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TÍTULO: Arresto domiciliario: concepto y esencia.

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RESUMEN: En el año 2001, una nueva medida preventiva en forma de arresto domiciliario se introdujo en la Ley de Procedimiento Penal de la Federación de Rusia; sin embargo, la ley no define el concepto de "arresto domiciliario", pero esta deficiencia se llena en la ciencia del procedimiento penal. Analizamos la literatura científica y damos nuestra propia comprensión del arresto domiciliario.

PALABRAS CLAVES: Arresto domiciliario, derecho penal, derechos humanos, estado, castigo.

TITLE: House arrest: concept and essence.

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ABSTRACT: In 2001, a new preventive measure in the form of house arrest was introduced into the Criminal Procedure Law of the Russian Federation in 2001, however, the law does not define the concept of “house arrest”, but this deficiency is filled in the criminal procedure science. We analyzed the scientific literature and gave our own understanding of house arrest.

KEY WORDS: house arrest, criminal law, human rights, state, punishment.

INTRODUCTION.

The term “arrest” is used quite widely in the current legislation. So, in Part 1 of Art. 54 of the Criminal Code of the Russian Federation, arrest is understood to mean the content of a convicted person in conditions of strict isolation from society. Article 3.9 of the Code of Administrative Offenses of the Russian Federation also defines administrative arrest as the maintenance of the offender in isolation from society.

In the criminal procedure legislation, the concept of “arrest” is used in relation to the institution of “seizure of property”, as well as such investigative action as “seizure of mail, telegraph, their inspection and seizure” (Enikeev, 1982; Baranov, 2008; Kovalenko, 2019). Moreover, if by “seizure of property” is meant a prohibition addressed to the owner or owner of the property to dispose of, and if necessary, use it, as well as seizure of the property and its transfer for storage, then the concept of investigative action is not fixed (Koloskova et al., 2013; Kuznetsov, 2000; Ozhegov, 1997). In addition, the term “arrest” is used in Art. 107 Code of Criminal Procedure. Moreover, it lacks a legislatively fixed definition of this criminal procedure institute.

If we look at the explanatory dictionary, then the meaning of the word “arrest” is defined as “detention”, “order not to leave home”, “prohibition of disposition of property imposed by the judicial authorities”. House arrest is seen as a ban on leaving home as a form of restraint; the prohibition of disposing of property or money imposed by the judiciary. Therefore, this concept is multifaceted,

widely used in legislation, has several meanings and is associated with restrictions on human rights and freedoms.

DEVELOPMENT.

Methodology.

The methodological basis of the research consists of general scientific, private scientific and special methods of cognition. The analysis method was used in the interpretation of regulatory legal acts, the study of special legal literature.

Discussion and results.

Of the greatest interest for this study is the understanding of arrest as a restriction on the right to freedom of movement, the degree of restriction of which is determined by adding the adjective “home” to the term “arrest”.

In legal literature, in contrast to legislation, various definitions of house arrest are given. Consider in detail the definitions proposed in science.

E.V. Saltykov gives the following definition to the concept: “house arrest is a preventive measure that, if there are reasons for choosing a custody, as well as to ensure the execution of the sentence, taking into account the age, state of health, marital status of the accused (suspect) and other circumstances, apply to it, by court order, restrictions related to freedom of movement, as well as establish a ban on communication with certain individuals, receiving and sending correspondence, negotiating using any means of communication" (Saltykov, 2009).

The above definition reflects the essence of house arrest, its purpose, marked belonging to preventive measures. However, in the presented definition there is no indication of the subjects to whom the use of house arrest is possible, and the question of the judicial procedure for the election of this measure of criminal procedural coercion is not considered. In addition, at present, some provisions of this

definition do not currently comply with the current Code of Criminal Procedure of the Russian Federation.

According to Svetochev A.A., house arrest is a preventive measure, selected by court decision in respect of the accused (suspect), which consists in restricting the freedom of his movement by full or partial isolation in a suitable dwelling and establishing legal restrictions prescribed by law (Svetochev, 2009). The analysis of the given definition of the concept entails the following questions: what is meant by the term "housing suitable for living"; how it relates to that enshrined in paragraph 10 of Art. 5 of the Code of Criminal Procedure of the Russian Federation with the definition of "home". Another disadvantage of this definition is that the restriction of freedom of movement is not considered a legal restriction.

Ovchinnikov Yu. G. considers house arrest through the prism of the following features:

- 1) Determination of the place of house arrest in the system of measures of criminal procedure.
- 2) An indication of the status of the subject in respect of whom the home is elected.
- 3) The types of impact that the preventive measure has on the suspect (accused).
- 4) A special procedure for the election of house arrest subject to the requirements of Part 1 of Art. 108 Code of Criminal Procedure (Ovchinnikov, 2006).

According to the first sign, house arrest is one of the most severe preventive measures after detention, forming a group of measures of procedural coercion (Shcherba, 2004; Mikhailov, 1997; Livshits, 1964; Kovriga, 1975).

Based on the second criterion, house arrest is selected with respect to the accused, and in exceptional cases against the suspect. As for the third sign, the following types of influence are exerted on the accused (suspect): firstly, personal freedom is significantly limited, however, the right to reside in one's own apartment is preserved; secondly, prohibitions are imposed on communication with certain persons to receive and send correspondence, to negotiate using any means of communication.

According to the fourth feature, Ovchinnikov Yu.G. notes that the procedure for electing house arrest and detention is the same. However, the conditions for electing house arrest and detention do not coincide, therefore, “the provisions provided for in part 1 of art. 108 of the Code of Criminal Procedure of the Russian Federation, regarding the special conditions for the application of detention, should not be extended to house arrest” (Ovchinnikov, 2006).

As a result of the analysis of these criteria, Ovchinnikov Yu.G. concludes that house arrest is a measure of procedural coercion, selected by court decision in court hearings on crimes for which the law provides for a punishment of imprisonment for a term of more than 2 years, in respect of the accused, in exceptional cases in relation to - of a suspect that has an effect by significantly restricting personal freedom (while retaining the right to reside in his home) and imposing bans on communicating with certain individuals, receiving and sending correspondence, to negotiate with the use of any means of communication.

The given definition in some respects no longer complies with the current legislation (Akhmetyanova,2018), but it correctly states that house arrest consists in restricting personal freedom, as well as imposing other prohibitions on the accused (suspect), but based on the definition, it becomes unclear: why indicate the preservation of the right of the suspect (accused) to live in a dwelling upon the appointment of a house arrest. Is it possible to strip this right?

A.V. Smirnov, K. B. Kalinovsky, in his commentary on the Code of Criminal Procedure of the Russian Federation, house arrest is defined as a physically-compulsory preventive measure, associated with the forced stay of the accused, suspected of limited space, isolation from society, termination of official or other labor duties, impossibility of free movement and communication with an unlimited circle of people (Smirnov et al., 2012). The definition notes the legal nature of house arrest, and its content is determined. However, the definition in question does not allow a distinction to be made between house arrest and detention.

A similar definition is given by A.S. Aleksandrov: house arrest in the current system of legal regulation is connected with compulsory the presence of the suspect, the accused in a limited space, with isolation from society, the cessation of official or other duties, the impossibility of free movement and communication with an indefinite number of people, i.e. with a direct restriction of the right to physical freedom and personal integrity, and not just the conditions for its implementation (Aleksandrov, 2012).

In his study, A.P. Ryzhakov comes to the conclusion that house arrest is a measure of criminal procedural coercion elected by the court at the request of the investigator (interrogator), exerting a certain psychological effect on the accused (suspect), restricting his personal freedom with the aim of depriving him of the opportunity to hide from bodies of inquiry, preliminary investigation or trial, continue to engage in criminal activities and (or) to prevent the criminal proceedings (Ryzhakov, 2016). In this definition, the emphasis is on the legal nature of house arrest, its goals. However, it is characterized by some incompleteness. In addition, it does not make it possible to distinguish between such preventive measures as recognizance not to leave and proper behavior, house arrest and detention.

A.V. Belyakov and L.N. In their article, Popov is considered a house arrest as a criminal procedure relationship arising in connection with the restriction of the right to freedom of a suspect (accused), associated with partial or complete isolation from society, in the framework of which the investigator, investigator, court, institutions and bodies criminally of the executive system, a subjective right arises: to require a liable person to be in full or partial isolation from the company in a certain place and to fulfill the restrictions and (or) bans imposed on him, and also the right to resort to state coercion in case of non-fulfillment by the opposing party of their duty (Belyakov, 2013).

The suspect (accused) has a legal obligation to refrain from certain actions and bear responsibility for failure to comply with these requirements. However, this definition is very universal in nature, which does not allow separating house arrest from other similar relations with it.

Summarizing all of the above, we can draw the following conclusions regarding house arrest:

- ✚ House arrest belongs to preventive measures.
- ✚ He is elected at the request of the investigator (interrogator).
- ✚ It is appointed, as a general rule, to the accused, in exceptional cases, to the suspect.
- ✚ It is elected only by judicial decision.
- ✚ It consists in the full or partial isolation of the accused (suspect) from society in the premises.
- ✚ It includes, in addition to isolation, restrictions and (or) prohibitions with the exercise of control.

CONCLUSIONS.

Thus, the study found that house arrest is a preventive measure chosen by the court at the request of the investigator (interrogator) in respect of the accused (in exceptional cases - the suspect) and consisting in full or partial isolation from society in the living room, as well as the application restrictions and prohibitions, with the exercise of control over the accused (suspect).

The essence of house arrest is to isolate the accused (suspect) from society with the use of other prohibitions. The peculiarity of home arrest is the combination of signs of several preventive measures in it: a written undertaking not to leave a place of residence and proper behavior, as well as an arrest. This circumstance causes consideration of the issue of combining preventive measures. In legal literature, this issue is debatable.

It is legislatively fixed that only one measure of restraint can be applied to the accused (suspect), however, draft laws are currently being developed that reflect the tendency to combine several preventive measures at once.

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