

## PROTECTION OF THE RIGHTS AND LEGITIMATE INTERESTS OF MINORS AT APPLICATION OF MEASURES OF CRIMINALLY- REMEDIAL COMPULSION

**Kuatzhan Ualiev**

Measures of remedial compulsion are directed on creation the blessing-pleasant of the conditions providing successful realization of appointment of criminal legal proceedings. Accompanied by intrusion into sphere of the legal relations guaranteed by Constitution of Kazakhstan Republic about the rights and interests of the person, they should be used only in strict conformity with their mission in the presence of the bases established by the law and with observance of appropriate legal procedure. As a result of illegal application of measures of remedial compulsion it is wrongful to limit the rights of citizens, the conditions defining dangerous for legal judge an accusatory bias in the subsequent activity of body investigation are created. Timely non-use of measures remedial compulsion in turn makes negative impact on activity on investigating crimes and, as consequence, limits of constitution the right of citizens to access to justice and indemnification of the caused damage. Compulsion use in criminal trial can be directed as on prevention negative for justice action persons from outside participating in it, and on restoration of breach legal relations by compulsion to execution earlier placed, but not executed remedial duties.

To the minor suspects, accused a preventive punishment provided by article 140 of Republic Kazakhstan CPC, except for such preventive punishment as supervision of command of military unit over the military man the regulated article 146 of CPC RK can be applied. The criminally-remedial law establishes special rules of application of measures of compulsion to minors (item 491 of CPC RK).

At the decision of a question on application of a preventive punishment concerning the minor suspect accused of each case possibility of election of such measure as transfer of the minor suspect accused under supervision in an order, provided by Republic Kazakhstan UPK article 147 should be discussed.

Arrest as a preventive punishment, and also detention 150 present Codes, only can be applied to the minor in the presence of the bases specified in articles 132, in exceptional cases at fulfillment heavy or especially grave crime.

Term of the maintenance of the minor under guards on stages of the preliminary investigation, established by article 153 of the present Code, can be prolonged for term no more than about six months. Minors separately contain.

Parents of the minor or its other lawful representatives are immediately informed of detention, arrest or prolongation of term of holding in custody, and at their absence - near relations

Essential value such circumstances, as frequency of a crime have, in particular, an orientation of intention, a consequence, impudence and aggression of

criminal acts, negative behavior after commission of crime, a long absence of certain employment, strong communications with the criminal environment etc.

One of features of activity of the lawyer - the defender on affairs of minors is the accurate formulation of a position concerning the preventive punishment selected to the teenager. According to the current legislation (item 491 of CPC RK) and the Standard decision № 6 Supreme court RK «About judiciary practice on affairs about crimes of minors and about their involving in criminal and other antisocial activity», election concerning the minor as an arrest preventive punishment, legally only in exceptional cases, caused by special weight of the crime committed by the teenager and in the presence of the bases of CPC RK provided in item 150.

As a result of the interrogation of lawyers spent by us (practicing basically on affairs about crimes of minors) about authorization by courts of a preventive punishment arrest, it was found out.

At election as a preventive punishment arrest (150 CPC RK) separate courts do not fulfill the requirement of article 491 of CPC RK according to which except weight of the committed crime data on the person suspected or accused, age and a state of health, the marital status, an occupation and other circumstances should be considered. At the decision of a question on election of a preventive punishment in the form of arrest concerning the minor conditions of its residing and education, mutual relation with parents were insufficiently investigated, and concerning suspected or accused women courts not always investigated a question on presence at them in charge of minor children.

On occasion by courts are not fulfilled the requirement of article 147 of UPK PK about obligatory discussion at the decision of a question on election of a preventive punishment concerning the minor suspect accused, possibility of its return under supervision of parents, trustees, trustees or other reliable persons, and also officials of specialized child care centre in which it is. By courts it was not taken into consideration that for the minor suspected or accused of commission of crime, this question has special value as gives the chance to avoid isolation from a society.

Not always at election concerning the minors suspected or accused of fulfillment of crimes of average weight, such preventive punishment as arrest, courts consider positions of a part of 1 article 81 CC RK establishing restrictions at appointment by the condemned minor of punishment in the form of imprisonment. As a result it is unreasonable under guards minors aged till sixteen years, suspected or accused of fulfillment of crimes of average weight by which punishment in the form of imprisonment cannot be appointed contained earlier not previous convicted.

The legislator connects occurrence criminally-remedial legal relations with minor subjects only after granting by them or their representatives to the body conducting criminal trial, the corresponding official documents certifying age (birth certificate). It is caused by that legal proceedings concerning minor participants of criminal trial on the remedial order essentially differ from

procedure of investigation concerning the persons who are not possessing the similar status. Therefore the legislator, considering psychological and age features of minors, has established the special rules applied at investigation and proceeding of affairs of the given category.

Thereupon, to the lawyer follows in each specific case proceeding from materials of business in their set, age and a state of health of teenagers and other, worthy circumstances, to bring an attention to the question and to achieve cancellation unreasonably selected concerning their preventive punishment in the form of arrest, meaning that the isolation of the teenager unreasonable and not caused by necessity can lead adverse for the teenager and legal concerns to consequences, to artificial distortion of the purposes facing to criminal legal proceedings and data to zero of educational influence of criminal trial.

Legally competent position on the business, directed on protection of the rights and legitimate interests of minors accused should be a result of this laborious and all-important work of the lawyer on preliminary investigation deeply thought over, based on materials of business and current legislation positions, objective and according to the law.

Personifying principles of the most expedient procedures, the remedial form represents one of legal guarantees of the rights of the person [1, a.107]. The Criminally-remedial law provides the branched out system of guarantees of the rights and personal freedoms, including principles of criminal trial, a duty of bodies of inquiry, the inspector, the public prosecutor being in certain dependences in connection with protection of the rights of citizens. Observance of the rights and freedom of participants of criminal trial is one of obligatory criteria of legality of inquiry and preliminary investigation.

Professor A.N.Ahpanov divides this system of guarantees into two kinds: on a guarantee of justice and a guarantee of the rights of the person, subdividing the last into three groups:

- Coinciding with justice guarantees;
- Conflicting to justice guarantees but where interests of justice dominate;
- Conflicting to interests of justice, but human rights are of great value [2, a.10].

In the first position measures on safety of participants of process when interests of justice and the person in which relation such measures are applied, coincide are resulted.

The second position concerns remedial actions and decisions of compulsory character, for example on application of a preventive punishment.

And last position is illustrated by the right to witness immunity when in interests of justice it is necessary to receive data about suspected or accused, but at the same time the persons specified in the law, consequences for themselves can refuse evidence without any legal. Or in case of detention of the minor on suspicion in commission of crime. According to ч. 3 items 138 of CPC RK business, with a view of appropriate maintenance of observance of secret of an initial stage of a consequence from the sanction of the public prosecutor, its

assistant the notice of relatives of full age arrested persons and arrested persons can not be made within seventy two hours from the moment of detention on minor arrested persons the given rule does not extend.

Along with the rights given to the adult suspect, accused, in the norms fixing a legal status of specified participants of criminal trial, the minor suspect, accused has the right immediately after detention or arrest to inform parents or other lawful representatives on the fact of detention, imprisonment and a place of its maintenance; to cause for participation in manufacture on business of the concrete expert - the teacher or the psychologist; to declare tap to the teacher or the psychologist; to refuse the lawful representative. Refusal of the minor suspect accused from the lawful representative is not obligatory for the inspector, the public prosecutor, court.

Being in conditions of an investigatory insulator and testing for itself moral and physical influence of the applied arrest or real threat of its application, the minor client cannot be a free and freely define the behavior, and is compelled to make only those actions which the inspector demands. Application concerning the minor of a preventive punishment as arrest essentially breaks its mental condition, deduces it from composure, irritates, will paralyze its self-protective functions, consciousness of own advantage, reduce the control over the behavior.

Investigatory practice testifies that arrest as the preventive punishment is applied to prevent on purpose accused more often, to abscond and vessels, and its intention to disappear is found out not always. Inspectors are limited only to that at election of a preventive punishment arrest is specified in the decision by all purposes of a preventive punishment. The defender needs to pay attention and to it as the exact instructions of the purpose of arrest play large role for the preventive punishment appeal. That has been sewn up successful, the lawyer should know accurately, in what cases it is possible to arrest accused, under what conditions it is admissible and is possible, and when it is forbidden by the law. The correct decision of corresponding questions is promoted in many respects by knowledge the defender of the established principles and the criminally-remedial bases to arrest election.

The right to protection inseparably from guarantees of its realization. The bodies which are carrying out criminal prosecution and court are obliged to provide to the arrested person suspected, accused, to the defendants its right to protection by any ways established by the law and means, and also to guarantee protection of its personal secrets. Observing a principle of protection of the rights of citizens, these bodies must full, comprehensively, objectively to find out circumstances, both confirming, and denying charge. In the modern literature practically there is non negative statements about the admission of the defender at early stages of investigation of crimes. In criminal-proceedings law «the right to protection as isolated constitutional principles is considered in the form of set of the concrete rights given accused and the suspect for full or a partial refutation of charge or softening criminal of responsibility» [3. a.25].

Special attention, in connection with the admission of the defender in business at early stages of investigation, the problem ought fulfillment the norm providing the introduction of the defender, selected to be suspected either accused, or its relatives, in business within twenty four hours from the moment of detention or application of a preventive punishment in the form of arrest gets. If within twenty four hours from the moment of detention of the suspect or the conclusion of the suspected, accused under guards the appearance of the defender, invited by him, is impossible, the investigator, the inspector or the public prosecutor takes measures to destination the defender. At refusal of the suspect accused from the appointed defender investigatory actions with participation of the suspect, accused can be made without participation of the defender, except for cases when the suspect, accused is the minor [4, a.129].

Among set of guarantees of the right on protection minor suspected and accused, there are special guarantees. One of them is the right to have in the course of criminal proceeding as the defender the special person representing rights and legitimate interests of the client is the professional lawyer having the status of the lawyer according to the law of RK «About lawyer activity».

The activity of law enforcement bodies which is carried out within the limits of criminal trial, has priority task maintenance of protection of the rights and personal freedoms, interests of society and the states from criminal encroachments. The lawyer in turn should know accurately that the citizens involved in manufacture on criminal case, should be guaranteed from unreasonable charge in fulfillment crime and condemnation, illegal or unreasonable application to them of measures of remedial compulsion, suppression (arrest), others illegal restrictions of the rights belonging to them and freedom [5, c.13].

Criminal prosecution concerning minors suppose granting to these persons of possibility to be protected. Not to mention them, in such protection it is interested and government, allocating corresponding state structures authority on realization of criminal prosecution. As it testified it is judicial – investigatory practice of criminal legal proceedings, arguments of bodies of criminal prosecution in avoidance legal errors require check on durability by comparison them with counterarguments from outside protection [6, c.71].

In connection with necessity of strict observance of legality deserve special attention questions of the bases of application of measures of criminally remedial compulsion concerning minors. Manufacture on criminal case in a stage of investigation, especially at its initial stage, comes true in the conditions of the limited quantity of the information that, does not relieve the inspector of necessity with a view of crime disclosing to operate quick and is resolute. The specified conditions do not exclude occurrence of the situations menacing by display of an arbitrariness concerning the minor suspected and accused. Therefore necessity of appropriate maintenance of their rights demands clearness and clearness in definition concerning application of remedial compulsion.

### **Literature:**

1. Stetsovsky U.I. To a question on the remedial form of the Soviet criminal legal proceedings.//Questions of struggle against criminality. – M. 1975. - p.107.
2. Ahpanov A.N.Problems of criminally-remedial compulsion in a stage of preliminary investigation. – Almaty: Zheti Zhargy, 1997. – p.176
3. Reznik G. M. Slavin “Constitutional rights on protection. – M. 1980. – p.125
4. Trunov I.L.protection of the rights of the person in criminal trial – M: Publishing house "Legislation", 2005 – 300 with.
5. Demidov I.F.human rights issue in modern Russian criminal trial. – M. 1996 – p.127
6. Shadrin B.C. Maintenance of the rights of the person at investigation crimes. – M. 2000 – p.182

### **Summary**

The need for strict observance of the rule of law in applying the measures of legal compulsion to minors - a requirement of the law.

\*\*\*\*\*

**Адам баласына тәрбие бермей тұрып, білім мен ғылым берсең, ол жүрген ортасына апат әкеледі.**

**Әл – Фараби**

\*\*\*\*\*