16. Митилино М.И. Гражданский суд до и после реформы / Митилино М.И. // Труды Киевского юридического общества, состоящего при императорском Университете Св. Владимира за 1911, 1912, 1913 и 1914 гг. – К., 1915. – С. 341-358.

17. Задоєнко О.В. Кодифікація цивільного процесуального законодавства України у 1922–2012 рр. (історико-правове дослідження) [Текст] : автореф. дис. ... канд. юрид. наук : 12.00.01 / О.В. Задоєнко // Ін-т законодавства Верховної Ради України. – К., 2013. – 21 с.

18. Комаров В.В. Цивільне процесуальне законодавство у динаміці розвитку та практиці Верховного Суду України / В.В. Комаров. – Х. : Право, 2012. – 624 с.

19. ЦПК УРСР 1963 р. – Режим доступу : http://zakon.rada.gov.ua/laws/show/1501-06.

20. Закон України «Про ратифікацію Конвенції про захист прав людини і основоположних свобод 1950 р.», Першого протоколу та протоколів № 2, 4, 7 та 11 до Конвенції від 17 липня 1997 р. [Електронний ресурс] // Режим доступу: http://zakon2.rada.gov.ua/laws/show/475/97-вр.

21. Ярошенко І.С. Цивільний процесуальний кодекс України: актуальні питання кодифікації // Європейські стандарти захисту прав у цивільному судочинстві: випробування часом: матеріали міжнар. наук.-практ. конф. (Київ, 26 вересня 2014 р.). – К.: ВД «Дакор», 2014. – 416 с. – 402 с.

22. Закон України «Про забезпечення права на справедливий суд № 192-19 від 12 лютого 2015 року. [Електронний ресурс] // Режим доступу: http://zakon1.rada.gov.ua/laws/show/192-19.

WARRANTIES OF RIGHTS AND FREEDOMS IN THE JUVENILE DETENTION

Oksana KRUKEVYCH,
Postgraduate of the Department of Justice, Faculty of Law of
Taras Shevchenko National University of Kyiv

Julia TSYHANYUK,
Doctor of Law, Associate Professor of Humanities
and Social and Legal Sciences of the Institute of Intellectual Property
of National University „Odessa Law Academy" in Kyiv, lawyer

Summary

The article investigates the guarantees of the rights and freedoms of minors in the application of preventive measures in the form of detention. It is proved that in the selection of a preventive measure such as detention, there is a range of additional guarantees concerning juveniles, which is implemented by introducing into the general conditions the application of a preventive measure that is connected with minors psycho-physiological development. As a result of the study, the conclusions offer their own list of these additional warranties that are applied to minors.

Key words: minor, preventive measure, detention, guarantees of minors rights and freedoms.

Аннотация

В статье исследуются гарантии прав и свобод несовершеннолетних при применении меры пресечения в виде содержания под стражей. Обосновывается, что в отношении несовершеннолетних, при избрании им меры пресечения в виде содержания под стражей, существует комплекс дополнительных гарантий, который реализуется путем внедрения в общие условия применения меры пресечения в виде содержания под стражей особенностей для его применения, связанных с психо-физиологическим развитием несовершеннолетнего. Как результат исследования, в выводах предложен собственный перечень этих дополнительных гарантий, которые применяются к несовершеннолетним.

Ключевые слова: несовершеннолетний, мера пресечения, содержание под стражей, гарантии прав и свобод несовершеннолетних.

Problem statement. The data generalization of courts of law of the first instance and appellate courts (as of 01. 06/01. 07. 2013) shows that 3 846 defendants, including 48 minors (persons who have committed offenses in juvenile age) were held in detention centers in custody and were considered by the courts for more than 6 months [1].

Moreover, according to the report of the General Prosecutor of Ukraine on the work of the prosecutor for 12 months in 2014 during the supervision of compliance with the laws by bodies that conduct investigative operations and pre-trial investigation by prosecution where the suspect, accused juvenile was found 16 times and the information of criminal offenses was determined and included to the record that had not been done before; 212 resolutions about terminating the proceedings were canceled; 7 resolutions about restoring the pre-trial investigation were passed; 2095 written instructions were given. 325 requests for the use of detention as a preventive measure to minors were sued to the court in 2014. 47 times the requests were denied by the investigating judge [2].

The quantitative indicators are relatively small, but the presence of at least one statistic speaks of the need to establish additional guarantees for minors who have their own physiological and psychological characteristics, typical age level of life, etc. The results also show that the order of detention application to minors as a preventive measure is not without its faults. That's why the study is relevant as far as it investigates the guarantees of rights and freedoms during the application of detention for juveniles.

Research condition. The research of guarantees of human rights and freedoms in the application of preventive measure such as detention is found in the works by V.G. Goncharenko, Y.M. Groshev, O.V. Kaplin, O.P. Kuchynska, E.D. Lukyanchykova, V.T. Malyarenko, V.O. Popelyushka,

S.M. Smokova, V.M. Tertyshnyk, O.G. Shilo, M.E. Shumylo, O.G. Yanovska and others. However the study of the range of guarantees of minors rights and freedoms in the application of a preventive measure such as detention is absent.

The purpose of this article is to establish a set of guarantees of rights and freedoms of minors during the application of detention to them.

Used methods and materials. The article uses the statistical materials of the Supreme Specialized Court of Ukraine for Civil and Criminal Cases, the General Prosecutor of Ukraine, the Criminal Procedure Code of Ukraine, the scientific portfolio by E.S. Berezina, Y.M. Groshevyi, C.V. Mudretska, G.S. Rusman, I.V. Pilipenko, G.V. Popov, V.Y. Tatsiy, O.V. Tsykova. This scientific material was worked out using system-structural, logic procedural, statistic and comparative methods.

Main part of the article. The scientists found out that the proceedings in juvenile crime have significant features. G.V. Mudretska and O.V. Tsykova mention that the specific legal position in society of people who have not attained the age of majority dictates the need to regulate the specific rules and procedures for dealing with juvenile offenders at all stages of the criminal process. The proceedings peculiarities are determined by the level of minor development, the ability to really analyze current events, etc. Because of the lack of experience, heightened suggestibility the teenager is not able to make full use of his rights to pre-trial investigation, including the right to protection in particular. This specificity finds its legislative reflection in special procedures. According to the authors, the rules of proceedings in juvenile crimes are aimed at providing additional guarantees of complete, comprehensive and objective investigation of the offence, identifying the causes and conditions of crime committing by juveniles, the implementation of their procedural rights, the use of reasonable and fair criminal procedure measures of impact on minor, taking into account the information about his personality and crime [3, p. 141].

Taking into consideration the juvenile's age and psychological characteristics, the important role of influence of the environment and the formation of a child character, the legislator has provided some differences in juvenile justice, which can be defined as a special approach to the protection of their rights as well as the range of circumstances which must be necessarily established in criminal proceedings [4, p. 669].

According to M.S. Strogovich opinion, the first and main point during the investigation and adjudication of juvenile crimes is how to hold a process and how to solve the case in order to have the right impact on a juvenile offender himself and direct him to the right way of his study and work as well as to prevent him from the negative impact of anti-social elements [5, p. 474].

The above mentioned information and the analysis of the rules of Chapter 38 of the Criminal Procedure Code of Ukraine (CPC) [6], which regulate juvenile criminal proceedings show that there is the existing set of guarantees of rights and freedoms in the application of detention as a preventive measure. We believe that this range of additional guarantees is realized by the implementation of a preventive measure in the form of custody for its application which are connected with a minor psycho-physiological development.

In a letter of the Supreme Specialized Court of Ukraine for Civil and Criminal Cases of July 18th, 2013 states that the investigating judge, the court of law must bear in mind that detention should be applied to minors only in exceptional cases, as a last resort, with determining the shortest detention period and ensuring periodic review of the grounds for its application or extension at short intervals of time (ECHR Decision of October 28th, 1998 in the case «Assenov and others against Bulgaria»). Implementing the regulations of p. 5 ch. 5 199 of CPC, the investigating judge and the court of law in accordance with p. 3 ch. 331 of CPC should take into account that after the expiry of a certain period of time (the term of a prior approval) the mere existence of a reasonable suspicion is no longer a reason for deprivation of liberty, that's why the judicial authorities are to cite other reasons for further detention in their judgment, considering the possibility of choosing alternative precautions (ECHR Decision of January 20th, 2011 in the case «Prokopenko against Ukraine») (paragraph 3 p. 6) [7].

As it follows from the foregoing, the use of ECHR judgments in matters of the minor rights and freedoms during a preventive measure application in the form of detention is necessary. I.V. Pylypenko also emphasizes on the need of international standards application. According to the author, if a preventive measure of detention is applied to a minor, we should take into account the international experience. Chapter 37 paragraph d of Convention on the Rights of the Child states that every child deprived of liberty should have the right to a prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of liberty in a court or other competent, independent and impartial authority, and the right to making prompt decisions by them on any proceedings [8, p. 114].

A similar opinion is expressed by G.V. Popov. The author notes that prosecutors, especially those with little experience, in order to optimize the protection of minor's rights should systematically study analytical materials and newsletters on violations of human rights and freedoms in applying precautions to them, jurisprudence on these issues and foreign experience [9, p. 273].

These international standards that are guarantees of minors rights and freedoms in the application of preventive measures such as detention is found in the Universal Declaration of Human Rights; Convention on Human Rights; International Covenant on Civil and Political Rights; Convention for the Protection of Human Rights and Fundamental Freedoms; UNO Standard Minimum Rules relating to the Administration of Juvenile Justice («The Beijing Rules»); Convention on the Rights of the Child; Code of principles for the protection of all persons subjected to detention or imprisonment in any way; Convention on the Rights of the Child; UNO Rules for the Protection of Juveniles Deprived of their Liberty; Resolution of the Committee of Ministers of the Council of Europe (65) 11 «Custody»; Declaration on the Protection of All Persons from torture and other cruel, inhuman or degrading treatment or punishment.

Except of detention, to the persons aged from 11 to 14 years another measure can be applied – placing in distribution centers. According to G.V. Mudretska and O.V. Tsykova special precaution applies to the suspect or accused juvenile who committed

socially dangerous act after reaching the age of eleven, but before reaching the age of criminal responsibility. Instead of custody as a preventive measure such person may be placed in distribution center, on the condition that the criminal law supposes punishment by imprisonment for more than 5 years for committing the action he/she is suspected/accused of. In all other cases the investigating judge, the court of law have no right to make decisions on its application and is to choose softer precaution. The term of holding a person in distribution center, despite the equal of the detention order of choosing, the cancellation or continuation of such an event is much smaller and is 30 days (hence, the term and its continuation of application is 30 days, not two months, as in case of detention) [3, p. 142]. Application of this legal mechanism is a manifestation of a special treatment to a person because of his age and other characteristics connected with it.

However, regardless of the humane content standards of CPC of Ukraine on the use of preventive measures such as detention of juveniles and guarantees of their rights and freedoms while its application, it is obvious that there are grounds for use, especially the probability of risks, form the basis for a decision on custody of the minor.

G.S. Rusman notes that in deciding on the selection of a preventive measure of detention for juvenile defendant, the court considered the following circumstances: 1) negative personality characteristics of a minor (minor is cruel, aggressive, deceitful, cunning, resourceful by nature, complaints about his behavior are repeatedly received from neighbors and other residents); 2) deliberate crime, committing a large number of crimes in a relatively short period of time; 3) minor tendency to commit crimes, misdemeanors; 4) the availability of outstanding convictions, committing the crime during the probationary period, during conditional release from punishment, responsibilities entrusted by the previous verdict are not complied; 5) the minor was registered with the Commission on Minors, was led to a special school of closed type, or placed in temporary centers for minors; 6) there is reason to believe that a minor can escape from pre-trial investigation and trial; 7) the minor works and learns nowhere or systematically miss classes, has no socially useful occupations; 8) abuses alcohol, takes drugs, toxic substances, or is in psychiatrist register; survey on the grounds of custody selection as a preventive measure; 9) single-parent, dysfunctional family (child is brought up only by one parent, the other is eliminated, the child is brought up by a grandmother, aunt and parents are deprived of parental rights), lack of control from parents, lack of influence of parents and caregivers on minors; 10) lack of permanent residence of a minor, minor normadism; 11) parents' alcohol abusing, absence of work or other fixed occupations («I was stealing, since there was no way to earn for a living»); 12) failure to appear in court (this fact is prevalent in the selection of the measure during the proceedings) [10, p. 63].

O.S. Byeryezina says that to the exceptional circumstances of a considered preventive measure on a juvenile that has committed a felony, it is advisable to include a minor extension of unlawful conduct, disobeying lawful demands of law enforcement, loss of control by parents or guardians. These circumstances, in author's opinion, should also be mentioned in the resolution of the application [11, p. 57] (a preventive measure – Y. TS.).

Accordingly, the peculiarities of guarantees of the rights and freedoms for juveniles which are predicted by the current CPC of Ukraine are progressive, the social characteristics of juveniles are taken into account and directed both to meet the needs of their development and to meet the objectives of criminal proceedings.

Guarantees of the rights and freedoms in the application of detention for juveniles are allocated in a separate chapter of CPC of Ukraine and they are about juveniles, except other conditions, the grounds for a preventive measure application in the form of detention are specified.

Conclusions. As to the minor there are the following features of a preventive measure application in the form of detention, which are additional warranties of its procedural status:

1. To justify suspicion as a ground for a preventive measure application to a minor in the form of detention, it is necessary to find out the circumstances which are in Ch. 485 of CPC of Ukraine as those to be established in the criminal proceedings against juveniles.

2. The possibility of selection in a separate proceeding criminal proceedings against a minor, during the preliminary investigation, if the juvenile is suspected in committing a criminal offense together with an adult.

3. In order to justify suspicion and state the probability of risks, it is necessary to conduct a comprehensive psychological and psychiatric and psychological examination of a suspect or the accused juvenile in accordance with Ch. 486 of CPC of Ukraine.

4. In justifying the probability of risks, as grounds for a preventive measure application in the form of detention we should find out the living conditions and education of the suspect or accused minor that are in Ch. 487 of CPC of Ukraine.

5. Mandatory participation of a defense counsel and the possibility of parallel involvement of the legal representative of the suspect or accused.

6. The possibility of legal representative of a suspect, accused minor to participate in criminal proceedings, along with the obligatory participation of a defense counsel.

7. The preventive measure application is possible only while taking into account the age, psychological characteristics and occupation.

8. Detention can be applied to a minor only if he is suspected or accused of committing a felony or treason, under the condition that applying other preventive measures will not ensure the prevention of risks referred to in Ch. 177 of CPC of Ukraine.

9. The parents of a minor or a person acting on their behalf must be immediately informed about detention.

List of reference links:

1. Вищий спеціалізований суд України з розгляду цивільних і кримінальних справ «Узагальнення судової практики судів першої та апеляційної інстанцій у справах стосовно осіб, які тримаються під вартою, судове провадження щодо яких триває понад 6 місяців» від 01.07.2013 р. [Електронний ресурс]. – Режим доступу: http://sc.gov.ua/ua/uzagalnennja_sudovoji_praktiki.html.

2. Генеральна прокуратура України «Звіт про роботу прокурора за 12

місяців 2014 року». [Електронний ресурс]. – Режим доступу: http://www.gp.gov.ua/ua/stst2011.html?dir_id=111479&libid=100820.

3. Мудрецька Г.В., Цикова О.В. Особливості застосування запобіжних заходів під час кримінального провадження щодо неповнолітніх / Г.В. Мудрецька, О.В. Цикова // Науковий вісник Херсонського державного університету. Серія: Юридичні науки. – 2013. – Випуск 3. Том 2. – С. 141-143.

4. Грошевий Ю.М., Тацій В.Я. Кримінальний процес: підручник/ За редакцією В.Я. Тація – Харків: Право, 2013. – 824 с.

5. Строгович М.С. Курс советского уголовного процесса. Том 2. – М.: Наука, 1970. – 616 с.

6. Кримінальний процесуальний кодекс України від 13.04.2012 № 4651-VI [Електронний ресурс]. – Режим доступу: http://zakon0.rada.gov.ua/laws/show/4651-17/page15.

7. Лист Вищого спеціалізованого суду України з розгляду цивільних і кримінальних справ «Про деякі питання здійснення кримінального провадження щодо неповнолітніх» 18.07.2013 № 223-1134/0/4-13. [Електронний ресурс]. – Режим доступу: http://zakon4.rada.gov.ua/laws/show/v1134740-13.

8. Пилипенко І.В. Окремі проблеми застосування законодавства щодо участі неповнолітніх у кримінальному провадженні / І.В. Пилипенко // Публічне право. – 2013. – № 3. – С. 110-118.

9. Попов Г.В. Додержання прав неповнолітніх при застосуванні до них запобіжного заходу у вигляді тримання під вартою / Г.В. Попов // Право і суспільство. – 2015. – № 2. – С. 268-273.

10. Русман Г.С. К вопросу об основаниях избрания меры пресечения в виде заключения под стражу / Г.С. Русман // Вестник Южно-Уральского государственного университета. Серия «Право». – 2007. – № 18 (90): Вып. 11. – С. 61-65.

11. Березина Е.С. Типичные нарушения уголовно-процессуального закона при заключении под стражу / Е.С. Березина // Вестник Воронежского института МВД России. – 2012. – № 3. – С. 56-58.

ПРОБЛЕМА ОПРЕДЕЛЕНИЯ АДМИНИСТРАТИВНО-ПРАВОВОГО СТАТУСА НАЦИОНАЛЬНОГО АГЕНТСТВА УКРАИНЫ ПО ВОПРОСАМ ГОСУДАРСТВЕННОЙ СЛУЖБЫ

Инна ЛЮДЬКОВА,
аспирант кафедры государственно-правовых дисциплин,
юридического факультета
Харьковского национального университета имени В.Н. Каразина

Summary

Research of central executive authorities of Ukraine has very importance now. Today Ukraine gets in way of reforming of all set of government bodies which main goal consists in creation of effective system of executive authorities. Still the state demands radical transformations in structural and organizational activity of executive authorities. The central executive authorities with special status are new group of bodies in system of central executive authorities with which creation there were many questions which are still insufficiently studied by legal science. Determination of administrative legal status, and also allocation of problems and a way of their decision, will help to achieve effective work of data of bodies, sufficient level of standard security and professional level of activity.

Key words: administrative legal status, executive authorities, National agency of Ukraine concerning public service, special status.

Аннотация

Исследование центральных органов исполнительной власти Украины в настоящее время имеет весьма важное значение. Сегодня Украина стоит на пути реформирования всей совокупности государственных органов, главная цель которой заключается в создании действенной системы органов исполнительной власти. До сих пор государство требует радикальных преобразований в структурно-организационной деятельности органов исполнительной власти. Центральные органы исполнительной власти со специальным статусом являются новой группой органов в системе центральных органов исполнительной власти, с созданием которых возникло много вопросов, которые еще недостаточно изучены правовой наукой. Определение административно-правового статуса, а также выделение проблем и пути их решения, помогут добиться эффективной работы данных органов, достаточного уровня нормативной обеспеченности и профессионального уровня деятельности.

Ключевые слова: административно-правовой статус, органы исполнительной власти, Национальное агентство Украины по вопросам государственной службы, специальный статус.

Постановка проблемы. Вопрос укрепления правового государства и создание качественно нового общества, в котором будут гарантированы и защищены общечеловеческие ценности – это главная цель Украины с первых лет ее существования. Известно, что особое место в государстве принадлежит центральным органам исполнительной власти, а с формированием и развитием Украины как суверенного и независимого, демократического, социального и правового государства эти органы постоянно менялись, мешая выполнять функции друг другу, что приводило к неэффективному их функционированию. Именно в результате этого центральные органы исполнительной власти начали отделяться от объективной реальности и перестали выполнять общественно полезные задачи.

Для регулирования узкопрофильных и важных проблем нашего общества были созданы центральные органы исполнительной власти со специальным статусом, и именно благодаря административным реформам, которые осуществляют действующее правительство вместе с Президентом Украины, они стали более эффективными. Поэтому проводится оптимизация и систематизация деятельности всех исполнительных органов в Украине.