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ON PRELIMINARY JUDICIAL CONTROL

The article discusses issues related to the form of implementation of judicial control at the early stages of inquiry and preliminary investigation. The author found out that in Russia, law and law enforcement practice are formed under the influence of the tendency of an increase in the role of bodies and institutions of the criminal process in the protection of rights and freedoms and personal inviolability, which corresponds to a similar, priority task of criminal proceedings, enshrined in Article 29 of the Criminal Procedure Code of the Russian Federation.

In article the questions connected with the form of realization of judicial control at early stages of inquiry and preliminary investigation. by the Author there is found out that in Russia the right and law practice are formed under the influence of a tendency of increase of a role of bodies and criminal trial institutes in realization of protection of the rights and freedom and personal immunity that to the full corresponds to the similar, priority problem of criminal proceedings fixed in article 29 CPC of the Russian Federation.

Key words: preliminary judicial control, inquiry, preliminary investigation, judicial power, judicial system, legality, validity.

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One of the significant novelties of the current criminal procedure legislation of the Russian Federation is the powers of the court to exercise preliminary judicial control, provided for in Part 2 of Art. 29 of the Criminal Procedure Code of the Russian Federation. Some of them, in particular, making a decision on arrest, extending the term of arrest, searching a home, etc., are, in general, new powers for the court. At the same time, the court began to apply the powers provided for in this article during the period of the RSFSR Code of Criminal Procedure. These include the seizure of postal and telegraph correspondence, the seizure of objects and documents containing information about bank secrecy, control and recording of telephone and other conversations.

In our opinion, it is these procedural actions carried out by a court decision and provided for in Part 2 of Art. 29 of the Code of Criminal Procedure of the Russian Federation, placed by the legislator under the control of the court due to the most significant restrictions on the constitutional rights and freedoms of persons involved in the criminal process. But these restrictions are permissible only subject to the guarantees of human and civil rights and freedoms provided for by the Constitution of the Russian Federation and federal procedural law to ensure the achievement of the goals of the criminal process and provided that they do not violate the rights of citizens at the pre-trial stages.

Thus, the subject of preliminary judicial control is the issues attributed to the exclusive competence of the court. Such control is expressed in the permissiveness or non-permissiveness of the commission by the operational-search or investigative bodies of actions that limit the constitutional rights of citizens in accordance with Part 2 of Art. 29, art. 107, h 2 art. 203. Art. 165 of the Criminal Procedure Code of the Russian Federation. The legal basis for such control is Art. 22, 23 and 25 of the Constitution of the Russian Federation. We must agree with the opinion of a number of authors that the introduction of the institution of judicial control in full will inevitably require changes to the existing judicial system [1].

So, I.F. Demidov spoke in favor of "the creation of the institution of specialized judicial authorities - federal investigating judges, exercising exclusively the function of judicial control and free from powers to administer justice, not only in the case in which they made decisions at the stage of pre-trial proceedings, but also in any other case" [2]. Other

experts propose to entrust the functions of judicial control in cases within the jurisdiction of the courts of the constituent entities of the Russian Federation to specialized judges, and in cases within the jurisdiction of a justice of the peace and district courts - to a specialized justice of the peace [3].

Taking into account the above, it seems that the domestic criminal proceedings, which provided for the introduction of judicial control at the early stages of inquiry and preliminary investigation, presupposes the need to include a new position in the system of judicial bodies - an investigating judge, endowed solely with the powers of judicial control over the preliminary investigation. Note that the European standards for the protection of human rights do not exclude the possibility of such a position. In accordance with Part 3 of Art. 5 "Right to liberty and security" of the European Convention for the Protection of Human Rights and Fundamental Freedoms "every arrested person shall be immediately brought before a judge or other official authorized by law to exercise judicial functions, and is entitled to trial within a reasonable time or to release pending trial. Release can be made dependent on the provision of a guarantee to appear in court "[4].

The investigating judge, according to N.G. Muratova, could carry out all forms of judicial control at the early stages of inquiry and preliminary investigation, since the permission of the petition of the participants in criminal proceedings (Art. 119 of the Code of Criminal Procedure of the Russian Federation); consideration of complaints of participants in criminal proceedings and persons whose interests were affected by the procedural actions and procedural decisions (Article 123 of the Code of Criminal Procedure of the Russian Federation), or that caused damage to constitutional rights and freedoms or made it difficult for citizens to access to justice (Part 1 of Article 125 of the Code of Criminal Procedure of the Russian Federation); permission to carry out an investigative action (part 2 of Art. 29, Art. 165 of the Code of Criminal Procedure of the Russian Federation); judicial immunity (conclusion on the presence of corpus delicti in the actions of certain categories of persons and consent to the production of certain investigative actions against them) - Art. Art. 447-450 of the Criminal Procedure Code of the Russian Federation [5].

According to the Decree of the Constitutional Court of the Russian Federation of April 29, 1998, the right to appeal to the court at the early stages of inquiry and preliminary investigation should belong to any interested person. In this regard, it should be noted that at present the number of applications that raise the issue of expanding the grounds for appealing to the court against the actions and decisions of the body of inquiry, the investigator and the prosecutor is increasing [6]. Analyzing this problem, one can note some contradictory opinions of the authors. For example, some are confused by the huge volume of appeal and the too deep intrusion of the court into the investigation work, and they propose to appeal only the violation of constitutional rights in cases where this prevents the transfer of the case to the court [7].

On this issue, a fair opinion has been expressed in the literature on the fundamental impossibility of limiting the subject of judicial control over acts of preliminary investigation by fixing in the law the list of actions and decisions of the investigation bodies subject to appeal [8]. Indeed, if a participant in the process applies to the court with a complaint, it means that he believes that his legitimate interest has been substantially violated. To refuse to consider such a complaint on the grounds that allegedly there is no violation of constitutional law is to deceive the expectation of a person who tried to resort to judicial protection. We must not forget that in accordance with the Constitution of the Russian Federation, every citizen is guaranteed judicial protection of his rights and freedoms (Article 46).

Judicial control over the execution of laws during the preliminary investigation (investigation and inquiry) helps to strengthen the legal protection of citizens. Therefore, from the point of view of the legislator, any person, including those who are not a party to the criminal process, if he considers that an official or a state body in the performance of a procedural action or adoption of a procedural decision has affected his interests, has the right to appeal them. This is expressed in the consideration by the court of complaints about actions (inaction) and decisions of the interrogating officer, the body of inquiry, the investigator and

the prosecutor capable of causing damage to the constitutional rights and freedoms of a participant in criminal proceedings, or hindering citizens' access to justice, as well as other complaints of citizens who have suffered from certain actions and decisions of public procedural bodies,

At the pre-trial stage of proceedings on a case, judicial control realizes itself in various legal forms, forming as a result a single legal mechanism for the protection (ensuring) of constitutional rights and freedoms of citizens. The difference in interests in the nature of the protected rights and freedoms requires differentiation of methods and forms of judicial protection, designed, ultimately, for the most optimal implementation of both the general goals of the process and specific tasks facing a particular procedural procedure. According to the current Criminal Procedure Code of the Russian Federation, the form of judicial control at the stages of inquiry and preliminary investigation is judicial control over the legality and validity of the application of procedural coercion measures that restrict the rights and freedoms of participants in criminal proceedings (Articles 108 - 109 of the Criminal Procedure Code of the Russian Federation).

Art. 108 of the Code of Criminal Procedure of the Russian Federation, which determines the procedural form of judicial control over the legality and reasonableness of the application of such preventive measures as putting a suspect in custody (Article 108 of the Code of Criminal Procedure); house arrest (Article 107 of the Criminal Procedure Code); the extension of the terms of detention and detention or house arrest, as well as the placement of the accused in custody for an inpatient forensic psychiatric examination (art. 435 of the CCP).

In accordance with Part 2 of Art. 22 of the Constitution of the Russian Federation, arrest, detention, detention in custody are allowed only by a court decision. The provisions of the current Code on detention, in contrast to the Code of Criminal Procedure of the RSFSR, were brought in line with the Constitution of the Russian Federation. The Code of Criminal Procedure of the Russian Federation provides for the exclusive right of the court in deciding on the selection and application of a preventive measure in the form of detention. Taking into custody is the strictest measure of restraint and is chosen only when other measures of restraint cannot ensure the proper behavior of the accused (suspect). On the other hand, the non-use of detention on persons who have committed serious crimes may lead to the commission of new crimes, destruction of evidence, etc.

Detention is applied to an accused (suspect) of committing crimes for which a punishment of imprisonment for a term exceeding two years is provided, however, in exceptional cases, this measure of restraint can be chosen in relation to an accused (suspect) of committing crimes, for which provides for punishment in the form of imprisonment for up to two years, but in the presence of one of the following circumstances: the accused (suspect) does not have a permanent place of residence on the territory of the Russian Federation; the identity of the accused (suspect) has not been established; the accused (suspect) violated the previously chosen preventive measure; if the accused (suspect) has disappeared from the bodies of the preliminary investigation or the court. If the accused (suspect) is a minor, then detention in respect of him can be applied as a preventive measure if he is suspected or accused of committing a grave or special grave crime; in exceptional cases, if he is suspected or accused of committing crimes of average gravity. In relation to minors, persons suffering from mental illness, pregnant women and breastfeeding women with young children, persons subject to extradition, foreigners with limited immunity, persons of a specific category (Article 450 of the Code of Criminal Procedure of the Russian Federation) this Code, the Constitution of the Russian Federation, other federal laws, norms of international law established specific grounds for the application of preventive measures to them. if he is suspected or accused of committing a grave or special grave crime; in exceptional cases, if he is suspected or accused of committing crimes of average gravity. In relation to minors, persons suffering from mental illness, pregnant women and breastfeeding women with young children, persons subject to extradition, foreigners with limited immunity, persons of a specific category (Article 450 of the Code of Criminal Procedure of the Russian Federation) this Code, the Constitution of the Russian Federation, other federal laws, norms of

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If the interrogating officer, investigator or prosecutor considers that it is necessary to apply a preventive measure in the form of detention to the detainee, then a decision must be made to initiate a petition before the court to choose such a preventive measure. The detainee must be brought before the judge, participate in the consideration of the petition, having the opportunity to state his objections to his detention. The court session is attended by the prosecutor or, on his behalf, the interrogating officer or the investigator who initiates such a petition, and, of course, the defense lawyer, if he is involved in the case.

The district judge shall single-handedly consider the arguments of the official filing the petition, and then hears the objections of the defense and makes one of the following decisions: to grant the petition to choose a preventive measure in the form of detention; on the refusal to satisfy the application (which entails the immediate release of the person from detention); on the extension of the term of detention [10]. The court has the right to give the prosecutor time to collect the missing evidence. This decision of the judge can be appealed by both parties on appeal. The submission of the prosecutor's cassation submission does not provide grounds for keeping the suspect in custody. In this manner, the consideration of a request for the detention of a suspect or an accused is conducted, when this was not preceded by his arrest.

Thus, the real subject and the limits of judicial verification objectively cover a dialectically interconnected system of legal grounds and factual data, indicating the presence of general, special, and, if necessary, individual grounds (criteria) necessary and sufficient for the legal and reasonable application of the requested court a preventive measure, the additional choice of which, ultimately, is due to the obligatory assessment of those circumstances (conditions) that characterize the personality of the perpetrator and the severity of what he has done.

The competence of the judge for the purpose of procedural verification of the legality and validity of the petition of the investigating authorities in accordance with Art. 109 of the Code of Criminal Procedure of the Russian Federation refers to the extension of detention for a period exceeding two months. The district judge has the right to grant the request of the investigator, agreed with the prosecutor, to extend the term of detention up to 6 months. In this situation, it seems that the subject of the verification and assessment of the court should include the data (results) of the preliminary investigation, in the name of achieving which the preventive measure was chosen, and only the reliable existence of a system of factual and legal grounds available in the materials submitted to the court and found their way. reflected in the petition of the investigator, may serve as a basis for the introduction of the said petition to the court and its possible satisfaction by the court based on the results of the judicial review. Of course, the court should also take into account the system of additional (material and procedural) grounds formulated by the legislator as objectively necessary for the legal and reasonable resolution of the investigator's petition to extend the period of detention over 6 months (part 2–3 of article 109 of the CCP Of the Russian Federation) or over the time limit established by law (parts 5-8 of article 109 of the Criminal Procedure Code).

In accordance with the norms of the Code of Criminal Procedure of the Russian Federation, the court (judge) has the right, if the criminal case is of particular complexity (when it comes to a grave or especially grave crime), the term of imprisonment can be extended to 12 months. The term of detention in custody over 12 months can be extended only in exceptional cases and only in relation to persons accused of committing especially grave

crimes. This period can be extended by the regional (regional) court, which is provided for in part 3 of Art. 109 of the Code of Criminal Procedure of the Russian Federation, at the request of the investigator, submitted with the consent of the Prosecutor General or his deputy, up to 18 months. The investigator's petition is considered in court with the participation of the parties. No further extensions (i.e. over 18 months) are permitted and the accused in custody is subject to immediate release.

In this regard, it should be noted that in accordance with the norms of international law, which are an integral part of the Russian legal system and are applied directly (part 4 of article 15 of the Constitution of the Russian Federation), the accused has the right to appeal and judicial review of his detention through "Reasonable intervals", which means relatively short. [eleven]. As you know, the current Criminal Procedure Code of the Russian Federation did not provide for such a possibility. It seems that the legislator should correct such a mistake, and the judicial practice, in turn, without waiting for a legislative decision, could well follow the path of recommendations to resolve the repeated consideration of the issue of the legality and justification of the detention of a person. Therefore, we assume

An analysis of the current Criminal Procedure Code of the Russian Federation shows that the judge is obliged to monitor the legality of actions in the preliminary investigation by making a decision not only on choosing a preventive measure in the form of detention, but also on carrying out other procedural actions related to limiting the constitutional rights of citizens (part 2 of article 29 of the Criminal Procedure Code).

However, they cannot be disclosed within the scope of one article. Therefore, we focused on the most serious of the above measures - detention.

Although the subject of our research is the considered form of preliminary judicial control, it should also be noted that the current Criminal Procedure Code of the Russian Federation provides for other forms of implementation of judicial control at the stages of inquiry and preliminary investigation: judicial control over the legality of actions (decisions) affecting the interests of participants in criminal proceedings in pre-trial proceedings (Article 123 of the Code of Criminal Procedure of the Russian Federation); judicial control over the legality and validity of investigative actions restricting the constitutional rights and freedoms of citizens (Article 165 of the Criminal Procedure Code); judicial control over the legality and justification of actions (inaction) and decisions of public procedural bodies that can damage the constitutional rights and freedoms of participants in criminal proceedings, or make it difficult for citizens to access justice in pre-trial proceedings in a criminal case (Article 125 of the Code of Criminal Procedure of the Russian Federation). The last form of judicial control is consistently implemented in the provisions of Art. 19, 125 of the Code of Criminal Procedure of the Russian Federation and is, in our opinion, the most productive, since it allows you to check the legality and validity of almost any procedural action and decision of an inquiry officer, investigator, prosecutor, limiting one or another constitutional right of citizens.

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