

**SEVERAL FEATURES OF THE APPLICATION OF ELECTRONIC
DEVICES DURING PRE-TRIAL INVESTIGATION**

Paper is devoted to the use of electronic devices of the monitoring of the new Criminal Procedural Code of Ukraine. Position is substantiated about the necessity of the amending of the articles of the Criminal Procedural Code of Ukraine concerning the improvement of the application of CRU, based on the analysis of legislation of Ukraine and international experience.

Keywords: *electronic monitoring, house arrest, investigator, law enforcement officers, precautions.*

Giving the subjects of the criminal procedure rights and charging them, editors of the criminal procedure code (CPC), as well as any other regulatory act, are counting on the fact that thanks to the public consciousness the right will be used, and acting voluntarily do. However, in reality, the mechanism of legal regulation without coercion is an abstraction.

So, in accordance with part 2 of art. 131 CPC to measures ensuring the criminal proceedings the precautions are related. The purpose of the application is to ensure implementation of a suspect, the accused conferred on him the procedural duties, while also preventing attempts: 1) hiding of pre-trial investigation and Court; 2) destroy, hide or distort any of the things or documents that are essential to establishing the circumstances of criminal offences; 3) unlawfully affect the victim, another witness, suspect, defendant, expert, a specialist in criminal proceedings; 4) discourage criminal in implementation of otherwise; 5) commit another criminal offence or continue criminal offences in which the suspected, accused (art. 175 CPP) [1].

So, from this norm, it follows that from assigned to the suspect duties in connection with the election in respect of a preventive measure, of course, depends on rapid, full and impartial investigation of criminal cases. In this connection, the need to determine the most effective measures to ensure the fulfilment of a suspect (accused) conditions of detention for the new CPC. Several aspects of the application of preventive measures investigated Y. Alenin, Y. Groshevij, T. Danchenko, A. Zakharko, O. Kaplina, O. Klochkov, Y. Kovalenko, L. Loboyko, P. Liublinsky, V. Malyarenko, R. Melnik, M. Mikheyenko, V. Nor, P. Pylypchuk, V. Rozhnova, V. Shybko, etc. However, a comprehensive analysis of the application of electronic controls to a suspect (accused), about which the chosen preventive measure, not associated with the custody for a new CPC is not carried out. Also missing from today's practice of applying analysis of the application of electronic controls induces to a more detailed study of this issue and provide appropriate suggestions.

The purpose of article is to clarify issues arising in connection with the use and providing suggestions for its improvement, taking into account the features of domestic legislation and international experience. Absolute novelty of the new Criminal Poceudural Code of Ukraine is the use of investigators and employees of the internal affairs body electronic controls to persons on whom preventive measure is house arrest or other preventive measure, not associated with imprisonment. This is an additional opportunity investigator and employees of internal affairs bodies to monitor suspects, defendants, for which selected the appropriate precautions. It is worth noting that CPC applied earlier and apply today to suspects, accused and convicted in the United States, Poland, the Russian Federation and in other countries of the world.

In general, the criminal legislation of many stes pretty clearly establishes the cases when the person may apply means of electronic controls. Mainly is provided for the crimes of a small gravity. So, in the United States of America electronic bracelets worn by a person suspected or convicted of hijacking cars, for crimes related to drug trafficking, as well as persons who violate traffic rules or abusing

alcoholic beverages. Use the following features to control and to persons who are involved in sexual crimes [2].

In Sweden electronic bracelets are applied to persons who are sentenced to three months of minor villains and drivers who were trapped in the accident. In Germany, at the request of the convicts' decision to wear them on the electronic bracelet takes not the Court and Prosecutor's Office. Choose the bracelets and those who count on parole. In Israel, at the request of the lawyers the Court may take such a decision, even with respect to persons who are under investigation. As an experiment the bracelets began to use in France, Switzerland and South Korea. In Austria, electronic bracelets are used to prematurely liberated persons were sentenced for a period less than three years. Agreeing to wear this bracelet may prematurely exit the prison and Estonian prisoners. In this country the bangles are from 2006 [3].

In accordance with legal acts of the Russian Federation, the right to use electronic or other technical means of supervision and control to ensure supervision of convicts and back control of suspects or defendants are chosen preventive measure in the form of house arrest, and for compliance with them is imposed the Court exclusions and limitations, provided the Criminal Executive Inspection. Applying the same CPC in Ukraine are the only additional guarantee securing performance of a suspect or accused their procedural obligations. Today, the application of CPC to convicted persons or persons who may be conditionally released ahead of legislation is not provided. Yes, in accordance with paragraph 9 of article 5. 194 to use CPC is one of the duties, the necessity of reliance of which was proved by a Prosecutor in connection with the use of the examining magistrate, Court of the suspect (the accused) is a preventive measure, not associated with the custody.

According to art. 195 CPC handheld can be applied: the investigating judge on the basis of a court ruling, an investigator on the election concerning the suspect, accused a preventive measure, not associated with imprisonment, which at last has a corresponding duty; employees of the internal affairs investigator on the basis of a court ruling, which the judge regarding the suspect, the accused elected a preventive measure in the form of house arrest. That is, according to this norm, except for using

CPC is the category of persons for which the chosen preventive measure of detention. In the case of election to the suspect and the accused is a preventive measure in the form of house arrest ruling on pretrial in the form of house arrest is to perform an organ of Internal Affairs of the place of residence of the suspect, the accused. So in 2013 CPC was applied: investigators to 107; employees of internal affairs bodies up to 182 people [4].

The application of electronic controls is stabilizing on the body of the suspect, the accused device that allows you to monitor and fix its location. Such a device must be protected from self removal, damage or other interference in its work with the aim of evading controls and has a signal about the attempts of individuals to carry out such actions. In accordance with part 4. 195 CPC, is not allowed to use electronic controls that significantly disrupts the normal way of life, causing considerable inconvenience in their sock or may constitute a danger to life and health of the person who uses them.

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Hiding from the pre-trial investigation authorities; to remove from the place of residence (specified in the Decree on the application of a preventive measure in the form of house arrest). Applying the same to the suspect (the accused) CPC in case the election to him, not related with the trimannâm custody preventive measure will prevent his attempts: to remove from the locality in which it is registered, resides or is found, without the permission of the investigator; visit the locations defined by the investigating judge or the Court, etc.

So in 2013 with CPC were found 235 violations imposed on suspects, defendants, including: 24 cases of evasion of control by willful removal electronic bracelet; 10 cases of evasion of control by damaging CPC; 7 cases of evasion of control by another interference in the work of CPC [4]. Analyzing the position of CPC, it should be noted that the obligation of use CPC may be placed on the suspect, the accused for a period not exceeding two months. If it is necessary, this period may be extended by request of the public prosecutor in the manner prescribed by article 199 PDA. After the end of the period, including continued that on the suspect, the defendant was given the duty of use CPC, ruling on the application of a preventive measure in this part shall expire and the obligations expire.

Given the foregoing, it should be noted that the main advantage of CPC to the suspect or accused, with respect to which the selected measure, not associated with imprisonment or house arrest, there is the possibility of staying on will or the place of residence, not interrupting family and social ties, and not in an isolated from society institution. Especially it concerns groups of persons with special needs, staying that detention is undesirable, such as this: persons suffering from certain chronic diseases, diseases that are treatable; minor blames in the Commission of crimes, because their stay in detention or detention in the pre-trial detention center has a negative impact on even a malformed function children's psyche; the elderly; individuals who have supported the minor children, and others. You can also assume that applying CPC will reduce the number of individuals arrested and sent to jail individuals and allows the State to save the dependents of persons under detention, dostavlennì them to the Court, and in future, if any, control will be used in Ukraine and to prisoners, reduce the occupancy of the confinement and expenses for their upkeep.

However, these advantages apply CPC still too early to say. If we take into consideration experience of CPC that exists today in Ukraine, you can note the lack of clear regulation regarding the actions of employees of the territorial units of the authorized unit who have to carry out 24-hour control using face CPC. That is the lack of well co-ordinated interaction of services and departments of internal affairs bodies with this issue contributes to the ill-timed response to an alarm that comes on

the remote monitoring. And as a consequence, the application of CPC to suspects (defendants) can not guarantee the fulfillment of the obligations stipulated by the chosen for them a safety measure. This is especially true of such a preventive measure as house arrest.

So, taking into account the recommendations Of the specialized Court of Ukraine with consideration of civil and criminal cases, outlined in a letter No. 511-550/04-13 from 04.04.2013, "About Some Questions of the Application of Safeguards during Pre-trial Investigation and Court Proceedings under the Criminal Procedure Code", on the use of house arrest, the emphasis placed on social and psychological issues, which should take into account the guardians. So, according to the VSSU, correct should be considered the practice of those investigative judges, who used this measure in these cases, see the opinion of the owner of the accommodation (if known), and evaluating all circumstances, in the aggregate, including: strength of social relations suspect, accused in the place of his permanent residence; the presence of his family and dependents (place of residence); the sufficiency of the application of such a preventive measure to prevent the risks defined in art. 177 the CCP, in particular attempts by the suspect, accused of hiding from pre-trial investigation and Court to illegally influence the victim, another witness, suspect, defendant, expert, specialist, prevent criminal in implementation of otherwise, commit another criminal offence or continue criminal offences in which the suspected, accused [5].

Therefore, in our opinion, it would be appropriate to consider such circumstances the examining magistrate when deciding on the application for the suspect (the accused) CPC in cases stipulated by law. Given the fact that there are software tools CPC special regime, which should be the suspect (the accused) during pre-trial investigation, the procedural value of applying them to a suspect (accused) lies in the fact that they contribute: 1) ensuring optimal conditions for evidence and achievement of the truth in a criminal case; 2) creating conditions for the realization of the objectives of the penal process; 3) providing special regime, which should be the suspect (the accused).

Thus, it should be stated that the statutes of the Criminal Procedural Code of Ukraine devoted to the application of CPC as an additional duty, which could be laid on a suspect, accused ruling investigator judge court at the election to it a preventive measure, not associated with the detention, and in the form of house arrest, is imperfect. This applies also to organizational readiness as the pre-trial investigation authorities apply CPC and employees of the territorial units of the authorized unit. We believe that eliminating the legislator existing at present deficiencies and gaps that arise in the application of a preventive measure in the form of house arrest and CPC, taking into account international experience in this matter will allow investigators and employees of the internal affairs bodies to avoid unnecessary as procedural and organizational issues during the application of CPCK.

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