs of a criminal offense under the age of 11 years at which possible prosecution criminal liability.

Key words: jurisprudence, minors, accused, detention, restraint.

Аннотация

В статье рассмотрены особенности процессуального порядка применения мер пресечения, которые применяются к несовершеннолетним и призваны способствовать предотвращению преступлений, обеспечивая в то же время исправление подростков. Проведен анализ практики применения мер пресечения к несовершеннолетним. Отражены особенности порядка избрания меры пресечения в виде содержания под стражей для несовершеннолетних. Исследована еще одна мера пресечения в виде помещения детей в приемник-распределитель, которая может применяться к несовершеннолетним, совершившим деяние, подпадающее под признаки уголовного преступления, в возрасте от 11 лет до достижения возраста, с которого возможно привлечение к уголовной ответственности.

Ключевые слова: судебная практика, несовершеннолетние, обвиняемые, содержание под стражей, мера пресечения.

Problem statement. Juvenile delinquency is quite sharp and relevant legal and social problem. The level of juvenile crime is increasing, the number of serious crimes, including murders, robberies, thefts is also increasing. The violence and cynicism of crimes committed by juveniles is growing.

State of juvenile delinquency causes disturbance and the need to find new means of crime prevention, additional measures by the government, including law enforcement agencies and the public, which would contribute to the gradual reduction of criminal offenses by juveniles. Procedural activities of investigation, prosecution and court exercising criminal proceedings in juvenile crimes are the important measures to prevent juvenile crimes.

Significant role in the prevention of crime play criminal procedure, including preventive measures that apply to minors and are appointed to help prevent crime and at the same time to ensure correct teenagers.

Research condition. The examined legal relations were analyzed by such domestic scientists and lawyers as E.M. Hidulyanova, V.K. Matviichuk, G.V. Mudretska, O.V. Tsykova and others.

Given these trends should recognize the urgency of the question to determine the current state of legal regulation and conduct of criminal proceedings in juvenile cases and preventive measures for minors in particular. This **defines the aim and task of the proposed article.**

Main part of the article. Juveniles in criminal proceedings have a specific position, as evidenced analysis of international laws on the rights of children (Convention on the Rights of the Child, the UN Standard Minimum Rules relating to the administration of justice relatively minors and the relevant articles of the CC of Ukraine and CPC of Ukraine. Thus, the criminal proceedings against minors carried out in accordance with the Constitution of Ukraine, CC of Ukraine, CPC of Ukraine, international treaties ratified by the Verkhovna Rada of Ukraine, in particular the UN Convention on the Rights of the Child from the 20th of November 1989, International Pact on civil and political Rights 1966, the Convention for the protection of Human Rights and Fundamental Freedoms 1950, Minimal UN standard rules relating to juvenile justice from 29th of November 1985.

The issue of rights and lawful interests of minors and humanization of criminal justice has always been the focus of national legislators and accordingly reflected in the new Criminal Procedure Code of Ukraine. Regulations of CPC of Ukraine aimed at increasing protection of minors and the establishment of a special procedure for criminal proceedings.

As rightly noted by G.V. Mudretska, rules of criminal proceedings against juveniles are aimed at providing additional guarantees complete, comprehensive and objective investigation of the case, identify the causes and conditions of crimes committed by juveniles, exercising their procedural rights, the use of reasonable and fair criminal procedure measures the impact on juvenile considering information about his personality and crime [4, p. 141].

According to p. 1 art. 492 CPC, minors can be used one of safeguards (Chapter 18, CPC of Ukraine), according to age, psychological characteristics and occupation. In this application to minors suspects, accused measures has its own characteristics, due to the specifics of the criminal procedural status of minors.

Measures to minors apply: during the preliminary investigation – investigating judge at the request of the investigator, agreed with the prosecutor or at the request of the prosecutor, and during the proceedings – the court at the request of the prosecutor.

About the arrest and detention of a minor notified his parents or persons who replace them.

Arrest and detention may be applied to juveniles only if they are suspected or accused of committing a grave or especially grave crime, provided that the use of other preventive measures will not ensure the prevention of risks that provide a sufficient basis investigating judge, the court considered that suspect, convicted can take the following actions as provided for in art. 177 CPC of Ukraine:

1) hide from the pre-trial investigation and/or court;

2) destroy, conceal or distort any of the things or documents that are essential to

establish the circumstances of a criminal offense;

3) illegally influence the victim, witness, another suspect, experts, scholars in the same criminal proceedings;

4) prevent the criminal proceedings otherwise;

5) commit another criminal offense or continue a criminal offense, which is suspected, accused [3, p. 81].

Detain is exceptional preventive measure that can be applied to minors only exceptional cases provided reasonable suspicion or accusation of having committed an grave or especially grave crime as prescribed in art. 183–187, 192–194, 196,197 CPC of Ukraine to ensure performance by juvenile suspects, when there are grounds to believe that any of the softer precautions are not can prevent the above risks.

"On the practice of application-courts of law in Ukraine juvenile crimes" from April 16, 2004 focuses on the account in a custody juvenile health, family and material state, relations with parents, effectiveness of existing monitoring their behavior, activity, place of living, data on previous convictions, social relationships, lifestyle, behavior during the proceedings in this or any other criminal case, the presence of factors or circumstances recognition their moral values, which allow to predict behavior. These conditions can be ascertained by interviewing parents, guardians, trustees, administration officials at the place of work or study juveniles [5].

According to the explanations Supreme Court of Ukraine for Civil and Criminal cases contained in the Letter "About some issues of criminal proceedings against minors" from 18.07.2013 № 223-1134/0/4-13 year "in the exercise of criminal proceedings against juvenile courts are obliged to provide accurate and strict application of existing legislation, timely and quality of review, take into account the European Court of Human Rights, introducing their position in domestic law enforcement" [2].

Thus, art. 5 of the European Convention on Human Rights guaranteed the right to liberty and security, provides that everyone has the right to liberty and security of person and no one shall be deprived of his liberty save in the following cases and in accordance with the procedure laid law.

In art. 63 the European Court of Human Rights in the case of 27.11.2008 "Svershov against Ukraine" in violation of Article justification noted that the domestic courts when considering the continued detention of a minor never considered the possibility of choosing an alternative preventive measure instead of detention and referring mainly to the severity of the crimes continued to keep the applicant in custody on the grounds which can not be considered "relevant and sufficient". In art. 64 of the same decision European Court of Human Rights, recognizing a violation claim of the Convention stated that "takes into account the fact that, although defender urged to take into account the age of the minor applicant authority, as evident from the case, never taking into account this fact when handed a decision on his detention" [6].

It should be noted that the national courts in most cases take into account the peculiarities of cases involving minors, choosing to judicial proceedings following the accused as a preventive measure of house arrest, which is confirmed by the analysis of jurisprudence, but there are numerous cases of unjustified detention for long periods of minors including:

– Court of Appeal decision of Zaporozhye region in 2010 changed the resolution of the District Court of Zaporizhzhya on April 9, 2010 in respect of G.O., last released from custody and he was elected as a preventive measure of personal responsibility, because choosing a precaution regarding minor, the court took into account only the severity of the crime, in which he accused committed, and did not consider other circumstances, such as the defendant's age, his positive characteristics, the presence of permanent residence, etc.;

– Court of Appeal decision Rivne region 2011. The Resolution Zdolbunov District Court Rivne region of 16 June 2011 on juvenile suspect B. and elected him a preventive measure – on parole with the release from custody of the courtroom. The Court of First Instance, choosing strict precautionary measure, referred to their own conclusion about B. commit other crimes, which are not mentioned in either the investigator or a record of the trial [7].

In accordance with art. 37 of the Convention on the Rights of the Child no child shall be deprived of liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a last resort and for the shortest appropriate period of time. This is necessary to ensure the humane treatment of every child deprived of liberty and respect for the dignity of the person, taking into account the needs of persons of his age, in particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to be do and have the right to maintain contact with their family through correspondence and visits, save in exceptional circumstances. Every child deprived of liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

According to the UN Standard Minimum Rules relating Administration of Juvenile Justice, holding a juvenile pretrial detention is used only as a last resort and for the shortest period of time and if possible replaced by other alternative measures (Rule 13.1 and 13.2).

Thus, detention can be applied to minors only in exceptional cases, as a last resort, with determination as soon as possible of such detention and ensuring periodic review at short intervals grounds for its application or renewal (the European Court of Human Rights from 28th October 1998 in the case "Assenov and Others against Bulgaria") [7].

High Specialized Court of Ukraine for Civil and Criminal Cases in Letter "On some issues of criminal proceedings against minors" from 18.07.2013 № 223-1134/0/4-13, the notes that implementing the provisions p. 5 art. 199 CPC, the investigating judge and the court in accordance with p. 3 art. 331 CPC should take into account that after the expiry of a period of time (the term of the prior approval) the existence of reasonable suspicion is no longer a reason for deprivation of liberty, but because in the judgment judicial authorities shall, considered the possibility of choosing alternative precautions cite other reasons for further detention (Judgment of the European court of Human Rights of 20 January 2011 in the case "Prokopenko against Ukraine") [2].

In addition to minor precautions provided art. 176 CPC of Ukraine can be used as an alternative to the transfer of a minor under the supervision of parents, guardians, and minors who are brought up in a children's institution – transferring them under the supervision of the administration of the institution (p. 1 art. 493 CPC of Ukraine). According to the Law of Ukraine "On structures and services for children and special institutions for children" from 24.01.1995. The number of child care, which can accommodate juveniles include reception centers for children, schools or vocational schools rehabilitation, medical and social rehabilitation of children, special educational institutions of the State Criminal executive service of Ukraine, shelters for children, services for children, socio-psychological rehabilitation children, social rehabilitation centers (children's town).

Transfer under supervision possible compulsory installation investigating judge, court following circumstances in their entirety:

1) information on the identity of parents, guardians or trustees, as well as information about their relationships with minors enable make sure that the person could exercise proper supervision of minors;

2) parents, guardians or trustees (representative of the administration of children's institutions, if a minor is a disciple of the institution) and minor given consent to transfer under supervision;

3) parents, guardians or trustees (Senior Administration childcare facilities, if a minor is a disciple of the institution) given a written undertaking to ensure arrival juvenile suspect or accused to the investigator, prosecutor, investigator judge, court, and the proper conduct of a minor.

A person who undertook the supervision shall have the right to refuse to perform this obligation by notifying in advance. In such cases, the investigating judge, the court must consider a message and request the presence of pretrial investigation or the prosecution to consider a request for a preventive measure to the juvenile suspect (accused) in accordance with art. 492 CPC of Ukraine.

The possibility of using such specific preventive measures as the transfer of a minor under the supervision of parents, guardians, and minors who are brought up in a children's institution – transferring them under the supervision of the administration of the institution fully complies with the requirements of art. 13 Rules on the need of changing possible detention for juveniles another alternative measures, such as permanent supervision, active educational work or placement in a family or educational institution or home.

Another special precaution in the form of placement in distribution of children can be applied to minor who have committed acts which fall under the signs of a criminal offense under the age of 11 years at which possible prosecution criminal liability. According to the Law of Ukraine "On structures and services for children and special facilities for children" – reception centers for children – a special agency of the Interior, designed for temporary detention of children under the age of 11 years. Reception centers for children created in the cities of Kyiv and act with rules approved by the Ministry of Home Affairs of Ukraine.

The order of detention of children placed in reception centers for children is determined by the internal regulations reception centers for children approved by the Ministry of Home Affairs of Ukraine.

The terms of the child in detention for children reception – defined investigating judge, the court depending on the availability of objective grounds for detention within the firm within 30 days, and its continued use of the term also is 30 days. Thus, despite the equal of the detention order of election, cancellation or continuation of such an event is much smaller.

In fact, placement in reception centers is a measure of procedural coercion, which by its nature is very close to the restraint of detention, as well as provides temporary imprisonment of a person whom it is applied by placing a special institution with special regime of stay.

Interesting is the position of p. 4 art. 499 CPC of Ukraine, which provides necessity for investigating judge in deciding on placement in a juvenile detention center distributor to establish that none of the softer measures can prevent risks under p. 1 art. 177 CPC of Ukraine, but in fact other measures of procedural compulsion to minors under the age of which engaging possible criminal charges, the current CPC of Ukraine does not provide, as well as provided possibilities placing minor changes in distribution to other children, milder measure of procedural coercion.

E.M. Hidulyanova rightly points out that it is a kind of omission national legislation in this part does not meet international standards of justice it on the requirements possibilities for replace detention of juveniles in custody other alternative measures, such as constant supervision, active educational work or placement in family or educational institution or building [1, p. 230].

Thus, it should be noted that the order of application of procedural safeguards to juvenile characterized by certain features that are important to take into account in practice, and in general conformity with international legal standards. To avoid fraud and irregularities in the application of safeguards to juveniles who have committed a crime, it is necessary to take account of the judge in making decisions of international practice, including the European Court of Human Rights on the characteristics of criminal proceedings against juveniles.

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AS FOR THE RIGHTS AND LIBERTIES OF AN INDIVIDUAL AND A CITIZEN IN ENFORCEMENT PROCEEDINGS

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Summary

The codes of the rights and liberties of an individual and a citizen are determined in this article. Definitions such concepts as justice, human liberties of an individual and a citizen are analyzed on the base of science and research library. These specification are investigated for enforcement proceedings, and the Summary is that the rights and liberties of an individual and a citizen aren't potential, they're real non-derogable human rights, are confirmed by Constitution and the Law. Considering the fact that, all these rights and liberties of an individual and a citizen must be realized in close contact with representatives of State Bailiff Department that according the Law are vested rights in individual and a citizen, so their self-confidence depends from implementation level of State Representatives their professional responsibility to full service, for example in case of compulsory execution of administrative enforcement and judicial decision.

Key words: rights and freedoms of human, person and citizen, state officers, executive production.

Аннотация

В статье определено понятие прав и свобод человека и гражданина. Проанализированы существующие в научной литературе определения понятий прав и свобод человека, лица, гражданина. Исследованы данные категории в контексте исполнительного производства, обоснованы выводы о том, что права и свободы гражданина являются не потенциальными, а реальными возможностями человека, которые закреплены в Конституции Украины и действующем законодательстве и являются неотчуждаемыми. Поскольку эти права и свободы должны реализовываться в процессе взаимодействия с государственной исполнительной властью в лице должностных лиц административной юрисдикции (которые, согласно действующему законодательству, наделены определенными обязанностями по отношению к обладателям этих прав и свобод), такая уверенность зависит от уровня реализации государственным исполнителем таких обязанностей по предоставлению полного спектра прав и свобод, в частности, при принудительном исполнении административных и судебных решений.

Ключевые слова: права человека, права и свободы человека, гражданина, государственные исполнители, исполнительное производство.

Formulation of the problem and thematic justification. The guarantee of translation into action the rule that "human is the highest social value" is created possibility for everybody for realizing own rights and freedoms it must be main ground for existence and functioning of the state, which pretends to the democratic status. However not only modern Ukraine, but also the international community, despite the desire of implement ideas to ensure the rights and freedoms of man and citizen faces with obstacles due, such as, under-development of moral and ideological criteria, legal culture and education, economic factors.

State Executive Service as a guarantor of liberty State referred to the decisions of government agencies and courts and it plays a significant role in providing opportunities every person who (voluntarily or forcibly) becomes a party of Executive production, exercises own rights. But the tendency of legislative contempt appropriate authorities and ones that should ensure strict implementation of the decisions to the Court is growing and progressing in Ukraine now. You can often hear sincere wonder when you talk about State Executive Service activities as an example of enforcement authorities not only from the citizens but from government employees, too. Talking about "state enforcement officer" we often mean a person who defends the interests of the suppliant at any price and ignores rights of the debtor.