

УДК 343.125

Biletska Katerina – Researcher of
Criminal Process Department of National
Academy of Internal Affairs

Білецька Катерина Костянтинівна –
здобувач кафедри кримінального
процесу Національної академії
внутрішніх справ

REGARDING THE ISSUE OF TAKING MEASURES OF PERSONAL GUARANTEE ON A MINOR

ЗАСТОСУВАННЯ ЗАПОБІЖНОГО ЗАХОДУ У ВИГЛЯДІ ОСОБИСТОЇ ПОРУКИ ДО НЕПОВНОЛІТНЬОГО ПРАВОПОРУШНИКА

This article is entitled «Regarding the issue of taking measures of personal guarantee on a minor». The subject of the research is preventive measures in the form of personal guarantee on a juvenile offender, methods of their use. The great changes have taken place when on 20 November 2012 Verhovna Rada adopted a new Procedure Code, which changing the essential meaning of «personal guarantee» in criminal trial. In new Criminal Procedure Code of the Ukraine consolidation constitutional principles of criminal proceedings and the principles of international legal acts which were accepted as binding by the Verkhovna Rada of Ukraine. The new Code have a lot of innovations, most of which contains a number of innovations, most of which are designed to create equal opportunities for each party in criminal proceedings, to introduce international experience in domestic proceedings. At the beginning of article it deals with the place of personal guarantee on a minor in the system of preventive measures. Then in article considered the alternative preventive measures which used to juvenile offenders in other countries.

Keywords: preventive measures; bail; personal guarantee; juvenile offender; criminal procedural law.

Здійснено аналіз запобіжного заходу у вигляді особистої поруки, що застосовується до неповнолітнього правопорушника. Розглянуто альтернативні запобіжні заходи, що застосовуються до неповнолітніх в інших країнах світу.

Ключові слова: запобіжні заходи; порука; особиста порука; неповнолітній правопорушник; кримінальне процесуальне законодавство.

Проанализирована мера пресечения в виде личного поручительства, которая избирается относительно несовершеннолетнего правонарушителя. Рассмотрены альтернативные меры пресечения, которые избираются к несовершеннолетним в других странах мира.

Ключевые слова: мера пресечения; поручительство; личное поручительство; несовершеннолетний правонарушитель; уголовное процессуальное законодательство.

For the modern society important enough and meaningful problems are the fight against juvenile criminality, the priority of protecting rights and legal interests of minor in a criminal process, the necessity of improving Criminal Procedure legislation that regulates legal status a minor defendant.

The state of criminality among minor causes a deep disturbance. Consequently a sharp necessity appears for the search of new effective facilities of prevention of their crime acceptance of additional measures by the public, in particular law-enforcement organs and public, that would result in gradual reduction of criminal displays among minors.

Juvenile delinquency attracts constantly the fact attention of scientists and practical workers. Today it is predefined caused by that not only minors were always considered the offenders of the special type, but also that in recent years minors are one of the most criminally staggered layers of the population.

Adoption the Constitution of Ukraine, the President desire of our state to enter the European community, the determination by the Ukrainian the priority and obligatory direction of their activity on supporting rights and freedoms of a man and citizen requires the necessity of bringing substantial changes to the current national legislation and adopting a number of new legislative acts. For this

reason today the research of certain problems of participation of minor defendants is topical enough in rule-making with the aim of making suggestions in relation to their solving and preparing recommendations to improve investigative and judicial practice [4, с. 7].

Accordingly, in relation to minor offenders criminal punishment is not more justified, even if it is not connected with imprisonment, but other measures of criminal law character, aimed forming at their law-abiding behavior, namely laying on teenagers certain duties and clear determination of their rights that find their expression in application in relation to the last measures of restraint for the offence committed.

By applying a measure of restraint to a juvenile offender, the investigator, the prosecutor and the investigating judge, first of all takes into account his/her age, regardless of their behavior, his/her place in the society and parents occupations and his/her characteristics feature other of the individual juvenile offender, and in this case applies, the mildest form of the measure of restraint, such as personal liability or personal guarantee.

Unlike the adult criminal justice system, where the basic goals are to punish, deter, and maybe rehabilitate offenders, the main thrust of the juvenile justice system is to supervise, treat, and rehabilitate defendants to turn them from the criminal path before they become repeat adult offenders. Since this is the case, although juvenile defendants have some constitutional rights like the right to an attorney and the right against self-incrimination in common with adult defendants, they do not have others, like the right to a jury trial or the right to bail. Any juvenile who is being tried as an adult, however, will be entitled to bail.

Not having a constitutional right to bail does not mean, however, that juvenile defendants will be kept in custody prior to trial without limitation. Most states have in place strict procedures regarding when and how a juvenile can be kept in custody prior to trial. In Pennsylvania, for example, once a juvenile is arrested, he can only be kept in custody for 24 hours prior to a detention hearing.

The court officer who presides over these hearings is called a juvenile master who will determine if enough probable cause exists to show the juvenile may have committed the criminal acts. If it does, based on factors such as seriousness of the offense, the

juvenile's prior contacts with the system, and the sufficiency of parental supervision, the juvenile master will then decide whether or not the defendant should continue to be held until the trial date [5].

Let's pay our attention on one of the types of the measures of restraint in Ukraine, namely, personal responsibility, which is often used by investigators to juvenile criminals. Thus, the personal guarantee (art. 180 CPC) is a measures of restraint, the essence of which is providing by the people whom the investigating judge, the court consider credible, a written undertaking that, they vouch for the caring out by the suspect or accused their obligations under Art. 194 CPC and undertake if necessary to deliver him/her to pre-trial investigation body or in court on the first requirement [1, c. 460–461, 490–491].

So, bail is an agreement to appear in court on a set day. It is juvenile offender right to apply for bail when charged with an offence. Bail applies only if juvenile offender has been charged and does not apply to your child if they have been issued with a court attendance notice.

There are two types of bail:

Unconditional – juvenile offender must appear at court on a set day.

Conditional – juvenile offender is released with conditions which might include:

reporting to police

times when your child must be at home

an acceptable person vouching for the child

requiring a surety or an amount of cash be lodged, which may be forfeited if they do not appear at court on the set day.

If juvenile offender does not abide by the conditions of bail the police can place them in custody.

On occasions the court may direct juvenile offender to accept supervision of Juvenile Justice while on bail.

If this occurs it is important that guarantee and juvenile offender make prompt contact with juvenile justice officer.

When juvenile offender is charged the senior police officer on duty will decide whether or not bail will be granted. A number of issues are considered including the seriousness of the offence, community ties and likelihood of attendance at court [6].

As it occurs in other countries, not in Ukraine?

When juveniles commit crimes, the court treats them differently from adults – especially if they come from a background of abuse or neglect. The court aims to save juvenile offenders from the path they're on and rehabilitate them through counseling and other efforts.

But this doesn't always work. Some juveniles are repeat offenders who commit serious crimes. In these instances, the law permits most courts to decide penalties for these offenders on a case-by-case basis.

When a juvenile is charged with a misdemeanor – usually a minor offense – the arresting officer might call the parents and release the child into their custody. This doesn't mean the officer won't charge the juvenile with the crime, but only that the child can go home until the next hearing date.

Police officers have the option of sending the minor to a juvenile detention facility instead. This might happen with more serious offenses or if the authorities can't locate a family member or some other responsible adult. Juvenile felonies almost always involve detention.

Generally, juvenile offenders do not have the right to bail. When a minor is held in detention, most states will schedule a first hearing very soon after arrest. The judge can also decide to release the juvenile to a parent or guardian. The adult must promise to return the minor to court for trial. When serious charges are involved, a judge might decide to keep the minor in a detention facility until trial.

Juveniles do not have the right to jury trials. A judge decides their guilt and sentence. Usually, the hearing is closed – although the judge can decide to open it to the public. In some states, if the juvenile is accused of a felony, the courtroom is open just as it would be for an adult trial.

Judges can decide to try juveniles as adults, and this decision is often made at the first hearing. Most state laws don't allow a minor younger than 14 to be tried as an adult. When this happens, the crime must generally be a felony.

With some very serious crimes, such as murder, judges don't have a choice – the law automatically tries a juvenile as an adult if the child is 16 or older. When judges choose this option, they'll

usually order a mental health evaluation first to try to decide if the child can be rehabilitated rather than sent to an adult prison if convicted [7].

But in some countries used very loyal preventive measure. For example, in Australia if the person who is accused of committing the crime was less than 18 years old at the time of the offence, he or she will usually be dealt with through the juvenile justice system. This system recognises that some young people do hurt other people and their property, and should do something to make up for this. However, they do not have the full legal responsibilities of an adult, and may still be in the process of learning about these responsibilities and how to exercise them. In South Australia, youths who abide by the law, but made mistakes in growing up, are encouraged to start life without being limited by youthful errors.

However, the principle of restoration is an important one. This can be demonstrated through the Family Conference system.

Under the Young Offenders Act 1993, Family Conferences are held, in certain circumstances, as a way of diverting young offenders from court where the offence is minor.

Family Conferences provide an opportunity for the young person, the victim of the offence, family, supporters and a police officer to discuss what has happened, how it has affected each person and how the offence will be dealt with. The conference is chaired by a Youth Justice Coordinator who encourages all participants to arrive, by consensus, at an appropriate outcome.

An outcome may include agreement by the youth to pay compensation, apologise either in person or in writing, perform community service, participate in various programs or anything else that is considered appropriate under the circumstances. Victims are encouraged to contribute to discussion regarding suitable restitution for the harm caused, or how the harm should be made good.

Compliance with undertakings is monitored by the Youth Justice Coordinator, and you will be informed of the outcome at the conclusion of the case.

Having you present at a conference can significantly affect a young person's understanding of the consequences of his or her offending behaviour. The process therefore encourages a young

offender to take responsibility for that behaviour and participate in a process that is both restorative and healing for all participants [8].

Therefore, in criminal proceedings, where the crimes were committed by minors and if the measure of restraint to them was personal responsibility, the guarantors are their parents, guardians or carers. In return the guarantor, in this case parents, guardians or carers are responsible to ensure not only coming of a minor suspect accused coming the police or the court on the first requirement, but the accused suspect carrying out obligations under Art. 194 CPC, namely to: abstain from communicating with any person, not to visit certain places, to undergo treatment from drug or alcohol addiction, to make the effort to seek training [3, c. 177].

When using a personal guarantee as a measure of restraint the guarantor gives a written undertaking that he vouches for the accused minor suspect carrying out his/her duties. In particular, it's written in Part 2 of Art. 202 CPC that if personal bail is chosen as a measure of preventive measure a juvenile suspect or accused, if he was arrested, is released from custody immediately after his/her guarantors give specified obligations [1, c. 507].

The investigator shall monitors carrying out the obligations of personal bail, or the prosecutor does if the case is in court proceedings.

Thus, I come to the conclusion that the use of personal bail as a measure of restraint to a miner in the form is one of the best measures, because person who took him on bail is for his actions and deeds fully responsible, and in most those persons are cases their parents, who are interested in their son or daughter not going on to be engage of in crime and not suffer from cruel punishment.

LIST OF REFERENCES

1. Кримінальний процесуальний кодекс України : [наук.-практ. комент.] : у 2 т. – Т. 1 / О. М. Бандурка, Є. М. Блажівський, Є. П. Бурдоль та ін. ; за заг. ред. В. Я. Тація, В. П. Пшонки, А. В. Портнова. – Х. : Право, 2013. – 768 с.

2. Кримінальний процесуальний кодекс України [наук.-практ. комент.] : у 2 т. – Т. 2 / Є. М. Блажівський, Ю. М. Грошевий, Ю. М. Дьомін та ін. ; за заг. ред. В. Я. Тація, В. П. Пшонки, А. В. Портнова – Х. : Право, 2013. – 664 с.

3. Кримінальний процес : [підруч.] / за заг. ред. В. В. Коваленка, Л. Д. Удалової, Д. П. Письменного. – К. : Центр учб. л-ри, 2013. 554 с.

4. Попелюшко В. Запобіжні заходи в новому КПК України: поняття, мета, підстави, види та загальна характеристика / В. Попелюшко // Юридичний вісник України. – 2012. – № 39 (900). – С. 6–7.

5. Am I entitled to bail out of juvenile hall like an adult can bail out of jail? [Електронний ресурс]. – Режим доступу :

[http://criminal-law.freeadvice.com/criminal-law/juvenile law/juvenile bail.htm#ixzz3LuPaNQAW](http://criminal-law.freeadvice.com/criminal-law/juvenile%20law/juvenile%20bail.htm#ixzz3LuPaNQAW).

6. Juvenile Justice [Електронний ресурс]. – Режим доступу :

http://www.djj.nsw.gov.au/family_info_kit_bail.htm.

7. Juveniles Who Commit Crimes [Електронний ресурс]. – Режим доступу :

<http://criminal.lawyers.com/juvenile-law/juveniles-who-commit-crimes.html>.

8. The juvenile justice system [Електронний ресурс]. – Режим доступу :

http://voc.sa.gov.au/information/the_legal_process/the_juvenile_justice_system.asp.