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Анотація

Савченко В.А. **Невтручання у приватне життя як фундаментальна засада кримінального провадження.** – Стаття.

У статті розглядаються питання щодо дії засади невтручання у приватне життя відповідно до Кримінального процесуального кодексу України та законодавства інших держав.

Ключові слова: засади кримінального провадження, приватність, невтручання у приватне життя.

Аннотация

Савченко В.А. **Невмешательство в частную жизнь как фундаментальное начало уголовного производства.** – Статья.

В статье рассматриваются вопросы, касающиеся действия принципа невмешательства в частную жизнь в соответствии с Уголовным процессуальным кодексом Украины и других государств.

Ключевые слова: принципы уголовного судопроизводства, частная жизнь, невмешательство в частную жизнь.

Summary

Savchenko V.A. **Non-interference in private life as a fundamental principle of the criminal procedure.** – Article.

This article deals with problems concerning the principle of non-interference in private life according to the Criminal Procedural Code of Ukraine and other countries.

Key words: principles of criminal procedure, private life, non-interference in private life.

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BAIL IN THE NEW CRIMINAL PROCEDURAL LEGISLATION OF UKRAINE

Bail is a relatively new measure of restraint in Ukrainian criminal justice as the corresponding article of Chapter 13 concerning measures of restraint appeared only in 1996. Nevertheless, as U. D. Livshyts properly marks, bail is a rather old procedural institution. In the epoch of financial liability bail and financial surety in comparison to other coercive measures were most frequently used. Further on, with the substitution of financial liability by personal one these coercive measures lost their importance. In the period of reign of inquisitorial procedure the leading role was given to arrest as a measure of restraint. In Russia, after the Regulations of Criminal Justice 1864 had been introduced bail as a measure of restraint was renewed. In soviet criminal justice bail was asserted in the Code of Criminal Procedure of 1922 and 1923, in the period of New Economic Policy [1, p. 54]. Revival of bail in the criminal procedure, to our mind, is a positive step on the way of development of the list of measures of restraint which are alternative to arrest and is meant to contribute to the decrease of the use of the latter.

Although 10 years passed since bail in the Ukrainian criminal justice was introduced until the introduction of the new Code of Criminal Procedure, the degree of its application is extremely low. According to procedural scholars, one of the reasons is considered to be the complicacy of the procedure of its application.

The same opinion was shared by practitioners. P. P. Pylypchuk, a Justice of the Supreme Court of Ukraine, stated that the main reason for such a low degree of the application of bail is caused by the fact that the legal regulation of the latter, provided by Article 154-1 of the Code of Criminal Procedure is rather complex, the procedure of its application is not regulated by special norms. This fact stipulates numerous faults which appear during the process of application of bail [2, p. 10].

Some theoretical and practical aspects of the application of bail as a

measure of restraint were studied by M. M. Mykheyenko, V. T. Nor, V. P. Shybiko, A. Y. Dubynsky, P. P. Pylypchuk, V. L. Pidpaly, U. V. Donchenko, B. Poshva. In the new Code of Criminal Procedural bail was a subject to certain changes aimed to contribute to more frequent application of this measure of restraint. In particular, according to the new legislation an investigator judge, a court in their order of application of arrest as a measure of restraint is bound to set an amount of bail in all cases except those set by law; the amount of bail has been changed.

Nevertheless, the law in effect doesn't define the precise procedure of the application of bail, it should be developed and stated in the most optimal form for its proper practical application. It (the procedure) shouldn't be too broad and complex, otherwise this measure of restraint won't be applied properly.

The goal of this article is to analyze bail as a measure of restraint in the new criminal procedural legislation of Ukraine.

Bail in the criminal procedure is a coercive measure which is applied in cases set by criminal procedural law to defined persons under certain defined conditions and by fixed procedure. According to Article 182 of the Code of Criminal Procedure the essence of bail as a measure of restraint lies in posting of money in the national currency of Ukraine on a special account determined by the procedure set by the Cabinet of Ministers of Ukraine with the aim to provide for the fulfillment of duties by a person suspected or charged under a condition of forfeiture of money to the State income in case of failure to meet the conditions.

The State coercion in the process of bail application lies in the existence of real jeopardy of losing by a suspect, an accused or a bail bondsman the sum of money posted as bail in case of failure to comply with the imposed and accepted duties. As M. O. Cheltsov marked, bail is designed to establish a very strong egoistic ground for a suspect or an accused aimed not to fail to appear and to secure his or bail bondsman's financial rights and interests [3, p. 210].

Bail is a kind of measure of restraint and it has all the signs of coercive measures. Only an authorized body, an investigator judge or a court namely, deciding the question of the application of a measure of restraint can decide on application of bail. The form of the application of bail is a procedural document in the form of writ. Moreover, an investigator judge, a court can set

bail in the order of the application of a restraint measure in the form of arrest except in cases set in Part 4 Article 183 of the Code of Criminal Procedure.

Accordingly, criminal procedural legislation in effect creates a possibility to apply bail as a separate measure of restraint being less severe than home arrest and stationhouse detention and more severe than other measures of restraint. An investigator judge, a court issue a writ of its application in which they set an amount of bail and other information determined by Article 176 of the Code of Criminal Procedure. Other kind of this measure of restraint is bail as an alternative to arrest. In this case court doesn't issue a special writ but sets an amount of bail in its order of the application of arrest as a measure of restraint. Accordingly, an investigator judge, a court considers it possible to apply one or another measure of restraint, which of them will really be applied in practice depends on the suspect or an accused who are supposed to post bail in the set amount during the fixed period of time and comply with the conditions as guarantees of their release. If they fail to do so, they will remain detained.

Bail as a measure of restraint can only be applied when there are reasonable grounds to believe that it is likely to assure proper conduct of a suspect or an accused, their compliance with the conditions and sentencing. In the science of Criminal Procedure the proposals have been worked out to limit the application of bail in grave crimes [4; p. 66-67], lucrative crimes [5, p. 672].

Proposals as to limiting of application of bail as a measure of restraint were taken into account by the developers of the new Code of Criminal Procedure, according to which bail is not applied to petty offences. Furthermore, an investigator judge, a court are entitled not to set an amount of bail in violent crimes, crimes that resulted in human losses and in case of previous violations of bail conditions. Doing this an investigator judge, a court take into consideration in compliance with Part 4 Art. 183 of the Code of Criminal Procedure the presence of grounds for the application of measures of restraint and facts characterizing personality of an accused.

Criminal procedural law in effect sets a possibility to apply bail at any stage of the criminal procedure.

In nearly all criminal cases a question of application of a measure of restraint, bail in particular, is decided for the first time at the stage of pretrial investigation after filing a written notice of suspicion or no later than 72 hours after detention without a court warrant, or at the moment when court receives a motion of an investigator or a prosecutor in case an accused is not detained, or at the moment court receives a motion of a suspect, a defendant or their council. In case an accused escaped and his whereabouts is unknown, a measure of restraint is applied at the moment of his location, detention and appearing in court. It is clear that in that case the application of bail as a measure of restraint is rather problematic.

The question about application of bail also arises at the stage of application of arrest as a measure of restraint. In this case an investigator judge, a court in their decision to apply a measure of restraint in the form of arrest are bound to set an amount of bail big enough to assure that a suspect or an accused will meet the requirements imposed on them by the measure of restraint. In this case a suspect, an accused have a right to post bail any time in the amount set in the decision about application of a measure of restriction in the form of arrest.

A protocol of informing a suspect of his rights assured by law also contains information about informing a bondsman about the crime an accused is suspected of or charged with, punishment set by law for its committing, his duties to assure proper conduct of a suspect or an accused and his appearance at notice and consequences of failure to fulfill these duties [6, p. 460]. O. V. Ostroglyad doesn’t consider it reasonable from the point of view that the essence of bail itself means that the fulfillment of duties is secured by the loss of the sum of bail [7, p. 72]. We cannot agree with his opinion as according to the law duties of participants of criminal procedure must be clarified to them in detail and that is exactly what the legislator demands on the reason that not every bondsman fully understands the essence of bail.

In case that a bondsman fails to fulfill his duties or if a suspect or an accused having been properly informed fails to appear at notice before an investigator, prosecutor, an investigator judge, a court, or he fails to comply with the duties imposed on him with the measure of restraint, bail is returned to the State income and is put on special account of the State Budget of Ukraine

and is used in order set by law for the use of legal fees.

Consequently, a bondsman has a duty to control the conduct of a suspect or an accused under the threat of money loss, so bail as a measure of restraint can be considered as a measure of financial as well as moral impact. Moral aspect is common for a bondsman and a surety person as they both are supposed to have moral influence and high authority which enable them to fulfill imposed duties and control the conduct of a suspect or an accused.

As to the duties of a suspect, an accused released on bail they include:

- to post bail in the set amount;
- to appear before bodies of pretrial investigation and/or court;
- not to destroy, damage or conceal things or documents that are important for investigation;
- not to interfere with other participants of criminal investigation illegally;
- not to impede the investigation;
- not to commit other crimes and not to continue the crime he is suspected of or charged with.

Together with those duties if the prosecutor proves it necessary an investigator judge, a court is entitled to impose on a suspect, an accused additional duties noted in Part 5 Art. 194 of the Code of Criminal Procedure.

At the stage of pretrial investigation any measure of restraint including bail is applied by an investigator judge on a motion of an investigator, a prosecutor. The presence of a suspect, an accused at the hearing of a motion of the application of a measure of restraint in the form of bail, home arrest or arrest is required. In case a suspect, an accused fails to appear in court at notice and an investigator judge, a court at the beginning of the hearing has no information about reasonable excuse that prevents an accused, a suspect from appearing in time, an investigator judge, a court is entitled to issue an order of attachment of a suspect, an accused if he fails to appear at the hearing of a motion of application of a restraint measure in the form of bail, home arrest or arrest or a writ of permission of detention with the aim of attachment if the order of attachment hasn’t been exercised.

At trial stages of criminal procedure a question of application of a

measure of restraint is decided by court while hearing a criminal case, deciding on its further move and exercising judicial review of legality and reasonableness of court decisions.

A question of application, dismissal or substitution of a restraint measure at the stage of preliminary hearing is decided on the basis of demands of Article 315 of the Code of Criminal Procedure of Ukraine, according to which a court during preliminary hearing on a motion of participants of criminal proceedings is entitled to apply, dismiss or substitute measures of securing criminal proceedings, including a measure of restraint applied to an accused.

According to Article 331 of the Code of Criminal Procedure of Ukraine at the stage of trial a judge (a court) is entitled to decide a question concerning measures of restraint independent on the decision made at the stage of pretrial hearing. Regardless of whether any motions have been filed a court is entitled to review the existence of reasonable grounds for continuing the detention of an accused beyond two months' term since the day the court receives an indictment, a motion of application of compulsory measures of medical or educational nature or since the day of application to an accused a measure of restraint in the form of arrest. At the result of a hearing a court in its grounded order dismisses, substituted a measure of restraint in the form of arrest or prolongs its effect for a term of no more than six months. A copy of the order is given to an accused, a prosecutor and is sent to an authorized person of detention facility.

Returning a verdict of acquittal a court according to the provisions of Part 4 Art. 374 of the Code of Criminal Procedure of Ukraine is supposed to note the decision made as to a restraint measure until the sentence comes into force, including bail, and to return amount of bail to the owner in case he complied with the imposed duties. Returning a guilty verdict a court is also supposed to decide on a question of measures of securing criminal proceedings (Sub-section 2 Part 4 Article 374 of the Code of Criminal Procedure).

In accordance with the provisions of the Article 401 of the Code of Criminal Procedure the court of appeal can also decide a question of substitution, dismissal or application of a measure of restraint.

The court of cassation has a right to decide a question of measures of restraint when it reverses a sentence and sends a case to a new hearing

concerning a person acquitted or found guilty in a reversed verdict.

Apparently, the law in effect sets a possibility to decide a question of substitution, dismissal or application of a measure of restraint in the form of bail at any stage of criminal proceedings.

In the previous criminal procedural legislation there existed the following types of bail according to its subject:

- cash bail;
- property bail.

An obligation to define a subject of bail was laid on a person or body authorized to decide on the question of application of a measure of restraint. Accordingly, a body of enquiry, a body of investigation, a prosecutor, a court (a judge) had to find out whether an accused, a suspect, a defendant, a bondsman were the owners of the property, whether it belonged to a legal person – a bondsman on a right of full ownership, whether there existed any obstacles of the alienation of property and the worth of property.

The procedure of taking property as a subject of bail is too complicated and makes it necessary to decide a lot of questions that needs time and effort. It is necessary to mention that property bail is not popular even in those countries where bail has great application practice, in particular, in the USA in the most cities courts apply property bail but the problems with alienation of bondsmen's property prevent from its frequent application. For instance, in Atlanta and Sent-Lewis businessmen who owned real estate throughout the city would use the same piece of property for several bonds. Charging defendants half of what they would have to pay bondsmen, the businessmen were shrewd enough to realize that they ran little risk of losing their property even if the defendant did forfeit and skip town [8, p. 685]. That is why according to the data of Bureau of Statistics of the US Department of Justice property bail was applied in 2000-2002 in less than 0.5%, in 2004 – in 1% of cases [9].

According to Part 1 Art. 182 of the Code of Criminal Procedure 2012 bail is posting of money in the national currency of Ukraine to a special account. The essence of bail is the fact that if a suspect, an accused fails to comply with the duties imposed on him money is returned to the State income.

Consequently, according to the new criminal procedural legislation the

subject of bail is limited to money only. Other material values – any kind property or real estate that belongs to a person posting bail on a right of full ownership can't be a subject of bail. Money which is physical evidence to a case or which is under arrest cannot be a subject of bail either.

Previous criminal procedural legislation didn't precisely define the amount of bail. Article 154-1 of the Code of Criminal Procedure set only the lower limit of bail amount depending on the gravity of offence, so the higher limit of bail amount was endless. The amount of bail was calculated in exemption limit of income of citizens which was not very convenient because the exemption limit is usually changed every year. Analyzing provisions as to bail amount of the new Code of Criminal Procedure (Art. 182) we come to a conclusion that the procedure of defining the bail amount has been positively improved. First of all, while previous Code of Criminal Procedure differentiated the amount of bail in grave or especially grave crimes, other grave or especially grave crime or previously sentenced person, and other crimes, the new Code precisely defines the amount of bail in less serious or average gravity crimes, grave crimes and especially grave crimes, which is clearer and more logical. Having done some calculations we can see that the lower limit of bail according to the previous legislation, which was 50 exemption limits of income of citizens (Art. 154-1) and the exemption limit of income of citizens in 2012 was 17 UAH, could be no less than 850 UAH in all crimes but grave and especially grave. Nowadays the amount of bail is calculated in size of minimum salary of citizens and can be no less than 1 and no more than 20 sizes in the same category of cases (the size of minimum salary of citizens in 2012 was 1134 UAH). We can see that the lower limit of the amount of bail has been slightly risen but we should keep in mind that bail is not used in petty offences according to the new legislation. In both legislations amount of bail also depends on the size of civil claims and can be no less than that.

Conclusion: Analysis of bail as a measure of restraint in the criminal procedural legislation in effect lets us make a conclusion that the legislator has done certain positive steps on the way of improvement of bail and making it an effective measure of restraint and a real alternative for arrest. However, the mechanism of its application needs further development.

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Анотація.

Садова Т.В. **Застава за новим кримінальним процесуальним законодавством України. –** Стаття.

Стаття присвячена аналізу застави як запобіжного заходу у кримінальному провадженні за новим кримінальним процесуальним законодавством України.

Ключові слова: кримінальний процесуальний примус, запобіжні заходи, застава, заставодавець, розмір застави, предмет застави.

Аннотация.

Садовая Т.В. **Залог в новом уголовном процессуальном законодательстве Украины.** – Статья.

Статья посвящена анализу залога как меры пресечения в уголовном производстве за новым уголовным процессуальным законодательством Украины.

Ключевые слова: уголовное процессуальное принуждение, меры пресечения, залог, залогодатель, размер залога, предмет залога.

Summary

Sadova T. V. **Bail According to New Criminal Procedural Law of Ukraine**. – Article.

This article is aimed to analyze bail as a kind of preventive measure in the criminal procedure in the light of the new Criminal Procedural Law of Ukraine.

Key words: criminal procedural coercion, preventive measures, bail, bail bondsman, size of bail, type of bail.

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ТАКТИКА ДІЙ ПРАЦІВНИКІВ ОВС ПРИ ОТРИМАННІ ІНФОРМАЦІЇ ПРО ВИЯВЛЕННЯ ГРОШОВИХ ЗНАКІВ З ОЗНАКАМИ ПІДРОБКИ

Згідно з Конституцією України забезпечення економічної безпеки є однією з найважливіших функцій держави, справою всього українського народу (ч.1. ст. 17). Для цього держава організовує функціонування фінансового, грошового, кредитного та інвестиційного ринків; визначає статус національної валюти і забезпечує її стабільність, визначає статус іноземних валют на території України; встановлює порядок випуску та обігу державних цінних паперів (ч.2 ст. 92, ст. 99) [1, с. 4].