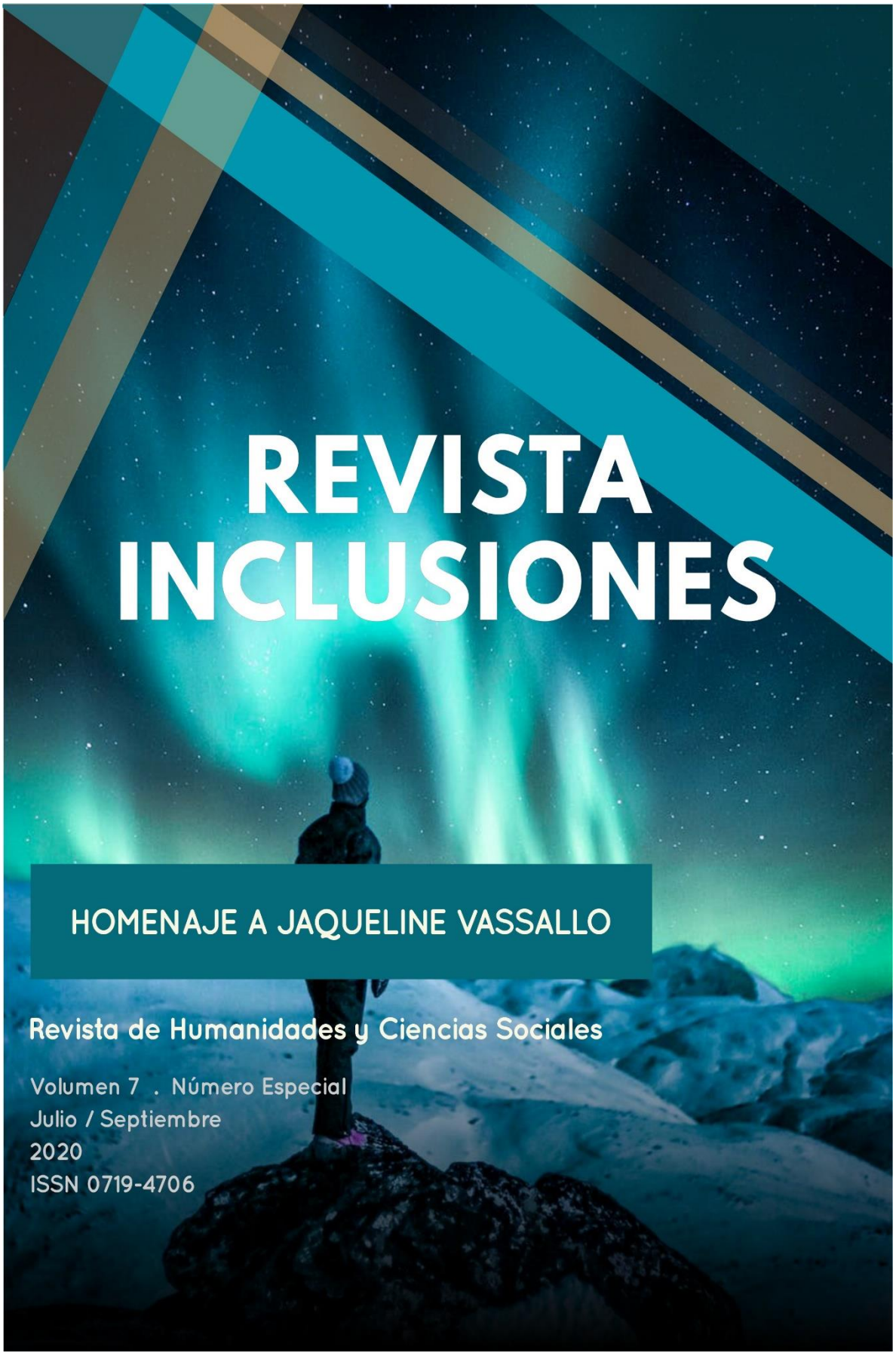

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HOMENAJE A JAQUELINE VASSALLO

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TO THE QUESTION OF THE NEED OF EXPANSION OF THE ADMISSIBLE LIMITS OF JUDICIAL CONTROL IN THE CRIMINAL PROCESS OF RUSSIA (BY THE EXAMPLE CHOOSING A PREVENTIVE MEASURE IN THE FORM OF DETENTION)

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Abstract

The subject of the scientific article is the problem of expanding the admissible limits of judicial control at the pre-trial stages of Russian criminal proceedings by the example of a court allowing a petition for a preventive measure in the form of detention. The relevance of the investigated problem is determined by the need ofimprovementof the procedure of detention in order to ensure the constitutional rights of citizens and compliance with international standards in the field of protection of individual rights. The current procedure takes into account the need for the court to decide only the issue of law (formal grounds for making these decisions), but not the “question of fact” when deciding on detention or extending the terms of detention in custody — a minimum set of evidence of suspicion against a person or charges. An analysis of Russian court decisions on the selection of a preventive measure in the form of detention allows to assert that in each case the court, in support of the decision made, refers to the qualification of the actions of the suspect, the accused, contained in the petition of the prosecution, the interrogating officer, as well as in the materials submitted by the said entities, which can be deliberately “overstated,” and pays attention exclusively to the severity or special severity of the deed.

Keywords

Detention – Validity of charge – Subject of judicial control – Limits of judicial control
Judicial control

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Introduction

Today, the right for judicial control is an undeniable and fundamental human right provided by Article 6 of the European Convention on Human Rights (hereinafter, the ECHR)[1]. At the international level, it ensures that every act of intervention, taking into account human rights and freedoms, is subject to judicial review. Human rights and freedoms are particularly susceptible to violations in the criminal process. Consequently, criminal proceedings, especially the investigation as its first phase, should be subject to judicial review, since the criminal investigation includes actions that violate human rights[2]. In worldwide legal practice, judicial control is also associated with the branch of state law, especially in countries that have a written constitution based on the concept of limited government[3] However, this type of judicial control is not the subject of this study.

The legal nature of the indicated judicial control activity only at the stage of the preliminary investigation of the criminal process is designed to resolve the conflict between the authorities, which also carry out criminal prosecution, and the participants in the application of legal proceedings to limit the constitutional rights of participants and freedoms of citizens to the code through participation of prohibitions of independent control of the court in this conduct of the conflict and its resolution. In each criminal process, it must be clearly and obviously defined when an investigation should be initiated against a citizen, how long it will take, and under what conditions the relevant citizen may appear before the court to determine his or her guilt and the possible imposition of a penalty or other measures prescribed by law[4].

The state must determine in advance under what conditions state prosecution bodies can violate fundamental human rights and freedoms, restrict them and ultimately suspend them for prosecution purposes. However, the existence of such conditions cannot fully guarantee the observance of human rights and freedoms in criminal proceedings if their application is not accompanied by an independent and impartial monitoring mechanism. On the other hand, if such a preventive action does not meet its purpose, and the prosecution authorities violate human rights, there should be a remedy that allows a citizen to intensify judicial control and thereby prevent violation of fundamental rights of an individual as a result of illegal actions of the prosecution authorities. “The position of the court and, in particular, the proper judicial protection of the rights of citizens from their illegal and unjustified violation are of supreme importance in terms of the development of any criminal process and are key factors affecting the establishment of a balance between the desire for an effective criminal process and the requirement to protect the human rights of citizens, as well as the rights of the accused in criminal proceedings ”[5].

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[1] M. Borraccetti, Fair Trial, Due Process and Rights of Defence in the EU Legal Order, in G. Di Federico, ed., The EU Charter of Fundamental Rights (New York: Springer, 2011), 95-107.

[2] G. J. Kjelby, “Some Aspects of and Perspectives on the Public Prosecutor’s Objectivity According to ECtHR CaseLaw”, Bergen Journal of Criminal Law and Criminal Justice, num 1 (2015): 61–83.

[3] Ch. Roy, Judicial Review and the Indian Courts. 2012. Available at: https://ssrn.com/abstract=1990601 or http://dx.doi.org/10.2139/ssrn.1990601 y D. Lustig y J. H. H. Weiler, “Judicial review in the contemporary world—Retrospective and prospective”, International Journal of Constitutional Law, 16(2) 2018): 315–372.

[4] J. Göhler, “Who Shall Be in Control of the European Public Prosecutor’s Dismissal Decisions?”, New Journal of European Criminal Law, num 1 (2015): 102–125.

[5] A. Novokmet, “The European public prosecutor’s office and the judicial review of criminal prosecution”, New Journal of European Criminal Law, Vol: 8 num 3 (2017): 374–402.

Methods

The methodological basis of the study was the general scientific methods of cognition, as well as the private scientific methods - the comparative legal method, the method of legal modeling and the method of analyzing documents. The author analyzes the legal positions of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, decisions on choosing a preventive measure in the form of detention of the courts of St. Petersburg (Russia) for 2017 and 2018.

Results

In the theory of the Russian criminal process, the purpose of judicial control is to ensure the rule of law and the procedure for the preliminary investigation bodies to observe constitutionally thorough human rights and freedoms. These powers of the court should be considered in close connection with the provisions of Chapter 2 of the Constitution of the Russian Federation. Constitutional postulates securing the inalienability of fundamental rights and freedoms and their belonging from birth become important for its implementation in criminal matters (part 2 of article 17). The analysis of the Code of Criminal Procedure of the Russian Federation (hereinafter, the CCP of RF) allows us to conclude that judicial control at the pre-trial stages of criminal proceedings is limited by the powers of the court, which are exhaustively defined in part 2 of article 29 (control over the election of procedural coercion measures and the production of investigative actions) and Art. 125, 125.1 (appeal of decisions and actions of preliminary investigation bodies). A similar solution to this issue is presented in the criminal procedure legislation of neighboring countries. Thus, the Code of Criminal Procedure of Estonia (hereinafter, the CCP of Estonia) provides for judicial control over the actions and decisions of the investigating authorities and the prosecutor's office (Article 230), as well as over the selected preventive measures (Articles 136, 137). The Code of Criminal Procedure of Georgia (hereinafter, the CCP of Georgia) connects judicial control exclusively with complaints (chapter 30). Part 4 of Article 242 of the CCP of Georgia reads: “A complaint may be filed against any actions or decisions of an inquiry officer, investigator or prosecutor, which, in the applicant’s opinion, are unlawful or unfounded. However, the range of appealed decisions includes the actions and decisions of the bodies of inquiry and preliminary investigation, as well as the application of procedural coercive measures“. Thus, the Georgian legislator has combined the two areas of judicial control in one chapter. The practice of effective judicial control in criminal proceedings has been achieved in Austria and Croatia. A case law study in these two countries showed that just regulating the defendant’s right to an effective remedy against unlawful prosecution has a preventive effect on the work of the public prosecutor, that is why the defendant and his counsel do not even use this remedy because they are convinced legality of the decision to initiate an investigation[6]. In Austria, judicial review of criminal prosecution at the investigation stage is presented by a statement to terminate the investigation (Antrag auf Einstellung, § 108 of the Austrian Code of Criminal Procedure). This statement is a remedy that can be used by the defendant to challenge the lawfulness of the criminal investigation. Similar provisions are contained in the criminal trial of Croatia[7].

[6] C. Bertel y A. Venier, Strafprozessrecht (Vienna: Manz, 2011), 196.

[7] A. Novokmet y M. Jukic, “Judicial Review of Preliminary Proceedings: Examination of the Case Law of the Courts in Osijek, Split, Rijeka, Varaz ˇdin and Zagreb’”, Croatian Annual of Criminal Law and Practice, num 2 (2015): 478.

Thus, in European countries, judicial control has a wider scope of permissible limits and covers the entire process of criminal prosecution, starting from its initial stage - the stage of initiation.

The Russian scientific literature theoretically confirms the points developed on the forms (types) of judicial control on the part of the pre-trial stages of criminal private legal proceedings, and problems that arise during its implementation are identified. One of the most important gaps in the current criminal procedure legislation is the lack of a definition of the category “limits is a judicial control order”. The question of the admissibility of the limits of judicial control is inextricably linked with its subject, and also causes lively discussions not only among theoretical processors, but also among practitioners, giving rise to a variety of judicial enforcement decisions.

The subject of judicial control in relation to the Russian criminal process can be defined as the activities of the bodies of inquiry, preliminary investigation, the prosecutor's office, as well as the bodies that carry out operational-search activities when they raise questions about restricting the constitutional rights of citizens, and in some cases, limiting the rights of legal entities, as well as the activities of such bodies, which impede the movement of relevant cases to court, that is, hamper the right of access to justice to participants in criminal proceedings.

A similar point of view is shared by a number of researchers. N.A. Kolokolov indicate that the subject of judicial control activities will be “the direct activities of the body of inquiry, investigator and prosecutor, raising the issue of restricting the constitutional rights of citizens who have decided to suspend, terminate the progress of the case, as well as the refusal to consider the head of the body of inquiry, the investigative unit and the prosecutor a complaint regarding procedural issues”[8].

Other researchers examine the subject of judicial control more narrowly. In particular, E.A. Bravilova, points to procedural actions and decisions that can be appealed to the court, believing that this circle “... is so wide and diverse that it is quite difficult to unambiguously determine the subject of judicial control for each of them”[9].

On the contrary, other researchers overly interpret the subject of judicial control, linking it with various forms of control. So, O.V. Khimicheva proposes to consider the issue of preventive judicial control, the subject of which includes actions and decisions of investigating authorities that significantly limit the constitutional rights of citizens, while generating consequences that go beyond the framework of criminal procedure relations themselves and lead to constitutional restrictions that cannot be restored as a result of subsequent judicial control or court proceedings. And the subject of subsequent judicial control, in her opinion, are two groups of actions and decisions of the preliminary investigation bodies. The first of them consists of decisions that are directly indicated in Article 125 of the CCP of the RF: refusal to initiate criminal proceedings and termination of criminal proceedings, refusal to receive a report of a crime. These procedural decisions

[8] N. A. Kolokolov, Judicial review is under investigation. Monograph (Moscu: UNITY-DANA, Law and Law, 2004), 287.

[9] E. A. Bravilova, “The subject and scope of judicial control over the actions and decisions of the investigator (interrogator)”, Jurisprudence and law enforcement practice, num 4 Vol: 38 (2016): 136-145.

entail the termination of criminal procedural relations, impede further proceedings in the case and can significantly limit the rights and legitimate interests of a citizen, blocking access to justice. The second group consists of other actions (inaction) and decisions, the specific list of which is not in the CCP of the RF. This allows you to appeal any actions and decisions of the investigator and the prosecutor if, in the applicant's opinion, they cause damage to his constitutional rights and freedoms or impede access to justice[10]. Such an approach extends the subject of judicial control to almost all the procedural activities of the preliminary investigation bodies, expanding its limits infinitely. The question of the admissibility of the limits of judicial control is controversial in the science of the criminal process, and this is primarily due to the fact that the law does not say anything about the depth of the judicial review of materials of pre-investigation inspections and criminal cases submitted to the court simultaneously with the petitions of the preliminary investigation bodies or upon receipt of complaints from participants in criminal proceedings. Law gaps are filled up by judicial practice, its regular generalization by the Supreme Court of the Russian Federation, embodied in the decisions of the Plenum of the Supreme Court of the Russian Federation. The admissible limits of judicial control were also the subject of repeated study of the Constitutional Court of the Russian Federation, the position of which did not remain unchanged. Thus, when studying the issues of choosing a preventive measure in the form of detention, in its first decisions on this issue the Constitutional Court of the Russian Federation invariably pointed out that the court of general jurisdiction, when deciding on the measure of restraint, is obliged to examine only the evidence that confirms the possibility the suspect or the accused to hide from the investigation and the court, continue criminal activity or interfere with the criminal proceedings, that is, evidence justifying the existence of grounds for taking the measure intersection, fixed in para. 1 tbsp. 97 CCP of RF. The issues of evidence of the fact of committing a crime and the guilt of a person should not be investigated by the court at this stage of the criminal process. This legal position is formulated, in particular, in the decision of the Constitutional Court of the Russian Federation No. 14-P dated 06/13/1996[11], in the determination No. 167-O dated 12/25/1998[12], the determination No. 417-O dated 04/04/2003[13] and a number of other decisions. In further decisions, the Constitutional Court of the Russian Federation recognized the impossibility of verifying the legality and validity of a preventive measure without examining evidence showing the validity of a person's suspicion of committing a crime.

In paragraph 29 of the Decree of the Plenum of the Supreme Court of the Russian Federation No. 41 dated 12/19/2013 "On the Practice of the Application by the Courts of the

[10] O. V. Khimicheva, Conceptual foundations of process control and supervision at the pre-trial stages of criminal proceedings: abstract. dis. doctor. legal sciences. (Moscú: 2004). Available at: http://www.diss.rsl.ru

[11] The decision of the Constitutional Court of the Russian Federation # 14-P "In the case of the verification of the constitutionality of the fifth part of Article 97 of the RSFSR Code of Criminal Procedure in connection with a citizen's complaint V.V. SHCHeluhina" (1996, June 13) Available at: http://www.consultant.ru

[12] Determination of the Constitutional Court of the Russian Federation # 167-O "In the case of verifying the constitutionality of the fourth, fifth and sixth parts of Article 97 of the RSFSR Code of Criminal Procedure in connection with complaints by citizens P.V. YAncheva, V.A. ZHerebenkova i M.I. Sapronova" (1998, december 25) Available at: http://www.consultant.ru

[13] Determination of the Constitutional Court of the Russian Federation # 417-O "On the refusal to accept for consideration the request of the Berezovsky city court of the Sverdlovsk region to verify the constitutionality of the second part of Article 91, part three and paragraph 3 of part seven of Article 108 of the Code of Criminal Procedure of the Russian Federation" (2003, December 04).

Law on Preventive Measures in the Form of Detention, Home Arrest and Bail", an attempt to establish certain limits of judicial control when considering the issue of choosing a preventive measure in the form of custodywas made. The court has a duty to assess the validity of a suspicion of a person committing a crime, as well as the availability of grounds and compliance with the procedure for detaining a suspect (Articles 91 and 92 of the CCP of RF); the existence of the grounds provided for in Article 100 of the CCP of RF for the selection of a preventive measure before the indictment and compliance with the procedure for its application; the legality and validity of notifying a person of a suspicion of committing a crime in the manner prescribed by Article 223 [1] of the CCP of RF; compliance with the procedure for attracting a person as an accused and bringing charges against him, regulated by Chapter 23 of the CCP of RF. Decisions on the election of custody as a preventive measure and on the extension of the period of detention should indicate why a milder measure of restraint cannot be applied to a person, the results of a study at a court session of specific circumstances justifying the choice of this preventive measure or extension of its validity period, evidence confirming the existence of these circumstances, as well as the court's assessment of these circumstances and evidence, setting out the reasons for the decision taken"[14].

To establish the above legally significant circumstances, paragraph 13 provides an approximate list of procedural documents, which, in the opinion of the Supreme Court of the Russian Federation, should be in the materials submitted to the court. This list includes: copies of decisions to institute criminal proceedings and bring a person as an accused; copies of protocols of detention, interrogations of the suspect, defendant; other materials testifying to the person's involvement in the crime, as well as information about the participation in the case of a defender, a victim; the evidence available in the case confirming the need to select a person in custody (information about the identity of the suspect, accused, criminal record, etc.) and the impossibility of choosing a different, milder measure of restraint (for example, house arrest or bail) and other

Thus, the courts are ordered simultaneously with the resolution of the issue of choosing a preventive measure in the form of detention to check not only the validity of the arguments of the preliminary investigation authorities about the need to apply this preventive measure, but also to verify that they comply with the legal procedure for detaining a suspect and attracting a person as an defendant, which also allows to somewhat clarify the permissible limits of judicial control when considering materials in this category.

In practice, there are cases when the court ignores the above instructions of the Plenum of the Supreme Court of the Russian Federation. So, by a decision of the Oktyabrsky District Court of St. Petersburg (Russia) dated January 31, 2018, the investigator's petition for taking a preventive measure in the form of detention in respect of G. was granted by the court. It was established that G. was actually detained on 01.30.2018 at 0545 hours; in the order of Article 91, 92 of the CCP of RF was detained on January 31, 2018 at 15 hours 20 minutes; The investigator's request for a preventive measure in the form of detention was filed with the court on January 31, 2018 at 09:50. In violation of the requirements of Clause 29 of the Resolution of the Plenum of the Supreme Court of the Russian Federation, the court did not assess the defense's arguments about gross violations of G.'s rights during the

[14] Resolution of the Plenum of the Supreme Court of the Russian Federation # 41 "On the practice of the application by the courts of legislation on preventive measures in the form of detention, house arrest and pledge" (2013, December 19; red. 2016, may 24).

detention. The period of G.'s actual detention was 52 hours 05 minutes. Thus, G. in violation of the requirements of Article 22 of the Constitution of the Russian Federation and part 2 of article 94 of the Code of Criminal Procedure of the Russian Federation for 4 hours was limited in its constitutional right forfreedom and security of person[15].

The most controversial in the theory and practice of judicial control remains the issue of the need for a court to assess when resolving the issue under consideration the validity of the suspicion or charge. It should be agreed with the position of A.N. Tarbagaev, A.D. Nazarova is that: “The current model of arrest should take into account the need for the court to decide not only the“ question of law ”(formal grounds for making these decisions), but also the“ question fact ”- the presence of a minimum set of evidence of suspicion or accusation incriminated to a person”[16]. Other proceduralists also pay attention to the existence of substantive legal grounds when a court makes a decision on choosing a preventive measure in the form of detention in custody.

An analysis of court decisions on the selection of a preventive measure in the form of detention gives grounds to assert that in each case the court, in support of the “repressive” decision, refers to the qualification of the actions of the suspect, the defendant, contained in the request of the interrogating officer, investigator, as well as in the materials submitted by the said entities, and draws attention to the severity or special severity of the deed[17]. At the same time, practitioners are most familiar with the situation of deliberate "overstatement" of the charge or "overstated criminal legal qualification of the act"[18]. So, the preliminary investigation bodies in relation to N. opened a criminal case under part 3 of art. 30, part 1, article 105 of the Criminal Code of the Russian Federation (attempted murder). Despite the defense’s arguments about initiating a criminal case with a clearly “overestimated” qualification, the gravity of the charges (a particularly serious crime) played a key role in the court's decision to elect N. a preventive measure in the form of detention. During the trial, the indictment did not find confirmation, and N.'s actions were retrained for part 1 of article 114 of the Criminal Code of the Russian Federation (intentional infliction of grievous bodily harm, committed when exceeding the limits of necessary defense), which is classified as minor and excludes, as a general rule, the application of a preventive measure chosen by the court[19].

Without dwelling on a scientific analysis of the reasons for such an “unethical”, or rather designating as “unlawful behavior” of officials of the preliminary investigation bodies, we consider it appropriate to cite the statement of the famous processist Yu.K. Yakimovich that the resolution of issues related to detention, extension of their terms is a special procedural significant situation and should be determined by the high degree of complexity

[15] The decision of the Oktyabrsky District Court of St. Petersburg (Russian Federation) in case # 3/1-22/2018. 2018.

[16] A. N. Tarbagaev y A. D. Nazarov, “Judicial control and the problems of preventing crimes and other offenses in the criminal process of Russia and Germany”, Criminological Journal of the Baikal State University of Economics and Law, Vol: 9 num 3 (2015): 560 – 570.

[17] A. I. Rarog, “Repressive roll of Russian criminal policy”, Criminological journal of the Baikal State University of Economics and Law, num 3 (2014): 88-95.

[18] A. N. Tarbagaev y A. D. Nazarov, “Judicial control and the problems of preventing crimes and other offenses in the criminal process of Russia and Germany”, Criminological Journal of the Baikal State University of Economics and Law, Vol: 9 num 3 (2015): 560 – 570.

[19] The decision of the Primorsky District Court of St. Petersburg (Russian Federation) in case # 3/1-319/2017. 2017.

of the criminal procedure form[20], which should include a full study of the evidence collected in the criminal case, with the aim of checking the lawfulness and justification of the suspicion or charge by the court, including whether their qualifications were appropriate. Undoubtedly, our position will be criticized by the defenders of the secrecy of the preliminary investigation, since with this approach the defense side, in preparation for the hearing to resolve the request of the interrogating officer, investigator, to choose a preventive measure in the form of detention or to extend it materials of the criminal case, and, therefore, will be aware of the evidence collected by the inquiry officer, investigator. This will allow the defender to predict the further course of the investigation, to refute the proof of any facts, as well as to otherwise "counter" the investigation. As noted by N.A. Vlasova: "... the strategy and defense tactics are, as a rule, a secret for the investigator. Therefore, based on the principle of competition and equality of arms, the strategy and tactics of the prosecution should also be a secret for the defense in the process of pre-trial proceedings"[21]. Many researchers agree with this. Securing the inadmissibility of disclosure of the preliminary investigation data as a general condition of the trial (Article 161 of the CCP of RF), the legislator did not define the range of information that falls into the category of "preliminary investigation data" or "constituting the secret of the preliminary investigation", therefore this issue still remains doctrinal development. In the scientific literature there are various definitions of the categories in question; attempts have been made to determine the amount of such information, and the focus is on the fact that this volume is determined independently by the interrogator, the investigator[22]. With regard to the subject of our study, the evidence obtained in the course of investigative actions without the participation of the accused, the processors refer to information constituting the secret of the preliminary investigation, which falls under the legal regulation of Art. 161 CCP of RF[23]. The problem of proportionality in maintaining the secrecy of the preliminary investigation and in exercising the right to familiarize oneself with the materials of the criminal case was somewhat resolved at the level of explanations of the Plenum of the Supreme Court of the Russian Federation. In the Decree dated 19.12.2013 No. 41 in paragraph 26, it is stated: "If, when deciding on the election of a suspect, the defendant, a preventive measure in the form of detention or an extension of the period of detention, a petition will be filed for familiarization with the materials, on the basis of of which the decision is made, the judge, on the basis of the provisions of paragraph 3 of Article 47 of the Code of Criminal Procedure, is not entitled to refuse a person, as well as his lawyer, legal representative or victim, his representative, legal representative to grant such a request"[24]. Similar explanations were available in paragraph 22 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated March 5, 2004 No. 1 "On the application by the courts of the norms of the Code of Criminal Procedure of the Russian Federation".

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[20] YU. K., Yakimovich; A.V. Lensky y T.V. Trubnikov, Differentiation of the criminal process (Tomsk: Publishing House Tom. University, 2001), 300.

[21] N. A. Vlasova, "Securing the secrecy of the preliminary investigation", Bulletin of the Moscow University of the Ministry of Internal Affairs of Russia num 3 (2016): 147-150.

[22] N. A. Vlasova, Securing the secrecy of the preliminary…

[23] N. A**.** Vlasova, Securing the secrecy of the preliminary… y A. YU. Golovin y A.V. Matveev, About some issues of tactics of using the criminal procedure law while ensuring the secrecy of the preliminary investigation during the familiarization with the materials of the criminal case. Accusation and defense in criminal cases: historical experience and the present. (SPb: Legal Center, 2015), 301-309.

[24] Resolution of the Plenum of the Supreme Court of the Russian Federation # 41 "On the practice of the application by the courts of legislation on preventive measures in the form of detention, house arrest and pledge" (2013, december 19; red. 2016, may 24). Available at: http://www.consultant.ru

According to A.Yu. Golovina, A.V. Matveeva, familiarization with copies of these documents significantly violates paragraph 6 of Part 1 of Art. 53 of the CCP of RF, which leads to a contradiction of the considered Resolution of the Plenum of the Supreme Court to the indicated norm of the CCP of RF. Providing copies of documents not included in the list provided for in clause 6, part 1 of article 53 of the CCP of RF, is the dissemination of information of limited access[25]. The authors also consider it necessary to invest this information in the form of secrecy of the preliminary investigation and, therefore, to fail to provide these participants in criminal proceedings.

Without sharing the scientific position of these authors, one should cite an excerpt from the preamble to the Decree of the Plenum of the Supreme Court of the Russian Federation No. 41 dated 12/19/2013: “When resolving issues related to the application of legislation on preventive measures, courts based on the presumption of innocence should observe a balance between public interests, related to the application of procedural coercion measures, and the importance of the right to personal freedom”[26]. Such a balance can be achieved only with a full study of all the materials of the criminal case with the active participation of the parties and with the observance of the constitutional right of the suspect accused of defense. Undoubtedly, the Constitutional and Supreme Court of the Russian Federation played a huge role in observing the constitutionalhuman rights and freedoms in the framework of judicial control, gradually expanding the admissible limits of judicial control. As noted by I.G. Smirnova, judicial control is expanding and developing not only thanks to the implementation of the idea of protecting individual rights and freedoms in criminal proceedings, but also with the help of the active position of the Supreme Court of the Russian Federation[27]. However, the legal positions of these courts did not fully find answers to all the debatable questions of theoreticians and law enforcement in the field of criminal procedure law. In resolving serious issues, which include the situation with the detention of a suspect accused under the presumption of innocence, it is important not to simplify the procedure, but to make it sufficiently responsible and comprehensively balanced.

Discussion

We made an attempt to scientifically substantiate the expansion of the limits of judicial control when resolving the request of the inquiry officer, investigator to select a preventive measure in the form of detention by checking the court for evidence of the lawfulness and justification of the suspicion and charge, which in no way contradicts the secrecy of the preliminary investigation, but guarantees the established The Constitution of the Russian Federation the right of a citizen to freedom. Any transformations in the field of criminal proceedings must comply with the Constitution of the Russian Federation, international standards in the field of protection of individual rights.

[25] A. YU. Golovin y A.V. Matveev, About some issues of tactics of using the criminal procedure law while ensuring the secrecy of the preliminary investigation during the familiarization with the materials of the criminal case. Accusation and defense in criminal cases: historical experience and the present. (SPb: Legal Center, 2015), 301-309.

[26] Resolution of the Plenum of the Supreme Court of the Russian Federation # 41 “On the practice of the application by the courts of legislation on preventive measures in the form of detention, house arrest and pledge” (2013, december 19; red. 2016, may 24). Available at: http://www.consultant.ru

[27] I. G. Smirnova. The mechanism for protecting human rights through the exercise of control powers by state authorities: a comparative legal analysis of Russia and Germany (Moscu: Publishing house "Lawyer", 2014), 416.

Within the framework of the existing judicial control system, the functions of which are the “on-duty” judges, the implementation of such a responsible procedure is practically impossible and in this context the issue that is actively discussed in the Russian academic community is even more relevant - the introduction of the institution of an investigating judge (judicial investigator).

Conclusion

The study made it possible to justify the need of expansion of the issues to be checked by the court when resolving the request of the inquiry officer, investigator to select a preventive measure in the form of detention, in terms of examining evidence of the lawfulness and justification of suspicion and charge, including with regard to their qualification in the conditions adversarial parties. When implementing judicial control, especially in a situation with the detention of a suspect, the defendant, it is necessary not to simplify the procedure, but to make it sufficiently responsible and comprehensively balanced. Under the existing judicial control system, the functions of which are the “on-duty” judges, the implementation of such a responsible procedure is practically impossible, therefore, it seems relevant to introduce the institution of an investigating judge (judicial investigator), the successful experience of which is available in European countries, and which is actively discussed in Russian scientific circles.

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