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RULES FOR SETTING OFF PERIODS OF APPLICATION OF MEASURES OF PROCEDURAL COERCION IN THE TERM OF CRIMINAL PUNISHMENT: PROBLEMS OF LEGISLATIVE REGULATION AND LAW ENFORCEMENT

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The research subject is represented by the correlation between provisions for criminal and criminal procedure law in Russian Federation which turns out to be the basis in resolution of the inclusion of certain terms of criminal procedure measures administration into the criminal punishment duration which is enforced toward a defendant during criminal proceedings.

The research objective is expected to be a confirmation or a contestation for hypothesis about the existing diversity of calculation methods for criminal punishment duration.

Research methodology encompasses both dialectical and formal cognition methods. It is based on a complex and comprehensive analysis and interpretation of statutory acts, legal reasonings of the Constitutional Court and the Supreme Court of Russian Federation as well as on judicial rulings regarding criminal cases and on doctrinal approaches to the current research subject.

Main determinations and application field. The research rationale is represented by the following conclusions. Criminal law does not contain the regulation of the inclusion of certain terms of criminal procedure measures administration into the criminal punishment duration which is enforced toward a defendant during criminal proceedings, namely – the restrictions enforced upon the suspect (defendant) with regards to sub-para. 1 para. 6 of the article 105.1 of the Criminal Procedure Code of Russian Federation. Hence, such issue constitutes an evident legal gap in the existing calculation methods for criminal punishment duration. Given the comprehensive analysis conducted with respect to pre-trial restrictions such as house imprisonment and restraining order, as well as examination of final judicial rulings which concern the inclusion of certain terms of criminal procedure measures administration into the criminal punishment duration which is enforced toward a defendant during criminal proceedings, it can be concluded that the existing case law appears to be generally established. At the same time the judiciary apply rather diversified calculation methods for criminal punishment duration, while due to the absence of distinct and precise legislation judicial provisions being therefore bearable and discordant lead to their controversial interpretation. Moreover, in the author's opinion, the existing practice for the inclusion of certain terms of pre-trial restrictions administration into the criminal punishment duration does not correlate with such principles of law as principles of justice and equality of citizens in the face of law. Pursuant to the conducted legal research it is suggested to introduce adequate changes and amendments to the effectual criminal law and criminal procedure law accordingly.

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1. Introduction.

With the adoption of Federal Law No. 72-FZ of the Russian Federation, the system of measures of criminal procedural coercion was supplemented with a new measure of restraint in the form of a ban on certain actions.[1] Moreover, due to the fact that the prohibition provided for in paragraph 1 of Part 6 of Article 105[1] of the Criminal Procedure Code of the Russian Federation for a suspect (accused) to leave the premises in which he is legally located during certain periods of time entails a restriction of his constitutional right to personal freedom, the time of application of this prohibition according to paragraph 1[1] h. 10 art. 109 of the Code of Criminal Procedure of the Russian Federation is subject to offset in the period of detention at the rate of two days of application of the specified prohibition for one day of detention.

Of course, there was also a need for a constructive understanding of the innovation, and it is not surprising that this caused a huge research interest of the scientific community. The legal literature critically analyzes the value and significance of this preventive measure for criminal proceedings [1; 2; 3], its place in the system of preventive measures [4, p. 74; 5; 6], the content and problems of implementing specific prohibitive measures imposed on suspects (accused) [7; 8; 9].

At the same time, the rules for calculating the terms of punishment and the offset of punishment provided for in Article 72 of the Criminal Code of the Russian Federation were significantly changed,[2] which was also not left without the close attention of scientists and practitioners [10; 11; 12; 13]. At the same time, the legislator did not specifically in Article 72 of the Criminal Code of the Russian Federation regulate the procedure for setting off the period of application of the ban, the execution of which can be imposed on the suspect (accused, defendant) on the basis of paragraph 1, Part 6 of Article 105[1] of the Criminal Procedure Code of the Russian Federation before the sentence enters into force.

This circumstance could not but raise the question of the need to offset the period of application of the ban provided for in paragraph 1 of Part 6 of Article 105[1] of the Criminal Procedure Code of the Russian Federation in the term of criminal punishment, as well as the proportions and methods of such combination [14, p. 49], [15, p. 76]. And since such an important issue has not been resolved at the legislative level, which, according to the fair comment of processualists, is a clear gap, its resolution will largely depend on the formation of law enforcement practice [16, p. 9].

At the same time, in our opinion, having made amendments to the criminal law taking into account the legal position of the Constitutional Court of the Russian Federation on the need, including when designing the rules for calculating sentences, for differentiated consideration of restrictions on rights and freedoms suffered by a citizen during the application of procedural coercion measures of various content and nature to him, the legislator is not fully the measure was able to comply with the requirements of ensuring legal equality, the criteria of which are formal certainty, accuracy, clarity and consistency of legal norms.[3] But not only the rule of law itself must meet these requirements, but the act of applying this rule must also be clear and unambiguous.

2. The practice of crediting the periods of detention of a suspect and the forced stay of a person in a medical hospital to the term of criminal punishment.

Based on the systematic interpretation of

[1] Federal Law of the Russian Federation No. 72-FZ of 18.04.2018 "On Amendments to the Criminal Procedure Code of the Russian Federation regarding the Election and Application of Preventive Measures in the Form of a Ban on Certain Actions, Bail and House Arrest". URL: http://www.consultant.ru/document/cons_doc_LAW_296073 / (accessed 12/24/2020).

[2] Federal Law of the Russian Federation No. 186-FZ dated 03.07.2018 "On Amendments to Article 72 of the Criminal Code of the Russian Federation". URL: http://www.consultant.ru/document/cons_doc_LAW_301586/3d0cac60971a511280cbba229d9b6329c07731f7 / (accessed 12/24/2020).

[3] Paragraph 4 of the Resolution of the Constitutional Court of the Russian Federation dated 06.12.2011 No. 27-P "On the case of checking the constitutionality of Article 107 of the Criminal Procedure Code of the Russian Federation in connection with the complaint of a citizen of the Republic of Estonia A. T. Fedin". URL: http://www.consultant.ru/document/cons_doc_LAW_123019 / (accessed 22.01.2021).

the norms of criminal and criminal procedure laws, it is indisputable that the absence in Article 72 of the Criminal Code of the Russian Federation of an indication of the ban provided for in paragraph 1 of Part 6 of Article 105[1] of the Criminal Procedure Code of the Russian Federation does not mean that the time of its application should not be counted in the term of criminal punishment. First of all, this is predetermined by the established clause 9 of Part 1 of art. 308 of the Code of Criminal Procedure of the Russian Federation, the obligation of the court, when passing a sentence, to resolve the issue of setting off the periods of application of procedural coercion measures against the suspect (accused) during the criminal proceedings, including the prohibition specified in paragraph 1, part 6 of Article 105[1] of the Criminal Code of the Russian Federation.

In addition, Article 72 of the Criminal Code of the Russian Federation also does not mention the possibility and procedure for setting off the period of time during which a person was detained as a suspect. However, this has never caused any particular criticism, and does not prevent the courts from counting this time period when passing sentences, moreover, from the moment of actual detention [17, p. 33], in the term of criminal punishment, guided by paragraph 1 of Part 10 of art. 109 of the Code of Criminal Procedure of the Russian Federation by the rule of offsetting the time of detention of a suspect during detention at the rate of one day for one day, followed by offsetting the result obtained in the term of punishment in accordance with Part 3, Part 3[1] of Article 72 of the Criminal Code of the Russian Federation.[4] The legality of using such a ratio in calculations also does not cause complaints, since it is quite obvious that the detention of a suspect and a preventive measure in the form of detention are identical in their internal nature, and consist in the detention of a suspect (accused) in custody, as explicitly stated in paragraph 42 of Article 5 of the Criminal Procedure Code of the Russian Federation.

Similarly, the criminal law does not set out the parameters of offset in the term of punishment for the period of time of forced stay of a person who is not in custody in a medical organization providing medical or psychiatric care in inpatient conditions, according to a court decision. In judicial practice, the period of a person's stay in such institutions is counted as a term of imprisonment in a one-to-one ratio.[5] At the same time, as indicated in the legal literature, the court does not have grounds for applying the preferential rules of offset established by Part 3[1] of Article 72 of the Criminal Code of the Russian Federation in this case, since the regime of detention in a medical organization does not imply complete isolation from society [18, p. 95], [19, p. 70]. However, when deciding whether to offset the period of stay of a suspect (accused) in a hospital during other types of punishment, the courts will proceed from the only possible calculation of one day for one day of detention on the basis of paragraph 3 of Part 10 of Article 109 of the Criminal Procedure Code of the Russian Federation.

3. The practice of setting off periods of application of a preventive measure in the form of house arrest in the term of criminal punishment.

The existing procedure for setting off periods of time for the use of coercive measures against a suspect (accused) in the term of punishment, in our opinion, clearly indicates that it has nothing to do with the rules for calculating the period of detention provided for in Part 10 of Article 109 of the Code of Criminal Procedure of the Russian Federation when applying procedural coercion measures in the course of criminal proceedings, and Emphasizes that there is no direct relationship between Article 72 of the Criminal Code of the Russian Federation and Article 109 of the Criminal Procedure Code of the Russian Federation.

[4] For example: the verdict of the Bratsk District Court of the Irkutsk region dated 13.07.2020 No. 1-130/2020. URL: https://sudact.ru/regular/doc/4z4qregN0RLC / (accessed 22.12.2020).

[5] For example: appeal resolution of the Nizhny Novgorod Regional Court of 18.05.2020 No. 22-2475/2020. URL: https://sudact.ru/regular/doc/83ylRu7niMQt / (date of appeal 24.12.2020).
See also: "Answers to questions received from the courts on the application of the provisions of Article 72 of the Criminal Code of the Russian Federation" (approved by the Presidium of the Supreme Court of the Russian Federation on 31.07.2019). URL: http://www.consultant.ru/document/cons_doc_LAW_330626 / (accessed 22.05.2020).

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On the basis of paragraph 2 of Part 10 of Article 109 of the Code of Criminal Procedure of the Russian Federation, the time spent by a suspect (accused) under house arrest is equated to the time of detention, and in accordance with Part 2^1 of Article 107 of the Code of Criminal Procedure, regardless of the sequence of application of these two preventive measures, the cumulative period of detention may not exceed its limits established by the Criminal Code-procedural law, depending on the category of crimes. In other words, two days of being under house arrest are equivalent to two days of detention, but are counted as one day in the period of detention or imprisonment when sentencing according to Part 3^4 of Article 72 of the Criminal Code of the Russian Federation.

The pre-existing rule of setting off one day of the suspect's (accused's) stay under house arrest for one day of deprivation of liberty was reasonably criticized, because in terms of restrictions on individual rights and freedoms, in terms of continuity and degree of control over compliance with the regime of coercive measures, house arrest is incomparably milder than the detention of a suspect and preventive measures in the form of detention [20, p. 120].

The wording allowed in Part 3^4 of Article 72 of the Criminal Code of the Russian Federation "... for one day of detention or deprivation of liberty" means that the time spent by a person under house arrest is counted in the term of criminal punishment in two ways, depending on the type of punishment: as one day of deprivation of liberty when assigning this type of punishment to a convicted person without applying the rules of preferential offset provided for in Part 3^1 of Article 72 of the Criminal Code of the Russian Federation,[6] and as one day of detention for calculating the terms of punishments specified in Part 3 of Article 72 of the Criminal Code of the Russian Federation. However, from our point of view, this calculation formula is contradictory, since the ratio is based on different criteria. However, from our point of view, this calculation formula is contradictory, since the ratio is based on different criteria. In particular, if we consider the procedure for setting off the period of a person's stay under house arrest during such types of punishments that are most comparable to each other in terms of serving conditions, such as restriction of liberty and deprivation of liberty with serving in a colony-settlement, then the imbalance in the calculation of the terms of punishment turns out to be quite significant. It is not difficult to notice that based on the meaning of parts 3, 3^4 of art. 72 of the Criminal Code of the Russian Federation, two months of a convicted person's stay under house arrest will be counted as two months of restriction of freedom, but his stay in the colony-settlement will be reduced by only a month, although, in fact, he served it while under house arrest. A similar disparity is observed when comparing the offset of periods of house arrest during the periods of detention in a disciplinary military unit and imprisonment with serving in a general regime colony.

It should also be noted that the phrase "... before the trial" used in Part 3^4 of Article 72 of the Criminal Code of the Russian Federation, as if left in memory of the legal provision in the previous edition, is incorrect and contradicts the general rule of the time of detention established by Part 3 of Article 72 of the Criminal Code, and therefore cannot be understood literally. As indicated by the Presidium of the Supreme Court of the Russian Federation, the period of time when a preventive measure in the form of house arrest is applied to a convicted person is counted in the term of imprisonment until the sentence enters into legal force, if this preventive measure is maintained.[7] If the preventive measure is canceled or changed to another, then in any case, on the basis of paragraph 9 of Part 1 of Article 308 of the Code of Criminal Procedure of the Russian Federation, the period of stay under house arrest should be set off as the term of punishment until the verdict is passed.

[6] For example: Appeal resolution of the Irkutsk Regional Court of 19.06.2020 No. 22-1207/2020. URL: https://sudact.ru/regular/doc/OV4ZtNJEyGZt (accessed 21.12.2020).

[7] "Answers to questions received from the courts on the application of the provisions of Article 72 of the Criminal Code of the Russian Federation" (approved by the Presidium of the Supreme Court of the Russian Federation on 31.07.2019). URL: http://www.consultant.ru/document/cons_doc_LAW_330626 / (accessed 22.05.2020).

4. The practice of setting off periods of application of a preventive measure in the form of a ban on certain actions in the term of criminal punishment.

To date, we can confidently talk about the well-established judicial practice of setting off the period of application to the suspect (accused) of the ban established by paragraph 1, part 6 of Article 105[1] of the Criminal Procedure Code of the Russian Federation in the term of criminal punishment. The courts, when passing sentences, almost always, with rare exceptions, resolve the issue of setting off the time of application of the ban provided for in paragraph 1 of Part 6 of Article 105[1] of the Criminal Procedure Code of the Russian Federation for the term of criminal punishment.[8]

In the vast majority of cases, the courts, when deciding on the offset of the period of application of the prohibition of certain actions in the term of punishment, apply the proportion established in paragraph 1[1] h. 10 Article 109 of the Code of Criminal Procedure of the Russian Federation. In fairness, it should be stated that this is the only way provided by law to calculate the term of application of this preventive measure and the term of criminal punishment. In rare cases, the courts deviate from this rule, or perhaps they simply make a technical mistake, establishing that the time of imposing the ban on the suspect (accused) specified in paragraph 1, part 6 of Article 105[1] of the Criminal Procedure Code of the Russian Federation is counted in the term of imprisonment, for example, at the rate of one day of the ban for one day of imprisonment,[9] for two days of detention.[10]

The study of judicial practice allows us to identify two main options for indexing the period of application of the prohibition of certain actions during the term of criminal punishment, which courts adhere to, which is confirmed by research and other authors [21, p. 24]. In the first variant, the courts determine in their sentences that the period of the ban on leaving the premises is counted as the term of punishment at the rate of two days of its application for one day of detention.[11] At the same time, as a rule, the period of time to be offset is indicated, but the specific number of days of detention obtained as a result of calculations is extremely rarely determined.[12]

The second option is more straightforward and consists in the fact that the courts in the sentences determine the proportion of the offset of the period of application of this prohibition directly in relation to the term of punishment.[13] In this variant of calculations, rules similar to the established procedure for setting off the time of application of house arrest during the term of imprisonment are also applied, that is, without taking into account the preferential rules for the multiplicity of periods of detention allowed by Part 3[1] of Article 72 of the Criminal Code of the Russian Federation.[14]

[8] When studying 200 sentences and appellate rulings, we identified 4 cases when, when passing a sentence, the court did not set off the time of application of the ban provided for in paragraph 1 of Part 6 of Article 105[1] of the Criminal Procedure Code of the Russian Federation for the term of criminal punishment, but this violation was corrected by the courts of appeal.

[9] For example: the verdict of the Solikamsk City Court of Perm Krai dated 28.08.2019 No. 1-360/2019. URL: https://sudact.ru/regular/doc/QpXGd6JAFggO // (accessed 04.05.2020).

[10] verdict of the Leninsky District Court of Murmansk dated 16.12.2019 No. 1-384/2019. URL: https://sudact.ru/regular/doc/C18SHeImXurK / (accessed 26.09.2020).

[11] For example: verdict of the Oktyabrsky District Court of Murmansk dated 02/19/2020 No. 1-16/2020. URL: https://sudact.ru/regular/doc/ZQsFQyVgoPLr (date of appeal 25.05.2020); appeal decision of the Perm Regional Court No. 22-7912/2019. URL: https://sudact.ru/regular/doc/4W7ldVYQXOdw / (accessed 23.06.2020).

[12] For example: the verdict of the Teikovsky District Court of the Ivanovo region dated 02.12.2019 No. 1-182/2019. URL: https://sudact.ru/regular/doc/OMd6dYyk5vot / (accessed 23.06.2020).

[13] For example: verdict of the Oktyabrsky District Court of Murmansk dated 07/28/2020 No. 1-73/2020. URL: https://sudact.ru/regular/doc/Fvk0acfsW5Yv / (accessed 22.12.2020).

[14] For example: the verdict of the Soletsky District Court of the Novgorod region dated 05/26/2020 No. 1-21/2020. URL: https://sudact.ru/regular/doc/gnVlcXwNX2g1 (date of appeal 14.01.2021); appeal resolution of the Kirov Regional Court of 18.07.2020 No. 22-1223/2020. URL:

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Moreover, both variants of calculations can hardly be considered flawless. The paradoxical nature of the first option is manifested in the fact that two days of the ban on certain actions will eventually be counted as one and a half or two days of imprisonment with serving in a general regime colony or in a settlement colony, respectively, and two days of being under house arrest in any case will amount to only one day of imprisonment. The error of the second option is due to its illegality, since neither the Criminal Code of the Russian Federation nor the Criminal Procedure Code of the Russian Federation contain norms that allow correlating the prohibition of certain actions directly with deprivation of liberty, and vulnerability, since it is not applicable when assigning other types of criminal punishment.

From our point of view, it is clearly not fair to persons under house arrest that the time of application of the ban provided for in paragraph 1 of Part 6 of Article 105[1] of the Criminal Procedure Code of the Russian Federation is counted in the term of criminal punishment in the same proportion as the period of house arrest.

According to the degree of restriction of personal freedom, the prohibition to leave the premises during specific periods of time is much milder compared to house arrest, the essence of which consists in the permanent stay of a citizen in the place of execution of a preventive measure [22, p. 22]. Although in the science of criminal procedure, and in practice, the question of the possibility and permissibility of granting the suspect (accused) the right to leave the residential premises in which he is located is still being ambiguously resolved. Some authors are convinced that persons under house arrest should be given time to take walks in the fresh air during the day [23, p. 108; 24; 25, p. 116]. Other scientists hold the position that house arrest means complete isolation of the suspect (accused) from society, therefore there can be no question of the possibility of granting such a right [26, p. 28].

In some cases, the courts allow suspects (accused) to leave the place of house arrest during the day to take walks, visit pharmacies, close relatives, etc.[15] In other cases, the courts refuse to grant the right to leave the premises, and the courts of appeal fully support them in this matter, refusing to satisfy appeals.[16] Nevertheless, suspects (accused persons) spend about 23 hours on average in isolation from society in their living quarters, even taking into account the granting of some of them the right to leave the premises.Whereas in the place of execution of the ban imposed on the basis of paragraph 1 of Part 6 of Article 105[1] of the Criminal Procedure Code of the Russian Federation, suspects (accused) stay on average 9.5 hours.[17]

According to the court decisions studied, in 59.4% of cases, the ban on leaving the residential premises was set for 8 hours, in 9.1% of cases this time interval was 9 hours, in 10.2% of cases the suspect (accused) was restricted in freedom of movement for 12 hours. In judicial practice, one can find examples of establishing both less severe restrictions on the freedom of movement of suspects (accused)[18] and longer periods of time during which suspects (accused) are required to stay in a residential building: 14 hours,[19] and even 24 hours with the right to two-hour walks during the

https://sudact.ru/regular/doc/1KP064f4AV5X / (accessed 12/24/2020).

[15] For example: appeal resolution of the Astrakhan Regional Court dated 04/29/2020 No. 22-1140/2020. URL: https://sudact.ru/regular/doc/CxGxjvpj0ML8 / (accessed 23.12.2020).

[16] For example: appeal resolution of the Irkutsk Regional Court of 16.07.2020 No. 22-2089/2020. URL: https://sudact.ru/regular/doc/YDQLXCo1mw6X / (accessed 23.12.2020).

[17] The data are provided based on the results of studying 200 court decisions on the election of a preventive measure in the form of house arrest and 200 court decisions on the election of a preventive measure in the form of a ban on certain actions with the imposition on suspects (accused) of the ban provided for in paragraph 1 of Part 6 of Article 1051 of the Code of Criminal Procedure of the Russian Federation.

[18] For example: Appeal resolution of the Leningrad Regional Court of 16.10.2019 No. 22K-2272/2019. URL: https://sudact.ru/regular/doc/nP1A04iGy2LO / (accessed 14.05.2020).

[19] For example: appeal resolution of the Lipetsk Regional Court of 15.01.2020 No. 22K-147/2020. URL: https://sudact.ru/regular/doc/rENOtiBuuUlN (accessed 23.08.2020)

day.[20] In such situations, another question naturally arises: about the fairness of an identical offset in the term of punishment of different periods of application of the ban provided for in paragraph 1 of Part 6 of Article 105[1] of the Criminal Procedure Code of the Russian Federation, differing from each other, and sometimes significantly, by the duration of daily execution.

Thus, as noted by many representatives of the scientific community [27, p. 31; 28, p. 253; 29, p. 28], house arrest and the prohibition of certain actions are unreasonably equalized with each other, which contradicts the inherent hierarchical structure of the system of preventive measures, the principle of justice and common sense, and this is further aggravated by the existing practice of offsetting periods of their application in the term of criminal punishment.

5. Rules for setting off periods of application of procedural coercion measures in terms of criminal punishment.

In our opinion, the systematic interpretation of Part 3, Part 3^1, Part 3^2, Part 3^3 of Article 72 of the Criminal Code of the Russian Federation, Part 10 of Article 109, paragraph 9 of Article 308, paragraph 11 of Part 1 of Article 397 of the Code of Criminal Procedure indicates that the "unit of account" when calculating the time of application of measures of procedural coercion in the term of criminal punishment the legislator chose "one day of detention" [30, p. 37].

Consequently, the period of application of measures of criminal procedural coercion related to the isolation of the suspect (accused) from society should first be synchronously equated to the period of detention, and then the result obtained should be translated into the number of days of imprisonment in accordance with the rules established by Article 72 of the Criminal Code of the Russian Federation. Moreover, the most correct, in our opinion, are court decisions, which not only use a similar sequence of calculation of the time for the application of procedural coercion measures,[21] but also indicate the exact number of days to be offset in the term of punishment until the day of the verdict.[22]

Moreover, it should be borne in mind that when transferring the number of days spent by the accused under house arrest or a ban on leaving the premises at a certain time, an even number of days of detention may not always turn out, for example, 43 days of house arrest literally equals 22.5 days of detention.

In this case, the courts quite justifiably take into account half a day as a full day of detention,[23] which corresponds to the general legal requirement to apply and interpret the law from the standpoint of improving the situation of the person being prosecuted. And from our point of view, such a rule should also be fixed at the level of criminal law, namely in Article 72 of the Criminal Code of the Russian Federation, since not all courts take this procedure into account when calculating the period to be offset against the term of punishment.[24]

When imposing punishment not only in the form of deprivation of liberty, but also other types of punishments, courts also sometimes apply the

[20] For example: appeal resolution of the Murmansk Regional Court dated 25.09.2018 No. 22K-1124/2018. URL: https://sudact.ru/regular/doc/DaIuJY46g4Vx / (date of appeal 12.04.2020); appeal decision of the Kaluga Regional Court dated 12.12.2019 No. 22K-1675/2019. URL: https://sudact.ru/regular/doc/av6HcWkJgplg / (date of appeal 16.06.2020); appeal decision of the Murmansk Regional Court dated 05.02.2020 No. 22K-233/2020. URL: https://sudact.ru/regular/doc/UADz2tSQru5l / (date of appeal 23.08.2020); appeal decision of the Saratov Regional Court dated 07.07.2020 No. 22K-1738/2020. URL: https://sudact.ru/regular/doc/6cyE6ZuivZJm / (accessed 24.11.2020).

[21] For example: verdict of the Belyaevsky District Court of the Orenburg region dated 05/18/2020 No. 1-14/2020. URL: https://sudact.ru/regular/doc/kHSePc97GYL6 / (accessed 12/24/2020).

[22] For example: the verdict of the Engels District Court of the Saratov region dated 15.01.2020 No. 1-16/2020. URL: https://sudact.ru/regular/doc/ULFIyvXV7OoW / (accessed 12/24/2020).

[23] For example: the verdict of the Oktyabrsky District Court of Murmansk dated 29.01.20 № 1-219/2019. URL: https://sudact.ru/regular/doc/zeP3pSzNJZoT / (accessed 26.08.2020).

[24] For example: the verdict of the Marianovsky District Court of the Omsk region dated 22.07.2020 No. 1-18-2020. URL: https://sudact.ru/regular/doc/j7CqGEJwT6oL / (accessed 12/24/2020).

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formula of direct offset of the period of validity of the prohibition of certain actions in the term of punishment based on, for example, two days of prohibition for three days of correctional labor.[25] The logic of calculations in such cases is quite clear and seems, at first glance, absolutely flawless, if we assume that one day of detention in accordance with Part 3 of Article 72 of the Criminal Code of the Russian Federation is equivalent to three days of correctional labor, two days of forced labor, and according to paragraph 11 of Part 10 art . 109 of the Criminal Procedure Code of the Russian Federation corresponds to two days of prohibition of certain actions. Nevertheless, in our opinion, this is true only from the point of view of a simple mathematical equation. So, choosing the formula "one day of the ban for one day of forced labor", the court actually counted 263 days of correctional labor for the convicted person (from 24.09.2019 to 12.07.2020).[26] But if we adhere to the step-by-step recalculation scheme, that is, first determine the number of days of detention, and then equate the result to the term of punishment, then the total number of days of forced labor that the convicted person should not serve will be 264 days.

In addition, one more nuance should be paid attention to when deciding on the offset of the period of application of preventive measures in the term of criminal punishment in situations where two measures of criminal procedural coercion are consistently applied to a suspect (accused) within one day. As a rule, this happens when the issue of choosing a preventive measure against a detained suspect (accused) is decided. On the day of the court session, the person is actually detained, but house arrest, bail or prohibition of certain actions may be applied to him, including with the assignment of the duty to stay at certain periods of time at the place of residence. In this case, the specified day should be counted in the period of detention according to the rules of offset of the strictest measure of procedural coercion. It seems that the indication of this circumstance in art. 72 of the Criminal Code of the Russian Federation would not be superfluous, since in practice, when calculating the term of punishment, courts sometimes take into account the day in which different coercive measures were used, twice, for example, counting it as one day of detention, since the suspect (accused) he was in the status of a detainee, and establishing that the calculation of the period of application of a preventive measure in the form of house arrest or prohibition of certain actions begins with him.[27]

6. Conclusions.

In our opinion, the practice of applying a preventive measure in the form of a ban on certain actions clearly demonstrates the need to change the legislative regulation of the election of the ban established in paragraph 1 of Part 6 of Article 105[1] of the Criminal Procedure Code of the Russian Federation.

It is a very difficult task to establish an acceptable, taking into account the differentiation of preventive measures in terms of their severity, the ratio of the prohibition of certain actions to house arrest, detention, and in general to detention, and even taking into account the existing diverse types of criminal punishment. One of the main problems of resolving this issue, from our point of view, is the existence of a very wide discretion of the preliminary investigation bodies and the court in determining the period of time during which the suspect (accused) is prohibited from leaving the residential premises.

In the scientific literature, it is proposed to abandon the possibility of applying the ban provided for in paragraph 1, part 6 of Article 105[1] of the Criminal Procedure Code of the Russian Federation [31, p. 93], which, undoubtedly, would be one of the radical ways to solve the problem of setting off a preventive measure in the form of a ban on certain actions during the sentence. However, at the

[25] For example: verdict of Syktyvkar City Court of the Komi Republic dated 04/23/2020 No. 1-1282/2019. URL: https://sudact.ru/regular/doc/MaDupDriPqo1 / (accessed 14.01.2021).

[26] For example: the verdict of the Leninsky District Court of Sevastopol dated 13.07.2020 No. 1-85/2020. URL: https://sudact.ru/regular/doc/aX31fxXoXxVI / (accessed 15.01.2021).

[27] For example: the verdict of the Dzerzhinsky City Court of the Nizhny Novgorod region dated 05/20/2020 No. 1-267/2020. URL: https://sudact.ru/regular/doc/43hH1b8K1RmH / (accessed 12/24/2020).

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present stage, such, in our opinion, a reasonable initiative is unlikely to be implemented at the legislative level.

At the same time, in our opinion, in any case, the criminal procedure law should define the time limits of "partial isolation", which is the essence of the prohibition provided for in paragraph 1 of Part 6 of Article 105^1 of the Criminal Procedure Code of the Russian Federation, which will allow for an orderly delineation of the measure of restraint in the form of a ban on certain actions from house arrest [32, 75; 33, p. 51; 34, p. 150; 35, p. 38].

And taking into account the practice of applying these preventive measures, it seems reasonable to limit the possibility of imposing a ban on the suspect (accused) to go outside the premises, setting the duration of the temporary period of its validity two times less than during house arrest.

We also believe that the generally accepted algorithm that has developed in practice for setting off periods of detention of a suspect, forced stay of a suspect (accused) who is not in custody in a medical institution in stationary conditions should have been established long ago as a legislative formula, which would correspond to the principle of legality enshrined in Article 3 of the Criminal Code of the Russian Federation.

Moreover, the exclusive prerogative belonging to the criminal law to establish the criminality and punishability of an act, including the procedure for calculating the terms of punishments, determines the necessity and obligation of strict and understandable criminal legal regulation of the rules for setting off time periods for the application of all coercive measures related to the restriction of freedom.

Based on the above, we believe that in order to improve judicial practice and bring it to uniformity on the selection of preventive measures, as well as the subsequent offset of the time of their application in the term of criminal punishment when passing sentences, it is necessary to amend this part of the existing criminal and criminal procedure laws. In this regard, we offer:

Paragraph 1. Part 6 of Article 105^1 of the Criminal Procedure Code of the Russian Federation after the words "... time periods" should be supplemented with the phrase: "... lasting no more than 12 hours a day";

Part 3^4 of Article 72 of the Criminal Code of the Russian Federation should be stated in the following wording:

1. "During the period of detention, periods of application to the defendant before the entry into force of the sentence of detention of the suspect, house arrest, prohibition provided for in paragraph 1 of Part 6 of Article 105^1 of the Criminal Procedure Code of the Russian Federation, forced stay of the defendant by court decision in a medical organization providing medical or psychiatric care in inpatient conditions are subject to offset. At the same time, one day of detention corresponds to:

1) one day of detention of a person on suspicion of committing a crime in accordance with the procedure provided for in Articles 91, 92 of the Criminal Procedure Code of the Russian Federation, from the moment of actual detention;

2) one day of compulsory stay of a person who is not in custody, by a court decision, in a medical organization providing medical or psychiatric care in inpatient conditions;

3) two days of stay of the suspect (accused) under house arrest;

4) four days of application of the ban provided for in paragraph 1 of Part 6 of Article 105^1 of the Code of Criminal Procedure against the suspect (accused).

2. The incomplete day of detention obtained as a result of calculations shall be counted as a full day.

3. When applying different measures of criminal procedural coercion against a suspect (accused) within one day, the specified day is counted as the period of detention according to the rules for setting off the time of application of the strictest of the measures of procedural coercion";

• Part 3^2 of Article 72 of the Criminal Code of the Russian Federation after the words "... in one day" add the words "in respect of persons specified in subparagraph 2 of paragraph 1 of Part 3^4 of Article 72 of this Code".

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