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**Prohibition of certain actions as an element of the system of restriction
measures: criminal-procedural mechanism of imposition and efficiency of
performance**

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INTRODUCTION

Relevance of the research topic.

The assessment of the existing legal reality in the Russian Federation by leading domestic legal scholars, scientists, politicians, and practitioners is conducted taking into account its current development trends. The humanization of Russian criminal proceedings is one of the most pertinent issues to be addressed.

The introduction in 2018 of a number of changes in the Criminal Procedure Code of the Russian Federation (CPC RF) concerning the selection and application of restraining measures, including the introduction of a new preventive measure in the form of prohibition of certain actions, represents one of the most striking results of the expression of the aforementioned trend in law. Such changes undoubtedly reflect the ongoing search for alternative restrictions to detention and complete isolation from society. They also demonstrate the desire of the legislative bodies to ensure a reasonable balance of interests of the parties, to improve the efficiency of criminal proceedings, and to ensure the observance of constitutional rights in the context of the presumption of innocence.

The relevance of the present study stems from its examination of the provisions and the lack of a consistent approach in understanding the role of prohibition in the system of restraining measures and its correlation with other coercive measures. In scientific publications for the period between 2018 and 2024, researchers presented a variety of perspectives on the modernization of the system of restraining measures, the competition between restraining measures, the possibility of combining restrictions, the justification of certain prohibitions in the composition of restraining measures, the improvement of the legislative wording and content of article 105.1 of the CPC RF, the identification and elimination of procedural errors, and other related issues.

The current legal reality, within which a previously nonexistent legal measure of coercion has emerged, underscores the necessity for theoretical comprehension of

debatable issues and the search for answers to them, as well as improvement of the legal regulation of selection and application of restrictive measures with prohibition of certain actions, theoretical and normative elaboration of new prohibitions.

The appearance of a novel coercive measure inevitably influenced the conduct of those involved in criminal proceedings. Notwithstanding the fact that the procedural procedure in the form of judicial control in terms of the application of restrictions set forth in article 105.1 of the CPC RF has not undergone significant changes, the selection and proving of restrictions that previously did not exist in the criminal procedural law permitted the identification of different ways of their interpretation and formalization in procedural acts. The elimination of contradictions in the application of prohibitions provided for in article 105.1 of the CPC RF, its generalization and bringing to uniformity additionally emphasize the relevance of the research topic.

The subject of the study of the system of restraining measures is expressed not only as one of the key sections of criminal procedural law, but also as an important element of the criminal policy of the state. The humanistic tendencies of modern criminal policy necessitate the study of the prohibition of certain actions not only as an element of the institution of restraining measures and an effective way to implement the activities of law enforcer, but also as a deeper phenomenon that can become a prerequisite for further improvement of the system of restraining measures, taking into account the current trends in the development of criminal proceedings in the Russian Federation.

A clear indication of the importance of studying the prohibition of certain actions can be derived from an analysis of practice¹ of selection of this preventive measure by the first-instance courts, starting from the moment of its appearance. The aforementioned statistics are presented in Fig. 1. The figure demonstrates a consistent increase in the number of court approvals of petitions for the prohibition of certain actions.

¹ Judicial statistics [Electronic resource] // Website of the Judicial Department at the Supreme Court of the Russian Federation. URL: <http://www.cdep.ru/?id=79> (access date 05.05.2024).

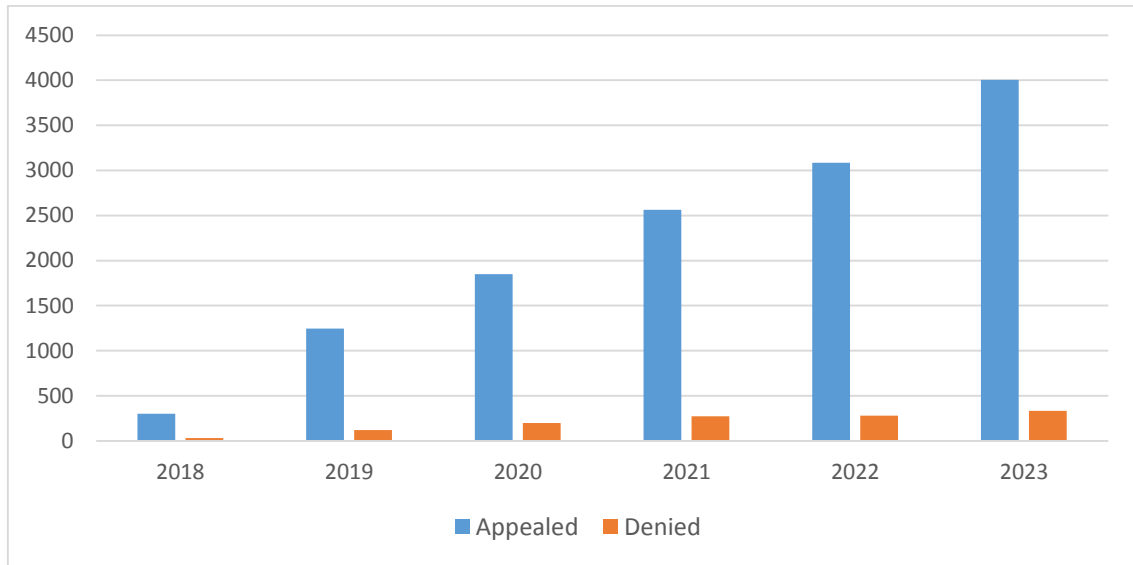


Figure 1 – Statistics of the first-instance court granting of petitions to prohibit certain actions over the period of 2018–2023.

Studying the issue of the procedure and grounds for selecting the prohibition of certain actions is directly related to one of the most pressing issues of criminal proceedings – alternatives to detention. Figure 2 presents quantitative data on the selection of restraining measures by courts over the past six years.

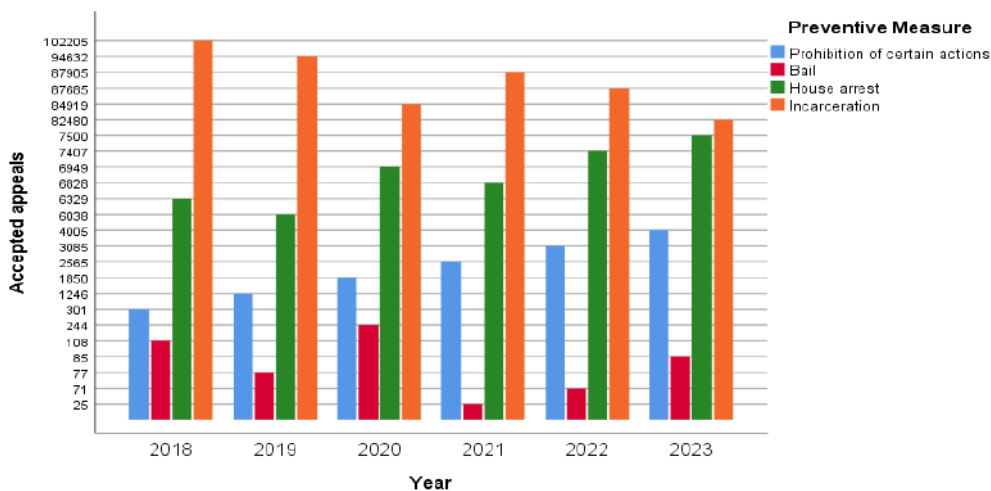


Figure 2 – Statistics of the first-instance court granting of petitions for applying a measures of restraint for the period of 2018–2023.

The diagram illustrates a discernible decline in the number of court approvals of petitions for remand in custody. It can be argued that the judicial practice reflects an attitude towards the selection of alternative restraining measures to remand in custody, namely those, which prohibit certain actions.

Degree of scientific development of the topic.

Theoretical developments concerning restrictions and the mechanism of legal regulation in Russian law were formulated in the works of S. S. Alekseev, N. N. Vitruk, A. V. Malko, I. M. Prikhodko, S. V. Pchelintsev, E. A. Chefranova, and other authors.

Among the scientists, who have made a significant contribution to the study of the theory and practice of the application of coercive measures ordered through a court proceeding, one should especially emphasize A. G. Volevodz, S. I. Vershinina, A. S. Gambaryan, I. M. Gutkina, A. V. Grinenko, I. S. Dikarev, Z. D. Enikeev, A. O. Zaitsev, Z. Z. Zinatulin, S. V. Zuev, O. V. Kachalova, N. P. Kirillova, Z. F. Kovirga, N. A. Kolokolov, V. M. Kornukov, Yu. D. Livshits, P. I. Lyublinsky, K. V. Muravyov, A. D. Nazarov, L. P. Popov, A. D. Proshlyakov, S. B. Rosinsky, V. V. Rudich, G. S. Rusman, I. G. Smirnova, N. G. Stoyko, M. S. Strogovich, O. V. Khimicheva, O. I. Tsokolova, N. V. Shchedrin, S. P. Shcherba, P. S. Elkind, and other authors.

The dissertation studies of N. V. Bushnaya, D. A. Voronov, I. D. Gaynov, A. E. Grigorieva, O. G. Ivanova, D. R. Iseev, E. K. Kutuev, I. V. Matvienko, V. Yu. Melnikov, N. V. Tkacheva and other authors are devoted to the issues of selecting and applying restrictions on freedom of movement and communication of the suspect and accused in the criminal process.

Currently, legal relations related to the selection and application of restrictive measures with the prohibition of certain actions as a subject of research have been revealed in a number of dissertation studies. O. D. Vastyanova considered the question of the place and meaning of the prohibition of certain actions in the criminal process of Russia. Y. V. Mihaylina analyzed the problems and features of the process on

selection of certain actions as a separate measure of repression. The study of O. A. Tkachuk examined the features of the procedural order of coercion of juvenile suspects and accused, among which there is a prohibition of certain actions. The problems arising from the application of the prohibition of certain actions have also been the subject of a study conducted by N. A. Andronic. A. V. Kvyk discussed the problems of choosing to ban certain actions in direct connection with other measures of repression: bail and house arrest.

The articles of N. A. Azarenok, Y. V. Derishev and E. I. Zemlyanitsyn, A. D. Elizarov, A. S. Iovleva, L. A. Kolpakov, O. V. Korostyleva, L. M. Litvin, A. V. Orlov, A. S. Petrovskikh and E. V. Smakhtin, I. S. Fedotov and N. Y. Dutov, V. V. Khatuaeva, S. S. Chernova, S. A. Yakovlev, and A. S. Kutyanin are devoted to particular problems of selecting prohibition of certain actions and its role in criminal proceedings.

The theoretical framework of the aforementioned authors served as the foundation for the present study, influencing the author's scientific views. However, it did not exhaust the topic of the study. Notwithstanding the substantial contributions of these scientists to the study of restraining measures, it can be argued that the theory and practice of the prohibition of certain actions as an independent preventive measure and as a component of house imprisonment and bail are underdeveloped.

Research object

The research object concerns regularities, development trends, and improvement of criminal procedural legal relations that develop during the selection and application of restrictions provided for by article 105.1 of the CPC RF.

Research subject

The subject of the study is theoretical ideas about limitations and prohibitions in law, including in the election and application of coercive measures, legal regulatory of the mechanism of selection and application of preventive measures with prohibition of certain actions, as well as resolution of issues concerning the effectiveness of these

measures and development of proposals for the introduction into legislation and practice of new restrictions and prohibitions.

Research aims and objectives

The aim of the research is to develop a set of theoretical and practical proposals on selection and application of preventive measures with prohibition of certain actions.

To achieve the specified aim, the following objectives were set and solved:

- identifying current legal trends that formed the basis for the emergence of a measure of restraint in the form of prohibition of certain actions;
- analyzing the transformation and development of coercive measures in the criminal procedural law of Russia, as well as in the post-Soviet space, and in foreign countries;
- conducting a comparative analysis of the legal institutions of restraining measures, criminal punishment, and administrative supervision;
- describing the significance of one of the properties of the domestic institution of restraining measures on the possibility of applying only one preventive measure and the autonomy of each of them;
- studying judicial practice on restraining measures in the application of restrictions included in the article 105.1 of the CPC RF;
- considering the legislator's approaches to the terminological and substantive description of restrictions in restraining measures with prohibition of certain actions;
- classifying judicial errors made in the practice of selecting and applying the prohibition of certain actions;
- developing indicators of the effectiveness of restraining measures with prohibition of certain actions.
- proposing ways for improving law enforcement in the process of selection and application of preventive measures with prohibition of certain actions.

Methodological and theoretical basis of the research.

As methodological basis of the study used *general* and *private-scientific* methods to obtain new knowledge. *The formal-logical* method was used as a basis for

analysis of the judgment of scientists-process on the problem studied. *The system method* was used in the analysis of the legal nature of the prohibition measures with certain actions. *Historical and historical-legal methods* served as the basis for analysis of genesis of prohibition of certain actions. *The legal modelling method* was used to form a model of optimal sets of prohibitions for modern law enforcement needs. *The sociological method* used in the questionnaire of respondents, helped to identify current problems of application of preventive measures with certain actions. *Comparative legal method*, which in the dissertation means comparison of norms of laws of different countries in regulation of similar social relations, used when comparing the content of prohibitions and restrictions of various coercive measures, powers of the authorities of criminal proceedings (officials carrying out criminal proceedings, prosecutor, courts) of foreign countries. *The statistical analysis method* has made it possible to summarize the practice and to trace the dynamics of the application of criminal procedure rules, regulating grounds, procedures and conditions for election and application of procedural coercive measures.

The theoretical basis of the dissertation research was formed by scientific works in the field of legal theory, philosophy, criminal procedure, criminal law, criminology, and criminal-executive law.

Regulatory framework of the research

The regulatory framework of the research includes the Constitution of the Russian Federation, universally recognized statutory provisions and principles of international law, current criminal procedure, criminal and other legislation, by-laws, resolutions of the Constitutional Court of the Russian Federation, and explanations of the Plenum of the Supreme Court of the Russian Federation.

The empirical basis of the dissertation research is comprised of the analysis of judicial statistics from the Judicial Department at the Supreme Court of the Russian Federation over the period from 2018 to 2024, the results of the generalization and reviews of judicial practice from the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, and courts of various subjects of the

Russian Federation. The author participated in the preparation of the changes proposed by the Law School of SibFU to be introduced into the Resolution of the Plenum of the Supreme Court of the Russian Federation of 19 December 2013. № 41 (in ed. of 11 June 2020) «On the practice of the courts to apply legislation on preventive measures in the form of detention, house arrest, bail and prohibition of certain actions».

The generalization of judicial practice encompasses procedural decisions regarding the prohibition of certain actions in the context of the application of restraining measures in the form of house imprisonment, bail, and the prohibition of certain actions. The primary source of procedural decisions was the Garant legal reference system. In total, approximately 1092 court judgments were rendered on the application of prohibitions as set forth in article 105.1 of the CPC RF.

The results of the generalization of statistical data and court practice are presented in tables and graphs, which are included as supplements to the dissertation research.

Furthermore, the author of the dissertation research conducted a questionnaire survey of practitioners (a total of 63 employees, 43 of whom were judges, 20 employees of the prosecutor's office), and studied the materials of criminal cases and court materials on the selection of restraining measures with prohibitions of certain actions, available in the archives of seven district courts of Krasnoyarsk (a total of 58 court materials and criminal cases).

Scientific novelty.

The scientific novelty is the following specific results obtained by the author in the course of the study: 1) *the formation by the author of new scientific provisions*, obtained as a result of a comprehensive study of legal relations, the resulting, changing and terminating in the course of criminal procedure rules on the application of preventive measures prohibiting certain acts; 2) *the development of an author's definition* of special criminal procedural mechanism for selecting and applying a prohibition on certain actions, as well as the description of its features and elements; 3) *proposal for practical recommendations on the application* of different

combinations of models of prohibitions of certain actions on various compositions of crimes; 4) *identification and analysis of errors*, the permitted by law enforcement and court officials in the application of certain prohibited actions; 5) *development of proposals* for further improvement of the regulations legal regulation of the application of preventive measures with prohibition of certain actions, taking into account the analysis of foreign experience.

Theoretical and practical significance of the research

The theoretical significance of the dissertation research is contingent upon the relevance and novelty of the chosen topic, as well as the theoretical provisions formulated in the work concerning the origin, understanding, and further improvement of the practice of applying the prohibition of certain actions in the system of restraining measures. The developed provisions can contribute to the further development of the theory of criminal procedure devoted to the institution of measures of criminal procedural coercion, in particular, the selection of restraining measures with the prohibition of certain actions that require a judicial decision.

The practical significance of the dissertation research is determined by the development of the mechanism for the selection and application of restraining measures with the prohibition of certain actions. The conclusions and recommendations presented in the study can be used in lawmaking and law enforcement practice, as well as in the educational process of universities and educational institutions within the system of advanced training for employees of the court, prosecutor's office, and investigative bodies.

Main scientific results.

1. The importance of specific information on the identity of a suspect or accused in order to decide on how best to apply the prohibitions of certain actions is justified and demonstrated by an example of a certain category of criminal cases².

² Kostenko D. S. Effectiveness of criminal procedural prohibitions of certain actions against suspects and accused of crimes involving destruction or damage property // Vestnik Sibirskogo yuridicheskogo instituta MVD Rossii. 2022. № 4(49). P. 234-238.

2. The prerequisites of legislative transformation of domestic institution of preventive measures and appearance of differentiated measures of criminal procedure were identified³.

3. The author's view on the legal nature of the preventive measure in the form of prohibition of certain actions and its correlation with the legal nature of bail and house arrest was established⁴. Author's personal contribution to writing the article: 90 %.

4. The role and importance of using certain provisions of forensic science to increase the effectiveness and efficiency of the application of preventive measures with restriction of certain actions⁵.

The main provisions presented for the thesis defense.

1. Creation of a prohibition of certain actions has improved the criminal procedural institution of preventive measures in a qualitative manner. Selection of a prohibition of certain actions in the context of humanization of criminal policy makes it possible to reduce the number of persons completely isolated from society during criminal proceedings.

2. Legal nature of a prohibition of certain actions is associated with modernization of house arrest and bail, as well as use of similar prohibitions provided for by criminal punishment in a form of restriction of freedom, as well as the institution of administrative supervision.

3. The rule provided for by the criminal procedure law on possibility of selection of only one preventive measure to a suspect or accused person does not need to be abolished.

Preventive measures have a characteristic of self-sufficiency which is understood by the author as an expression of independence of criminal procedural

³ Kostenko D. S. The role of the modern school of social defense by M. Ansel in the issue of modern reforms of the system of preventive measures in Russia // Eurasian Law Journal. 2023. № 12. P. 328-329.

⁴ Kostenko D. S., Chubukov B. A. Correlation of the legal nature of house arrest and prohibition of certain actions in the context of the development of the institution of preventive measures in the Russian Federation // Legal Bulletin. 2023. V. 8, № 12. P. 64-75.

⁵ Kostenko D. S. Theoretical basis for the use of scientific and technical equipment in forensic enforcement // Zakon I vlast. 2021. № 2. P. 56-58.

restrictions in their specific totality or separately, constituting the content of preventive measures.

4. Conditions for selection of a prohibition of certain actions shall be requirements established by the law based on the principles of criminal procedure, ensuring the legality of the application of restrictions in accordance with Article 105.1 of the Code of Criminal Procedure of the Russian Federation.

Such conditions for selection of a prohibition of certain actions shall be: 1) the accused person has a dwelling; 2) the accused person has the driving license when committed crime related to violation of traffic rules and operation of vehicles; 3) functioning of the competent authority monitoring compliance with prohibitions provided for in paragraphs 1-5 of Part 6 of Article 105.1 of the Criminal Procedure Code of the Russian Federation; 4) ensuring a right of the suspect, the accused's right to use the means of communication in emergency cases.

5. Name of the preventive measure provided for in Article 105.1 of the Code of Criminal Procedure of the Russian Federation must be changed from "prohibition of certain actions" to "restriction of certain actions".

In accordance with the current version of Art. 105.1 of the Code of Criminal Procedure of the Russian Federation, the prohibition of certain actions is a preventive measure expressed in two types of obligations: 1) to appear in time when summoned by an inquiry officer, investigator or to the court and 2) to comply with one or more of the provided prohibitions.

Use of the term "prohibition" simultaneously in the name and content of a legal norm creates logical contradictions in its interpretation, since the term "prohibition" is used to designate both a general and a particular category.

Thus, *restriction* of certain actions will consist of an obligation to appear at the summons of the inquiry officer, investigator, court and an obligation to comply with various types of prohibitions.

6. *Special criminal procedural mechanism* for selecting and applying preventive measures with a prohibition of certain actions is a procedural organization of

proceedings provided for by the law to establish combinations of restrictions in relation to the suspect, accused, defendant in order to ensure his/her appearance when summoned to the inquiry officer, investigator and to the court, that the accused person poses no threat for society, to prevent attempts to commit new crimes, hide from investigation and trial, interfere with the establishment of circumstances that constitute the subject of proof in a criminal case.

7. Model of a prohibition of certain actions is a self-sufficient set of restrictions included in the legal norm on a prohibition of certain actions (Part 6 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation).

Based on the study of practice, the author presents for practical use the most popular models for application of a prohibition of certain actions.

Based on a model approach and analysis of judicial practice, *methodological recommendations* have been developed for subjects conducting criminal proceedings on selection and application of preventive measures with a prohibition of certain actions, as well as proposals to the legislator and the Plenum of the Supreme Court of the Russian Federation to improve the regulation of the procedure for applying certain provisions of Article 105.1 of the Code of Criminal Procedure on the prohibition of certain actions.

8. *Procedural error* in the selection and application of preventive measures with a prohibition of certain actions shall be an error related to violation of the criminal procedure law, expressed in non-fulfillment or improper fulfillment of its requirements by the subject conducting the criminal process, recognized as such by a competent authority in the relevant legal act.

Substantive error in the selection and application of preventive measures with a prohibition of certain actions shall be an error associated with an incorrect interpretation of the legislative content of restrictions by an official conducting criminal proceedings

Procedural errors in the practice of preventive measures application with a prohibition of certain actions are the following main types: 1) errors related to

insufficient motivation and justification of prohibitions; 2) errors related to determining period of a prohibition of certain actions and offsetting this period to the period of detention; 3) errors related to non-compliance with the procedural requirements (conditions) for selection of a prohibition of certain actions.

The following main groups constitute the *Substantive errors*: 1) imposing on the accused an unintended prohibition to leave a territorial entity; 2) applying an unintended prohibition by the law to change their place of residence; 3) applying prohibitions not provided for by the law to refrain from using intoxicating substances, etc.; 4) applying prohibitions not provided for by the law to engage in certain activities.

9. The effectiveness of a prohibition of certain actions in the system of preventive measures is associated with minimizing errors in their selection and application, as well as the stability of the applied preventive measures with a prohibition, the abolition of certain prohibitions during their application or changing the preventive measure to less restrictive ones.

10. The author proposed to supplement the content of Part 6 of Article 105.1 of the Code of Criminal Procedure with the following types of prohibitions (restrictions): prohibition on monetary transactions, prohibition of travel abroad, prohibition on travelling outside a certain area, prohibition to engage in certain activities, deprivation of a right to keep weapons and an obligation to live separately from the victim.

Testing and implementation of research results

The main provisions of scientific research are reflected in the monograph and twelve articles, including four articles published in the list of the State Commission for Academic Degrees and Titles.

The results of the study were incorporated into the educational process of the Siberian federal university Law School in the course program of the disciplines «Criminal procedure law», «Theory and practice of criminal procedural evidence»; into the educational process of the Siberian Institute of the Ministry of Internal Affairs of Russia in the course program of the discipline «Criminal Procedure Law (criminal proceedings)». Also the results of the dissertation study have been officially introduced

into the service activities of the units of Krasnoyarsk regional court, Chief Investigation Department of the Investigative Committee of the Russian Federation on the Krasnoyarsk Territory and the Republic of Khakassia, Investigative Department of the Ministry of Internal Affairs Central of Russia in Krasnoyarsk region.

Some provisions were reported in 2018-2024. at international and Russian scientific-practical conferences: 1) XVII International Conference of Students, Postgraduates and Young Scientists. Avenue Svobodny - 2021. Siberian Federal University; 2) XXIV International scientific and practical conference Actual problems of fighting crime: questions of theory and practice. Krasnoyarsk, 2021; 3) International Round Table «Criminal Policy in the Field of Economic Security: Challenges and Threats»; 4) All-Russian Scientific and Practical Conference «Actual Problems of Prosecutorial Activity: 300 Years of Russian Statehood»; 5) X International scientific-practical conference «Problems of modern legislation of Russia and foreign countries»; 6) XIV All-Russian scientific-practical conference «Actual problems of Russian law and legislation»; 7) Scientific School of Criminal Procedure and Criminalistics, Saint Petersburg State University; 8) International Scientific and Practical Conference «European Convention on the Protection of Human Rights and Fundamental Freedoms: Problems of Implementation in Russian Criminal Procedure (to the 25th anniversary of the Russian Federation's membership in the Council of Europe); 9) International Conference of Students, Postgraduates and Young Scientists «Lomonosov-2021» on the basis of the regional platform «Vernadsky - Krasnoyarsk Krai»; 10) XVI National scientific-practical conference «Eniseyskiy political-legal readings» (Krasnoyarsk, 2024).

Structure of the dissertation thesis

The dissertation thesis is comprised of an introduction, three chapters comprising nine paragraphs, a conclusion, and references of used literature, supplements reflecting the generalization of judicial practice. Additionally, the thesis includes a questionnaire survey of law enforcement officers, a study of criminal cases

and court materials, a comparative analysis of foreign legislation, and methodological recommendations.

CHAPTER 1. PROHIBITION OF CERTAIN ACTIONS IN THE CONTEMPORARY LEGAL DOCTRINE

1.1. Procedural nature of prohibition of certain actions and its place in Russia's modern law of criminal procedure

The topical issue to diversify restrictive measures found expression in the emergence in 2018 of new preventive measures in the form of prohibition of certain actions. The preventive measures were developed in a well-established setting. Consequently, this provision of law was influenced by the existing policies of the system. In this regard, consideration of the legal nature of prohibition of certain actions will be shown by highlighting the general patterns that influenced the emergence of the prohibition of certain actions, and the subsequent influence of the prohibition of certain actions on the scope of preventive measures.

B.B. Bulatov rightfully notes that in connection with the constant development of law, representatives of legal science and practice are constantly “searching for the most effective measures that will prevent inappropriate behaviour of the suspect and accused, will ensure the determination of the proposed sentence and its execution with the least restrictions”⁶.

In our opinion, the emergence of new preventive measures and enshrining them in law are associated with the simultaneous influence of the trend towards the humanisation of criminal proceedings and the search for the most effective ways of its implementation. As a result of this influence, it becomes possible for the law to topically restrict individual rights of the accused. Moreover, such innovations should be consistent with the principles of criminal proceedings. In this regard, the presumption of innocence, which determines the provision of proof and justification

⁶ Bulatov B. B. Coercion by the state in criminal proceedings: monograph. Omsk : Publishing house Omsk : acad. Russian Ministry of Internal Affairs, 2003. P. 11.

for each of these targeted specific restrictions applied to the accused, is of paramount importance.

The mentioned legal policy is based on humanitarian and theoretical developments, including the provisions of *the school of new social protection*, which involve an individualized approach to the prevention of offences, taking into account the study of personality and the full range of empirical data, in order to protect public relations through a range of non-punitive measures⁷.

Diversification of preventive measures directly leads to an increase in the ways of proving these restrictions. In our opinion, this pattern can be identified as one of the *legal prerequisites for the emergence of investigative and judicial errors* and a risk factor in efforts to unify the procedure for law enforcement and judicial practice in choosing preventive measures.

The emergence of phenomena previously not existing in the domestic criminal procedural legislation has sparked the debate *about further upgrading preventive measures*. along with limiting the possibility of using detention, clearer regulation of the grounds and conditions for the use of the most stringent preventive measures made the Russian preventive measures more flexible⁸.

The variety of possible procedural situations allows us to model approaches to the application of a wide range of restrictions within the framework of one rule of law. The application of one or another restriction should depend on the specific procedural situation taking into account the status of the suspect and accused, and the defence strategy chosen by them. In this regard, it is advisable to theoretically develop such models.

Of great importance in the proceedings for imposing a preventive measure is the application of prohibitions on maintaining a certain distance, visiting certain events and driving a vehicle, as well as prohibitions on communication in various ways as

⁷ Kostenko D. S. The role of the modern school of social defense by M. Ansel in the issue of modern reforms of the system of preventive measures in Russia // Eurasian Law Journal. 2023. № 12. P. 329.

⁸ Kachalova O. V. The effect of the principle of personal integrity in the application of detention, house arrest and the prohibition of certain actions in criminal proceedings // Laws of Russia: experience, analysis and practice. 2019. No. 3. P.39.

independent restrictions, which was introduced in Russian criminal procedural law for the first time⁹. At the same time, it continues to be relevant to ensure *the right to defence* and ensure the principle of *a reasonable period* of criminal proceedings when applying prohibitions in accordance with Article 105.1 of the Code of Criminal Procedure of the Russian Federation¹⁰.

Any original statutory concept, which includes the provisions of Art. 105.1 of the Code of Criminal Procedure of the Russian Federation, creates the prerequisites for improving the description of the content of a provision of law. A discussion on this issue took place at the stage of drafting the draft law two years before the actual appearance of the preventive measure in the legislation¹¹. At the stage of working with the draft law, the wording of Art. 105.1 of the Code of Criminal Procedure of the Russian Federation with an open list of prohibitions was presented¹². This approach was revised in the final version of the law. However, this does not negate the importance of the discussion about *supplementing the content of Art. 105.1 of the Code of Criminal Procedure of the Russian Federation with new restrictions*. Proposals regarding the content of new restrictions and a description of the prerequisites for their introduction will be further considered in the thesis research.

By determining the legal nature of the prohibition of certain actions will make it possible to highlight its place in preventive measures and the trajectory of further upgrading. The legal nature of the prohibition of certain actions is also inextricably linked with its regulatory content provided by the legislator. The established definition of *legal nature* in science is understood as “legal characteristics of a legal phenomenon, allowing one to see the structure, place and role among other legal phenomena according to its social nature”¹³.

⁹ Chakinski A. A. Law prohibiting certain actions - will there be a legal effect? // Labour law. 2018. No. 6. P.76.

¹⁰ Mikhailina Yu.V. Problems of counting the prohibition of certain actions during detention // Public service and personnel. 2021. No. 3; Zheleva O.V., Tkach A.S. Some problems of calculating and counting the period of prohibition of certain actions on account of the period of house arrest, placement in detention and imprisonment // Newsletter of the Tomsk State University. Right. 2022. No. 45.

¹¹ Voronov D. A. Prohibition of certain actions within the framework of bail, house arrest and a new preventive measure // Russian Judge. 2016. No. 3. P. 21-25.

¹² Chakinski A. A. Op. cit. P. 80.

¹³ Alekseev S. S. General permissions and prohibitions in the Soviet law. M.: Legal literature, 1998. P. 227.

The prohibition of certain actions is a preventive measure that contains *active* and *passive* obligations. The obligation of the *active type* is making sure to appear when called by the inquirer, investigator or court. The obligation of the *passive type* is making sure to comply with one or more of the prohibitions. This content is similar to a preventive measure in the form of a written undertaking not to leave. However, a written undertaking not to leave does not include in its content a listing of specific passive obligations by limiting itself to indicating the general obligation “not to interfere with the criminal proceedings.”

Despite such similarities, we share the position that substantiates the origin of the prohibition of certain actions by upgrading preventive measures in the form of house arrest and bail. This pattern can be identified from the content of the explanatory note to the draft law, which precedes the introduction of a prohibition of certain actions¹⁴. Consequently, the humanisation of the institution of preventive measures is directly implemented through improving the content and expanding the passive obligations of the accused.

The search for current models for constructing the institution of preventive measures is actively promoted by researchers. As possible options, a “constructor” model was proposed with a set of restrictions applied depending on the procedural situation¹⁵. Other researchers have focused on the shortage of preventive measures available for implementation in Russian criminal proceedings¹⁶. Various approaches to

¹⁴ Explanatory note to draft federal law No. 900722-6 Amending the Code of Criminal Procedure of the Russian Federation (with regard to the imposition and application of preventive measures in the form of bail, prohibition of certain actions and house arrest).

¹⁵ Golovinskaya I. V. Institute of preventive measures: problems of diversification and options for their resolution // Contemporary Law. 2016. No. 3 // URL: <https://www.sovremennoepravo.ru/m/articles/view/%D0%98%D0%BD%D1%81%D1%82%D0%B8%D1%82%D1%83%D1%82-%D0%BC%D0%B5%D1%80-%D0%BF%D1%80%D0%B5%D1%81%D0%B5%D1%87%D0%B5%D0%BD%D0%B8%D1%8F-%D0%BF%D1%80%D0%BE%D0%B1%D0%BB%D0%B5%D0%BC%D1%8B-%D0%B4%D0%B8%D0%B2%D0%B5%D1%80%D1%81%D0%B8%D1%84%D0%B8%D0%BA%D0%B0%D1%86%D0%B8%D0%B8-%D0%B8-%D0%B2%D0%B0%D1%80%D0%B8%D0%B0%D0%BD%D1%82%D1%8B-%D0%B8%D1%85-%D1%80%D0%B0%D0%B7%D1%80%D0%B5%D1%88%D0%B5%D0%BD%D0%B8%D1%8F> (access date 05.09.2023).

¹⁶ Burmakin G., Gabaraev A. et al. Issues of improvement and practice of implementing a preventive measure in the form of house arrest in the activities of penal enforcement inspectorates of the Federal Penitentiary Service of Russia // Criminal Law. 2016. No. 1. P. 131.

resolving this issue are discussed in the works of E.V. Markovicheva¹⁷, V.V. Khatuaeva¹⁸, K.V. Muravyova¹⁹ and S. S. Chernova²⁰.

Based on the arguments provided by the authors about the essence of the prohibition of certain actions, *the relationship between various procedural institutions in the system of restrictive measures* has become relevant. Namely, about the relationship between the institutions of preventive measures, criminal punishment and administrative supervision, since some of the restrictions in their substantive expression are identical to the “prohibitions-punishments” provided for by the criminal law of Russia²¹.

Thus, based on the analysis of the above positions, it can be concluded that a full-fledged study of the prohibition of certain actions involves not only addressing the issues concerning problems of the procedural order of applying individual prohibitions but also understanding the reasons and origins of these prohibitions in Russian law.

For a more detailed description of this property, it is necessary to pay attention to the nature and patterns of origin of the prohibition of certain actions.

As an immediate prerequisite for the emergence of a preventive measure in the form of a prohibition on certain actions, the legislator determined the need to create conditions for choosing alternatives to detention in relation to accused and suspected persons as part of a course to diversify preventive measures²².

The alternatives of house arrest and bail that existed at the time of the discussion of the federal law were considered ineffective due to the continuing predominant practice of applying remand in custody to suspects and accused persons. Thus, the

¹⁷ Markovicheva E. V. Prohibition of certain actions as the basis for imposing combined preventive measures. Criminal law. No. 2. March-April 2019. P. 107.

¹⁸ Khatuaeva V.V. Prohibition of certain actions - a novelty in the system of preventive measures // Legislation. 2019. No. 8. P. 83.

¹⁹ Muravyov K.V. 20 years of improving the institution of preventive measures: results and directions for further reform // Modern criminal procedural law - lessons from history and problems of further reform. 2021. V. 2. No. 1 (3). P. 12.

²⁰ Chernova S.S. A new preventive measure in the criminal procedural legislation of the Russian Federation // Legal science and law enforcement practice. 2018. No. 3 (45).

²¹ Ibid; Larkina E. V. New preventive measure - prohibition of certain actions // Criminal law. 2018. No. 4.

²² Explanatory note to draft federal law No. 900722-6 Amending the Code of Criminal Procedure of the Russian Federation (with regard to the imposition and application of preventive measures in the form of bail, prohibition of certain actions and house arrest).

immediate purpose and prerequisite for the emergence of the prohibition of certain actions can be considered to be *the creation of additional “opportunities to restrict the rights and freedoms of a suspect or accused person, except for his/her isolation in a residential facility”*²³.

The emergence of the prohibition of certain actions as a new element of the system of preventive measures gives rise to a completely justified reason to search for legal and logical prerequisites for its emergence directly from the norms of this institution. Historical analysis has shown that the closest to prohibiting certain actions in terms of the nature of restrictive impact of preventive measures in the past were police supervision and house arrest. It is the latter measure that is perceived by quite a wide range of researchers as the “progenitor” of the prohibition of certain actions.

For example, E.V. Larkina characterises the prohibition of certain actions as “a modification of house arrest by transforming the system of restrictions and prohibitions”²⁴. O.D. Vastyanova and V.V. Nikolyuk also assess the prerequisites for its emergence “through the expansion of the list of preventive measures as a result of the introduction of ... house arrest”. At the same time, such transformation, in their opinion, “provides a real possibility of simultaneous use of two preventive measures”²⁵.

In our opinion, despite the similarity of some ways of restrictive influence on the accused in the framework of house arrest and prohibition of certain actions, we cannot fully agree with the above positions. On this basis we put forward the thesis about the independent legal nature of the prohibition of certain actions, as well as the presence of prerequisites for its emergence which go beyond the procedural institute of preventive measures.

Through the analysis of classical ideas about the concept of preventive measures, Y.B. Plotkina rightly defines the essence of preventive measures “as restriction, the

²³ Ibid.

²⁴ Larkina E. V. New preventive measure, prohibition of certain actions // Criminal Law. 2018. No 4. P. 114.

²⁵ Vastyanova O. D., Nikolyuk V. V.. On the issue of historical prerequisites for the registration in the Russian legislation of a preventive measure in the form of prohibition of certain actions // Scientific Bulletin of the Orel Law Institute of the Ministry of Internal Affairs of Russia named after Lukyanov V.V. Lukyanov. 2023. No 3. P. 139-140.

purpose of which is prevention”²⁶. On the basis of the fact that each of the preventive measures is different from the other, is a restriction of certain rights and has its own peculiarities of origin and development in the national criminal procedural law, it is natural to highlight the *independent legal nature* of each of the preventive measures²⁷.

In our opinion, *the legal nature of the preventive measure in the form of house arrest* is the complete isolation of the accused in the residential premises. Some researchers rightly noted that the format of house arrest with the possibility for the accused to leave the residential premises which existed until 2018 “blurred” the essence of this preventive measure²⁸, as well as the fact that the use of house arrest is legitimate only as a complete isolation from society²⁹.

It should be additionally noted that in addition to house arrest as a criminal procedural measure, Russian legislation provides for several different types of arrests: as a criminal punishment, administrative arrest, or disciplinary arrest. The procedure for applying each of these measures provides for maximum isolation from society for a relatively short period of time.

For example, the criminal punishment in the form of arrest is generally established for a period of one to six months (Part 1 of Article 54 of the Criminal Code of the Russian Federation). In accordance with Article 69 of the Penal Enforcement Code of the Russian Federation, those sentenced to arrest are kept in conditions of strict isolation which provide for a complete absence of contact and communication with society, receipt of parcels and packages, education and vocational training.

Administrative arrest also consists in isolation from society and is established as a general rule for a period of up to fifteen days (Part 1 of Article 3.9 of the Code of Administrative Offences of the Russian Federation). A person subjected to

²⁶ Plotkina Y. B. On the issue of the essence and purpose of preventive measures // Bulletin of the Moscow University of the Ministry of Internal Affairs of Russia. 2009. No 7. P. 193.

²⁷ Kostenko D. S., Chubukov B. A. Correlation of the legal nature of house arrest and prohibition of certain actions in the context of the development of the institution of preventive measures in the Russian Federation // Legal Bulletin. 2023. V. 8, № 12. P. 6810

²⁸ Anlronik N. A. Preventive measures chosen by the court at the request of the preliminary investigation authorities: problems of law enforcement and legislative regulation: P. 222.

²⁹ Orlov A. V. Actual problems of the implementation of house arrest in the light of the introduction of preventive measures in the form of prohibition of certain actions // Bulletin of Samara Law Institute. 2018. No 3. P. 49.

administrative arrest is granted only one visit with close relatives or close persons lasting no more than one hour³⁰. Disciplinary arrest applied to military personnel is carried out in a guardhouse with a specially provided procedure for detention, different from the conditions existing for other military personnel³¹.

Even on the basis of pre-revolutionary legal positions, the preventive measure in the form of house arrest was assessed as “detention” in the place of residence of the accused³². Subsequently, the procedural meaning of house arrest did not change. A preventive measure was defined as the deprivation of liberty of the accused in the form of isolation at home, with or without the appointment of guards³³.

Thus, the format of complete isolation from society as a procedural measure of influence in the form of house arrest fully corresponds to the name and meaning of “arrest” as a category and emphasises its legal nature.

In turn, *the legal nature of a preventive measure in the form of prohibition of certain actions* can be defined as a normative-legal accumulator of various restrictions that do not provide for the complete isolation of the suspect or an accused person from the society³⁴.

Indeed, most of the restrictions provided for in Art. 105.1 of the Code of Criminal Procedure of the Russian Federation, similar to house arrest, are associated with restrictions on the right to freedom of movement and place of stay. Thus, the obligation to appear promptly when summoned by the inquiry officer, investigator and to court, the prohibition on going out during certain periods of time, the prohibition on being in certain places, the prohibition on attending certain events correspond to the restriction of the rights to freedom of movement, assembly, and choice of place of stay.

³⁰ Art. 10 of the Federal Law of 26 April 2013 No. 67-FZ On the Procedure for Serving Administrative Arrest//Garant SPS.

³¹ Decree of the President of the Russian Federation of 25 March 2015 No. 161 Approval of the Charter of the Military Police of the Armed Forces of the Russian Federation and Amendments to Some Acts of the President of the Russian Federation // Garant SPS legal reference system.

³² Shadrin V. S. House arrest: an updated preventive measure // Criminologist. 2012. No 1. P. 47.

³³ Kostenko D. S., Chubukov B. A. Op. cit. P. 69.

³⁴ Ibid. P. 73.

However, does it follow from this a natural logical conclusion about the prerequisites for the emergence of the prohibition of certain actions directly from house arrest? In our opinion, it doesn't. The following arguments may serve as evidence for this thesis.

1) Objective fixation of a certain kind of succession from one preventive measure to another should be reflected in the legislative regulation. For example, when "modernising house arrest", the legal norm of Article 107 of the Code of Criminal Procedure of the Russian Federation should either be amended or abolished with the appearance of a new norm in the legislation. The loss of force of the legal norm on house arrest and the simultaneous appearance of the prohibition of certain actions would really mean the fact of modernisation of house arrest and the connection in the origin of one legal norm from another. The legislator did not follow this path, leaving both of these measures in the content of the criminal procedure law.

2) The presence in the prohibition of certain actions of restrictions that are not inherent in the meaning and content of house arrest makes it impossible to conclude on the succession from one of these measures to another. Restrictions in the form of a prohibition on driving a vehicle, maintaining a certain distance, or participating in certain events are not related to the nature and essence of house arrest. At the same time, singling out succession only on the basis of the presence in Article 105.1 of the Code of Criminal Procedure of the Russian Federation, of the prohibition to go outside the residential premises at a certain time, as well as prohibitions on communication is not quite logical.

Such statements make it necessary to put forward a different thesis about the prerequisites for the formation of the essence of the prohibition of certain actions as a preventive measure.

The analysis of Russian legislation allows us to identify legal institutions directly containing restrictions that have been chosen by the legislator as the content of the preventive measure in the form of prohibition of certain actions. Such institutions are

the Institute of Criminal Punishment³⁵ and the Institute of Administrative Oversight. The ratio of restrictions within these institutions is presented in the table in annexes to the dissertation³⁶.

Based on the comparative table, it is indicatively reflected that half of the restrictions of Article 105.1 of the Code of Criminal Procedure of the Russian Federation have direct expression in the institutions of criminal punishment and administrative supervision, including the obligation of the person under control to appear. Restrictions on communication and driving a vehicle are not included in this set. This pattern makes it necessary to examine the relationship between the institutions under consideration in more detail and to establish the presence or absence of influence that can be logically assessed as a legal genetic link.

Let us start by considering the degree of influence of a legal norm in the form of a restriction of freedom on the prohibition of certain actions. First of all, it is necessary to note the general legal origin as alternatives to complete isolation from society within the framework of a preventive measure and type of punishment, respectively.

The appearance of these restrictions in the format of restriction of freedom in Russian legislation occurred in the edition of the 1993 Criminal Code of the Russian Federation. S. B. Boyko considers the basis for the appearance of this punishment and the criminal institution of restriction of freedom to be the institution of conditional release from criminal punishment with compulsory involvement in labour that existed in the USSR³⁷. At the same time, the legal meaning of existence in the form of restriction of freedom lies in the inherent search for a humane measure of punishment that is not associated with the break of social ties³⁸.

The point of view regarding the origin of restriction of freedom from the institution of early release of persons is supported by V. P. Markov, while noting the continuity in the objectives of the functioning of these institutions. These, in his

³⁵ In the framework of such a punishment as restriction of freedom.

³⁶ Annex № 1.

³⁷ Boiko S. B. Restriction of freedom as a type of punishment in Russian criminal law. PhD in Law Thesis. Rostov on Don. 2001. P. 37.

³⁸ Ibid. P. 39.

opinion, were: 1) the creation of ... conditions in which it is impossible to commit crimes; 2) providing the opportunity for correction and introduction to working life³⁹.

Criminal punishment in the form of restriction of freedom is directly related to the objectives of general and special crime prevention, the provision of which is carried out through restrictive physical and mental measures of influence⁴⁰. It can be noted that the existence of identical restrictions in the content of various institutions of criminal punishment and preventive measures is naturally built on the basis of the general goal of legal regulation - the prevention of crimes, and therefore is completely justified.

In his thesis research I.V. Sokolov concludes that the restriction of freedom “is not the result of the development of any individual punishment ... but was created from the elements of various legal institutions of criminal, penal and administrative law”⁴¹. At the same time, the author especially highlights the role of administrative supervision, since “the punishment in the form of restriction of freedom under the Criminal Code of the Russian Federation actually completely reproduces the institution of administrative supervision, regulated in ... “Regulations on the administrative supervision of internal affairs bodies over persons released from places of imprisonment”, which is perceived by him as a legal prerequisite⁴².

The above positions can be supplemented by the statement of S.B. Boyko that the correct understanding of the place of restriction of freedom in the mechanism of legal protection of public relations is based on the content of the protective function of the criminal penal law⁴³.

In the theory of law, the protective function is divided into static and dynamic⁴⁴. “The static protective function is expressed in the establishment of ... prohibition, approval of inviolability of the most important social relations protected ... by law. The

³⁹ Markov V.P. The mechanism for implementing the main criminal penalties not related to isolation from society in the Russian Federation (criminal-legal analysis). PhD in Law Thesis. St. Petersburg. 2006. P. 74.

⁴⁰ Ibid. P. 99-108.

⁴¹ Sokolov I. V. thesis. P. 39.

⁴² Ibid. P. 37.

⁴³ Boiko S. B. Op. cit. P. 46.

⁴⁴ Alekseev S. S. Problems of legal theory. Sverdlovsk, 1972. V. 1. p. 96. Cited according to Boyko S.B. Op. cit. P. 48.

protective dynamic function... is expressed in the implementation of the norms... of law in case of committing a crime⁴⁵.

Thus, the conducted comparative analysis of legal institutions of restriction of freedom, preventive measures and administrative supervision allows us to identify common patterns in the formation of restrictive measures, which make it indicative of the presence of the same measures of influence in their content.

1) The prohibition of certain actions and the restriction of freedom have the same regularities of origin which are connected with the development of social relations and the ongoing trend towards humanisation of legislation. The search for alternative restrictions is initiated in the conditions of the existence of a standard of legislation that most strictly regulates the realisation of certain individual rights. Within the framework of criminal and criminal procedural law, such measures are measures for complete isolation of a person from society. This conclusion is able to emphasise the legal connection of the institutions in question; the objective regularity of the emergence of new restrictions; the possibility of the origin of measures of influence from outside the legal institution.

2) The emergence of new restrictions occurs within the framework of the disclosure of the statistical protective function of law as a regulator of social relations. Such a situation makes it natural to disclose the category “restriction” for the design of the terminological apparatus and content.

The issues about the correlation of the legal institutions in question were also the subject of attention in the Resolution of the Constitutional Court of the Russian Federation, which confirmed above conclusions, and also emphasised the legal nature of the restriction of freedom and the substantive grounds for its expression.

First of all, the Constitutional Court focused on the preventive value of punishment in the form of restriction of freedom. *“One of the aspects of private prevention is to prevent a convicted person from committing new offences against a citizen who has previously been a victim of his unlawful act... Therefore, the meaning*

⁴⁵ Boiko S. B. Op. cit. P. 48.

of the constitutional prescription on protecting the rights of victims of crimes by law... implies the adoption of appropriate measures both in determining the content of possible encumbrances and legal restrictions of the person who committed crimes, and in applying them to the circumstances of a particular case.”

“Accordingly, if the very nature of punishment allows for the possibility of taking into account in its content the need to minimize the risks of potentially dangerous and, in any case, psychologically painful interaction for the victim with the convicted person who caused him pain, suffering and (or) humiliation of human dignity, then such a possibility should be implemented in the normative regulation so that the court can choose, within the limits provided for by the criminal law and on the basis of the rules for imposing punishment established by this law, its type and specific content within the chosen type, taking into account the circumstances of the case, the personality of the defendant, and other criteria provided for by the criminal law. Consequently, the restrictions that make up the content of restriction of freedom as a type of punishment are intended to be both elements of a sanction for a crime and guarantees for preventing repeated infringement of the rights of victims⁴⁶.

The court also directly noted the relationship between the provisions of Article 105.1 of the Code of Criminal Procedure of the Russian Federation and Article 53 of the Criminal Code of the Russian Federation. *“In the application of a preventive measure enshrined in Article 105.1 of the Code of Criminal Procedure of the Russian Federation in the form of a ban on certain actions related to being in certain places, including closer than the established distance to specific objects, if they are related to the victim (place of his residence, work or study), does not in itself indicate the need to automatically transfer this system of prohibitions and control over their observance to the relations arising during the execution of a punishment in the form of restriction of freedom, due to the different purposes of the institutions of preventive measures and criminal punishment. At the same time, the presence of such a possibility and the*

⁴⁶ Resolution of the Constitutional Court of the Russian Federation of January 31, 2024 No. 4-P “In the case of verifying the constitutionality of Part one of Article 53 of the Criminal Code of the Russian Federation in connection with complaints from citizens O. A. Balukova and Yu. M. Chernigina.”

*practice of its application confirm that this toolkit for establishing prohibitions (restrictions) and monitoring their compliance is **not inapplicable** in practical law enforcement activities⁴⁷.*

The perception of the origin of the prohibition of certain actions from the legal institution of restriction of freedom provides grounds for the assessment of similar patterns, application practices, investigative and judicial errors, and confirms the possibility of introducing new prohibitions (restrictions) to this institution.

Understanding the independent nature of the prohibition of certain acts is the key when considering its place in the system of preventive measures, the mechanism of operation and ways of improving. The autonomy of the prohibition of certain actions and the determination of its place in the system of measures of restraint will be revealed by us through the description of the nature of the autonomy of preventive measures.

1.2. Property of autonomy of preventive measures and its significance in Russian criminal procedural law

The institution of preventive measures has some properties that express the patterns of functioning of legal provisions typical of it. Usually, such properties include a significant impact on the rights and freedoms of persons involved in the criminal procedural activities when applying preventive measures to them; the focus of enforcement measures on suppressing the possibility of evading investigation and trial, preventing the establishment of objective truth, the continuation of criminal activities, and ensuring the execution of the sentence; the power to apply preventive measures is a right and not an obligation of the authorised person; each of the preventive measures has its own characteristics and is applied only in certain circumstances⁴⁸ and has the necessary limits⁴⁹; preventive measures act as a form of criminal procedural liability;

⁴⁷ Ibid.

⁴⁸ Zinatullin Z. Z. Criminal procedural coercion and its effectiveness (issues of theory and practice). Kazan, 1981. P. 65-69.

⁴⁹ Mikhailov V. A. Preventive measures in Russian criminal proceedings. M.: Law and legal, 1996. P. 22.

provide moral impact; established by criminal procedural legislation in a closed list; have the regulatory grounds for the application procedure, which are a guarantee of the impartiality of the imposition of preventive measures; impossibility of combined application with administrative restrictive measures; the application of preventive measures is to guarantee respect for the rights and legitimate interests of an individual; are not chastisement⁵⁰; the possibility for the inquirer, investigator and the court, within the powers granted to them, to impose only one of the preventive measures on the accused or suspect (Part 1 of Article 97 of the Code of Criminal Procedure of the Russian Federation).

Since the introduction of the preventive measure in the form of a prohibition on certain actions into the criminal procedural law in 2018, the last property from the above list has come into sharp focus.

Based on the review of the legal literature on the procedural institutions of restrictive and preventive measures, it can be concluded that this property has not only been studied in detail in the scientific literature until now but has not been further distinguished from the general range of other properties. This situation is not surprising in view of the existing independence and certainty of each of the preventive measures. The substantive core of each of them in the form of a special restriction of law did not raise the need for any additional regulations or comments in this regard. In our opinion, the currently implemented changes in the norms of the institution of preventive measures necessitate a detailed consideration of the *property of autonomy*. Consideration and disclosure of the property of autonomy will highlight the possibilities, patterns and ways of further transformation of the legal institution of preventive measures.

Despite the obvious semantic meaning of such a quality as “autonomy,” it is not enough to simply transfer its lexical content into a legal definition. To ensure a qualitative possibility of drawing any consequences in the future, it is necessary to formulate a definition of this legal phenomenon. This need is all the more intensified

⁵⁰ Kornukov V. M. Procedural restrictive measures in criminal proceedings. Saratov, 1978. P. 11, 15, 31, 23, 26.

since autonomy as a separate independent category or feature in the theory of jurisprudence and criminal procedural law has not been discussed in detail.

The lexical meaning of the concept of “autonomy” comes from the Greek words αὐτός - *oneself* and νόμος - *law* meaning something that exists or acts in relation to something independently⁵¹. At the same time, autonomy characterises systems signifying the fact that the functioning and behaviour of such systems are determined by their internal foundations, nor it depends on the external environment⁵². Autonomous systems are distinguished in various branches of knowledge, such as mathematics, biology, physics, mechanics and sociology. It is noted that the autonomy of the system is based on such categories as “control, goal, feedback, needs, efficiency” indicating a higher specialisation of the element⁵³.

It should also be noted that the theoretical apparatus of other sciences contains a clearly expressed, consistent and reasoned basis that clearly elaborates on the autonomy of individual elements. In this regard, the most indicative are the physical and mathematical sciences. Focus on such experience will help formulate legal categories by the example of specific natural patterns under study.

It seems that the most suitable phenomenon in its essence and content is expressed in the physical theory of related regulation systems, which explains how certain functions work to control various physical processes⁵⁴. In the theory of related regulation systems, *autonomy* is understood as the independence of any one of the controlled quantities from changes in the remaining controlled quantities⁵⁵. This system and definition were chosen as the most appropriate because the institution of preventive measures also represents a certain system to regulate relations. The purpose

⁵¹ Small Academic Dictionary [Electronic resource] // URL: <https://gufo.me/dict/mas/%D0%B0%D0%B2%D1%82%D0%BE%D0%BD%D0%BE%D0%BC%D0%BD%D1%8B%D0%B9> (access date 05.12.2023).

⁵² New Philosophical Encyclopaedia [Electronic resource] // URL: https://gufo.me/dict/philosophy_encyclopedia/%D0%90%D0%92%D0%A2%D0%9E%D0%9D%D0%9E%D0%9C%D0%9D%D0%9E%D0%A1%D0%A2%D0%AC (access date 05.12.2023).

⁵³ Ibid.

⁵⁴ Besekersky V. A. Theory of automatic control systems / V. A. Besekersky, E. V. Popov. - Electronic text data. – M.: Science, 1975. P. 9.

⁵⁵ Great Soviet Encyclopaedia. in 30 v.. – 3rd edition. – M.: Soviet Encyclopaedia, 1969 - 1986. [Electronic resource] // URL: <https://www.booksite.ru/fulltext/1/001/008/094/397.htm> (access date 05.12.2023).

of this system is to prevent the negative impact of a suspect or accused on the course of a criminal investigation, and its structural elements or links can be considered preventive measures.

In the given theory of automatic regulation systems there is a number of rules, one of which is formulated as follows: “If when two links are connected, there is an influence of one link on the other, as a result of which the original equations of a link are changed, then such a connection of two links should be considered as a new independent link with its... function”⁵⁶.

Accordingly, in continuation of the adaptation of the mentioned physical model to describe the legal phenomenon, a consistent conclusion can be drawn that when a preventive measure is perceived as a separate element of a legal restriction (its initial beginning), the combination of various restrictions *creates a new modified preventive measure, to a certain extent*.

For example, before the prohibition of certain actions was introduced into legislation, we were dealing with a classic pledge without any prohibitions. Art. 105.1 of the Code of Criminal Procedure of the Russian Federation appeared in the Code of Criminal Procedure of the Russian Federation introduced a new preventive measure consisting of several restrictions, which are combined under the name “prohibition of certain actions” and can be applied with other preventive measures. Thus, when the court chooses bail, in combination with prohibitions on certain actions, a *modified autonomous* preventive measure, bail will be created. The basis of this form of preventive measure will be bail restrictions, while prohibitions enhance its coercive potential.

Such changes actually expand the system of preventive measures, since along with the *classic bail*, it becomes possible to use a *modified bail*. At the same time, from the point of view of a legal institution, the system of preventive measures does not change and remains within the limits established by the legislator in Art. 97 Code of Criminal Procedure of the Russian Federation. These patterns make it necessary to

⁵⁶Besekersky V. A. Op. cit. P.114.

provide a theoretical basis for the possibility of applying any available combination of restrictions.

On this basis, we formulate the definition of *the property of autonomy* of preventive measures as an expression of the independence of criminal procedural restrictions in their specific aggregate or individually creating a preventive measure. It is possible to expand in practice alternatives to the use of the strictest preventive measure, detention by singling out the property of autonomy⁵⁷.

It is possible to express our attitude to the discussion about the need to transform the domestic system of preventive measures by singling out the property of autonomy of preventive measures.

For example, K.V. Muravyov, in his monograph on restrictive measures published a year before the prohibition of certain actions appeared, noted the effectiveness of the ability of the official in charge of the proceedings to choose individual restrictions and methods of ensuring them. To do this, he proposed a model for dividing preventive measures into three categories, such as basic restrictions, additional restrictions and obligations⁵⁸. The *main restrictions* were understood as those that in one way or another affect the right to freedom of movement (restrictions on leaving the state or locality, prohibition to leave residential premises, as well as placement in detention). *Additional restrictions* could be applied along with the main ones or independently, and as such, the seizure of property, temporary removal from office, and seizure of documents were proposed. The third group was additional *obligations*, which included obligations not to commit new crimes, not to communicate with certain persons, not to approach certain persons, to undergo treatment etc.⁵⁹

A separate group was identified by K.V. Muravyov as *means of securing obligations*. These included personal obligation, guarantee of trustworthy persons, bail, control by authorities. At the same time, according to K.V. Muravyov, these

⁵⁷Golovko L. V. Alternatives to criminal prosecution in contemporary law: monograph, M.: Legal Centre Press, 2002.

⁵⁸ Muravyov K. V. Measures of procedural coercion - special means of criminal law enforcement: doctrine, application, optimization: monograph. Omsk: Omsk Academy of the Russian Ministry of Internal Affairs, 2017. P. 196.

⁵⁹ Ibid.

restrictions had to comply with any of the group of basic restrictions. In his opinion, such a position was determined by historical, modern domestic and foreign experiences based on the situation of the impossibility of applying two preventive measures at the same time.

O.D. Vastyanova supports the idea of combining the prohibition of certain actions with any of the preventive measures, with the exception of placement under detention⁶⁰, proposes to amend the criminal procedure law and exclude mention of the possibility of using only one preventive measure in relation to the suspect and accused.

The basis for this position is the given interpretation of the existence of such a restriction, namely as a traditional method of legislative technique that ensures brevity and reduces the degree of possible restriction of a person's rights at the stage of preliminary investigation⁶¹. Also, as a final conclusion on this issue, O.D. Vastyanova proposes to consider the prohibition of certain actions as an additional prohibition or restriction that can be applied with any of the preventive measures.

V.V. Rudich supports the point of view of eliminating the doctrinal prohibition on the use of two preventive measures at the same time and considers it an anachronism. In his opinion, the abolition of this rule should create "the prerequisites for a systemic reform of the institution of preventive measures." In general, he supported the above position of K.V. Muravyov on basic and additional restrictions with some objections⁶². Taking into account the possibility of applying the restrictions specified in Article 105.1 of the Code of Criminal Procedure of the Russian Federation, P.G. Marfitsyn and L.P. Izhnina, both independently and separately, conclude that it is possible to further promote the institution of preventive measures as a constructor⁶³.

⁶⁰ Vastyanova O. D. Op. cit. P. 39.

⁶¹ Ibid. P. 106.

⁶² Rudich V. V. On the contemporary system of measures of criminal procedural coercion - preventive measures // Russian law: education, practice and science. 2021. No. 3. P. 26.

⁶³ Marfitsyn P. G., Izhnina L. P. A new preventive measure in criminal proceedings // Current problems of criminal and criminal procedural policy of the Russian Federation: materials of the Russian scientific and practical conference with international participation / Responsible. ed. I.G. Ragozina, Yu.V. Derishev. Omsk, 2018. P. 7.

Yu.V. Derishev and E.I. Zemlyanitsyn characterises this approach to the use of preventive measures as a complex structure in which two measures can be imposed simultaneously but at the same time they act either as one whole or in their own mode⁶⁴.

As can be noted, researchers on this issue have a similar focus in their reasoning. The key idea is to transform the institution of preventive measures as a more expanded (compared to the present) list of restrictions on various categories of rights with the ability of officials to impose them individually or in a certain aggregate, which contradicts the currently valid rule on the possibility of applying only one preventive measure. At the same time, as a means of resolving this issue, scientists propose complicating the institution of preventive measures through the introduction of internal categories of basic and additional measures with their own regulatory procedure, or a complete reformatting of the institution of preventive measures, turning it into a single set of restrictions.

Based on the analysis of the above positions through the prism of the property of autonomy, the conclusions can be drawn as follows.

1) The idea of expanding the list of preventive measures and their combined use is a natural development of the institution of preventive measures. The priority focus on limiting individual rights from excessive restrictions has a completely natural expression in the form of regulation of specific restrictions on rights, which can be called a useful and even inevitable complication of the structure of law.

2) By using the proposed approach on the property of autonomy of preventive measures it is possible to resolve the main contradiction and give absolutely any of the restrictions the same status thereby preserving the traditional format of the Russian institution of preventive measures without any contradictions. In this regard, the expression of the natural and justified property of autonomy only supports the meaning of the existence of preventive measures as such, namely as measures that actually prevent the negative influence of the suspect and accused on criminal proceedings. At

⁶⁴ Derishev Yu. V., Zemlyanitsyn E. I. Prohibition of certain actions - a new old preventive measure // Legality. 2019. No. 6. P. 35-38.

the same time, the division of preventive measures into various categories, such as “main”, “additional” and others, in itself seems completely illegal and an unnecessary complication of the institution, in which, as time shows, the introduction of even small changes leads to serious consequences in law enforcement practices.

1.3. Prerequisites for the emergence of a prohibition on certain actions as an autonomous preventive measure in the criminal procedural law of Russia

The rule on the possibility of applying only one preventive measure to the suspect or accused plays a decisive role in the practice of imposing preventive measures. This rule is enshrined in Part 1 of Art. 97 of the Code of Criminal Procedure of the Russian Federation is determined by L.V. Golovko as the “Russian version of the continental approach” to the use of preventive measures⁶⁵.

The existence of a list of seven preventive measures in their specific legislative interpretation before the introduction of a prohibition on certain actions in 2018 into the criminal procedure law did not call this rule into question. On this basis, it is natural to conduct a comparative analysis of the Russian legislation to look for examples of rules for applying several preventive measures to the accused.

It should be noted that despite the fact that measures to ensure a criminal investigation and search for accused persons in a certain form have existed in Russia since the established of the state and the allocation of state power, an orderly system of restrictive measures in criminal proceedings was created much later.

The first source containing a systematic design of preventive measures was the *1832 Code of Laws of the Russian Empire*, which formalised the system of measures in the form of detention in prison and with the police; House arrest; police surveillance; bailing. This law provided for the use of one or another preventive measure depending

⁶⁵ Criminal procedure course / under the editorship of Doctor of Law, Prof. L.V. Golovko. 2nd edition., revised - M.: Statute, 2017. P. 541.

on the severity of the charge, the strength of the evidence and the rank of the accused (his/her class affiliation)⁶⁶.

The *1864 Regulations of Criminal Proceedings* (hereinafter referred to as the Regulations of Criminal Proceedings, RCP), which appeared a few years later, was created under the influence of advanced humanistic views of that time and provided for a wider list of preventive measures including the confiscation of a residence permit or the obligation to sign an undertaking to appear at the investigation and remain in custody. living place; placement under special police supervision; on bail; pledge; house arrest; taking into custody (Article 416 of the Criminal Code). At the same time, the person “under investigation should not have left the city or area where the investigation is being carried out without the permission of the investigator” (Article 415 of the Regulations of Criminal Proceedings, RCP), which forms another additional restriction⁶⁷. It should be separately emphasised that this restriction was not singled out as a separate preventive measure but was implied as a logical restriction in relation to the person under investigation.

The explanatory note to the draft Regulations prepared by the then-current Minister of Justice of the Russian Empire, Dmitry Nikolaevich Bludov, contains legislative clarifications for practicing lawyers. They note that the previous regulatory document (1857 Code of Laws) did not contain any “positive rules about detaining someone on accusation or suspicion of a crime, and about taking into custody”⁶⁸. Thus, one of the reasons for the adoption of the new Regulations was to resolve the problem of unjustified detention of the suspect by the police, detailed legal regulation of the actions included in this process, and granting the right to protect one’s identity. That is

⁶⁶ Tkacheva N. V. The relationship between the understanding of criminal procedural coercion in the 19th and 21st centuries. // Materials of the International Research Conference dedicated to the 160th anniversary of the birth of prof. I. Ya. Foinitsky “Strategies of Criminal Proceedings”. 11-12 October 2007 (St. Petersburg). Quote according to Zelenina O. A. On some aspects of the procedural responsibility of parties to criminal proceedings // Journal of the Russian Law. 2012. No. 5. p. 72.

⁶⁷ Judicial statutes November 20, 1864. Part 2. Regulations of Criminal Proceedings [Electronic resource] // URL: <https://www.prlib.ru/item/372593> (access date 07.11.2022).

⁶⁸ Judicial statutes of 1864 with a statement of the reasoning on which they are based. Volume II. P. 152-154.

why the regulation of detention and registration of restrictions on individual rights acquires special significance in the legislative innovation of that time.

In addition, the comments to the Regulations describe the boundaries of the application of preventive measures. In these instructions, one can find confirmation that as restrictions for the accused during the preliminary investigation, it was assumed that *only one of the measures* would be used, that is, a criterion for applying a preventive measure that is quite relevant to this day was determined. Namely, “the main basis for determining the preventive measure for the accused should be the nature of the crime of which he/she is accused and the type of punishment to which he/she may be subjected; all other considerations can be taken into account only within certain limits”⁶⁹. For each type of crime, the Regulations provided for the most stringent preventive measure including bail, requirement of bail and detention in custody.

“Thus, for each category of crimes, an investigator’s power is limited in only determining the highest injunctive relief, and the imposition of one of the lower measures is left to his/her discretion so that he/she takes into account the strength of the evidence against the accused person, his/her position in society and the state his/her health, as well as his/her gender and age”⁷⁰.

A similar interpretation is contained in the explanations for the application of the 1907 Regulations: “The law... limits the power of the judicial investigator only in administering the highest measure to ensure the defendant’s identity, while the imposition of one of the lower measures is at his/her discretion so that he/she takes into account not only the severity of the punishment and the strength of the evidence against the accused person but also his/her age, state of health and position in society.”⁷¹. A similar procedure was explained by the Highest State Commission, which prepared comments on the application of the provisions of the Regulations⁷².

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Shcheglovitov S. G. Judicial statutes of Emperor Alexander II with legislative motives and explanations. Regulations of Criminal Proceedings, updated as of 15 February 1907. // Dec. Comb. Pris. 8 March 1884. – collection published by the Ministry of Justice. P. 735.

⁷² Explanatory note to the draft Regulations of Criminal Proceedings // Experience of domestic judicial reform in 1864. ConsultantPlus, 2010. 1 electronic optical disc. (CD-ROM).

When interpreting legislation, law people of the past noted the nature of the restrictions themselves and their totality, and also considered questions concerning the application of individual measures. P.V. Makalinsky noted that “whether it is possible not to take any preventive measure against the accused at all is resolved in the negative on the basis of the simple consideration that the lowest of the preventive measures - the withdrawal of a restriction of travel order only serves as a reminder of the general obligation of the accused not to be absent, and since the accused must comply with this measure, no matter how weak the evidence collected against them may be, there is no reason to exempt them from applying to them such a measure that reminds them of this obligation.”⁷³.

At the same time, “regarding whether several measures can be applied against the accused at the same time, it should be noted that, although there are no direct instructions to resolve this issue the rules on taking preventive measures, there is no doubt that the highest measure, as a more secure one, eliminates the need for least of all. [...] A judicial investigator has the right to change the preventive measure taken against the accused, since... the preventive measure shall serve as a real guarantee against the accused person’s failure to evade the investigation and trial and therefore always correspond, on the one hand, to the nature of the crime under investigation, and on the other, to the conditions of reliability of the accused”⁷⁴.

The above interpretations of legislative provisions can be confirmed by the law enforcement practice of that time. In one of its decisions, the Governing Senate, while recognising the preventive measure taken against the accused official as insufficient, prescribes the use of a more stringent measure. Accordingly, based on the gravity of the charges against the suspended magistrate, the surety was found to be insufficient.

⁷³ Makalinsky P. V. A Practical Guide for Forensic Investigators. 1881, Part 2 p.344-347. 1890 edition, Part 2. P.439-452.

⁷⁴ Timanovsky A. Collection of Russian lawyers’ interpretations to the Judicial Statutes of Emperor Alexander II. For twenty years (1866-1891). Establishment of judicial institutions and the Regulations of Criminal Proceedings. 2000 theses // Domestic judicial reform experiences in 1864. ConsultantPlus, 2010. 1 electronic optical disc. (CD-ROM).

On that basis, bail in the amount of 5,000 roubles was demanded from the accused, and until it was granted, the court decided to keep the accused under house arrest⁷⁵.

Moreover, the investigators were ordered to draw up a resolution on the adoption of any, even the lightest, preventive measure, which should contain the grounds for applying a measure against the accused. This resolution was also assigned the role of stimulating additional discretion of the investigator in making procedural decisions that limit individual rights⁷⁶. Obviously, based on the legislative regulations of that time, the investigator essentially could not make a decision to apply two preventive measures at the same time.

The procedure for applying preventive measures under the 1864 Regulations did not undergo any significant changes. As a commentary on this section of the Regulations P.I. Lyublinsky notes: “During the 50 years of the existence of the Judicial Statutes in the field of establishing preventive measures, no improvements have been made. The law of 15 June 1912 is limited to only microscopic amendments in that area.”⁷⁷.

These facts make it possible to conclude that the property of the possibility of applying only one preventive measure, defined by us as the property of autonomy, has existed since the emergence of the legal institution of preventive measures in Russian legislation.

Thus, the key areas of development of legal and political thought of the 19th century, covering the territories of different states, increased the importance of the principles of personal inviolability, as well as the adversarial principle in criminal proceedings, which was reflected in the creation of new preventive measures (bail, house arrest, special placement) police supervision, the recognisance to appear⁷⁸ and

⁷⁵ Collection of definitions of the combined presences of the first and cassation departments of the Government Senate created on the basis of Articles 119.4 and 119.5 of the Institution of Judicial Institutions // Experience of domestic judicial reform 1864 ConsultantPlus, 2010. 1 electronic optical disc. (CD-ROM).

⁷⁶ Timanovsky A. Op. cit. P.369.

⁷⁷ Regulations of Criminal Proceedings: Systematic commentary / With the participation of senators Koni A. F., Sluchevsky V. K., Tagantsev N. S. Under the general editorship of Prof. Gernet M.N. Issue 3. P.800 // Experience of domestic judicial reform in 1864. ConsultantPlus, 2010. 1 electronic optical disc. (CD-ROM).

⁷⁸ Pikalov I. A. Creation of the institution of procedural coercion measures in criminal proceedings in Russia (historical aspect). M.: Yurlitinform, 2010. P. 111.

consolidating the institution of preventive measures as a full-fledged national system of provisions of law.

Subsequent changes in the rules governing criminal proceedings in Russia continue the promotion of the established patterns. Social and political events, that took place in the country during the revolutionary and post-revolutionary periods of 1917-1921, did not create any conditions for making significant changes directly to the system of preventive measures, touching only on questions about the procedure for assigning restrictions and government bodies involved in that process⁷⁹.

In the conditions of relative stabilisation of the political situation in the state, the first legislative reforms were started, as a result of which *the first Soviet Code of Criminal Procedure was adopted on 25 May 1922*. This edition of the law retained the general concept of preventive measures. At the same time, the written recognisance to appear to the investigator was excluded from the list of preventive measures, while at the same time, investigators began to withdraw the recognisance to appear when summoned by the investigator and the court and the obligation to report a change of place of residence began to be taken away by the from each accused. The obligation to remain present became known as a written restriction of travel order⁸⁰.

A contemporary of these reforms, a classic of the Russian legal thought P.I. Lyublinsky, who worked to improve the legal regulation of domestic legislation in pre-revolutionary Russia, assessed such changes positively. As the main trend, he identified a consistent movement from the search process of the era of police states to the modern one, in which the accused is not seen as a criminal but as a party to the process. In this regard, the establishment of specific boundaries for the use of preventive measures is one of the key elements of this trend⁸¹. As a distinctive feature of the 1922 Code of Criminal Procedure, he highlights the absence of an obligation for the investigator to apply a preventive measure in all cases. Such a decision is made as

⁷⁹ Ibid. p.113-115.

⁸⁰ Tkacheva N. V. Preventive measures not related to detention in criminal proceedings in Russia: monograph. Chelyabinsk: Publishers of the South Ural State University, 2004. P.78.

⁸¹ Lyublinsky P. I. Preventive measures: (Commentary to Article 143-161 of the Criminal Procedure Code) / Prof. P. I. Lyublinsky. - 3rd ed., corrected and supplemented M.: Law and Life, 1926. P. 5.

needed, and the new code provides only guidelines and definitions that should serve as preventive measures⁸².

In commenting on the mandatory nature of taking away a recognisance to appear in the investigation and court in the criminal procedural law, P.I. Lyublinsky notes that violation of such a subscription does not entail any liability for the accused, but only creates an unfavourable position for him/her due to the possibility of using a criminal record or imposing legal costs in case of failure to appear at a court hearing. There is also a positive attitude towards enshrining in the law only the obligation to report a change of place of residence, and not the presence of a strict prohibition on leaving a city or area, which existed in the past and was highlighted in the wording of the new law as an independent preventive measure.

It is noteworthy that researchers place special emphasis on the possibility of applying several preventive measures to the accused at the same time. The work notes that “only some of the specified... preventive measures allow simultaneous combination. For example, a restriction of travel order is combined with all other measures except arrest; house arrest can be combined with bail or surety... We personally do not see any obstacles to resolving the issue in the affirmative sense. The task of both the legislator, the investigator, and the judge is, if possible, to limit the number of cases of imposition of the gravest preventive measure, detention; and if its imposition can be avoided at least through the combined action of other, less serious measures, then it is advisable to admit this”⁸³.

The 1923 Criminal Procedure Code of the Russian Soviet Federative Socialist Republic allows us to find the first specific case of the transformation of one of the restrictions, namely “the withdrawal of a residence permit or a recognisance to appear at the investigation and a restriction of travel order.” It can be noted that this preventive measure is complex and consists of several restrictions. In the 1923 Code of Criminal Procedure of the Russian Soviet Federative Socialist Republic, some of these

⁸² Ibid. P. 6.

⁸³ Ibid. P. 12.

restrictions were modified and transformed from a preventive measure into a general obligation of the suspect and accused to appear when summoned to the investigator and to the court. The second component of the prohibition in the form of confiscation of a residence permit was abolished in the legislation.

The need for such changes was noted earlier. For example, M.V. Dukhovskoy believed that a recognisance to appear before the investigator “cannot even be considered a preventive measure, because every accused person, who does not want to be forcibly brought, is obliged to appear before the judicial investigator upon the investigator’s summons even without a provisional subscription”⁸⁴. The remaining part of the restrictions concerning “not leaving the place of residence” was transformed into a preventive measure in the form of a written restriction of travel order.

This transformation looks natural and was carried out from the point of view of procedural expediency. For example, some pre-revolutionary scientists believed that “the collection of a written consent should be viewed as a legal form of a natural obligation resting on everyone under investigation, and at the same time not so much as an independent preventive measure but as an additional one”⁸⁵. Its mandatory nature was also emphasised by I.Ya. Foinitsky, and the use of other preventive measures was made dependent on the discretion and necessity of the investigation and trial⁸⁶.

The above points of view of legal scholars allow us to consolidate the conclusion that the procedural institution of preventive measures was transformed taking into account individual rights, the practical value of the changes made, and their compliance with the principles of the criminal process. At the same time, scientists and practitioners of the past did not highlight the use of several preventive measures, as well as the special importance of the national model for the use of preventive measures.

The following meaningful transformation of the elements of preventive measures was carried out in connection with changes in legislation and the adoption of

⁸⁴ Dukhovskoy M. V. Russian criminal trial. M.: Posthumous edition. 1905. P. 368.

⁸⁵ Kistyakovskiy A. F. On preventing the accused person’s evading from investigation and trial. St. Petersburg., 1868. P. 148.

⁸⁶ Foinitsky I. Ya. Criminal Justice Course. St. Petersburg, 1910. V.2. 3rd edition. P. 336-337.

the *Fundamentals of Criminal Proceedings of the USSR in 1958*. This regulatory act directly established four preventive measures: restriction of travel order, personal guarantee, guarantee of public organisations and placement in detention. At the same time, other preventive measures could be determined by the legislation of the Union republics⁸⁷. The criminal procedural legislation of the Russian Soviet Federative Socialist Republic supplemented this list with such preventive measures as bail, surveillance by the command of a military unit, and placing under the supervision of minor suspects and accused.

House arrest is not included in the above list of preventive measures. Soviet researchers characterised this measure, along with property guarantees, as obsolete due to the transition from the completion of the construction of socialism to the extensive construction of communism⁸⁸ and the inconsistency of these restrictions with the values of the society being formed due to the denial of individualisation of any restrictions, as well as the creation of political or economic inequality⁸⁹. The property nature of the restrictions of such a preventive measure as bail also, according to many researchers, did not fit organically into the system of socialist criminal process. However, the criminal procedure law of the Russian Soviet Federative Socialist Republic, along with the law of the Tajik Soviet Socialist Republic, provided for bail in the list of preventive measures.

It should be noted that the discussion on including house arrest in the criminal process continued in the 20th century. I.L. Petrukhin and V.A. Mikhailov considered this measure as an intermediate link between a written restriction of travel order and placement in detention and its alternative^{90,91}.

The degree of autonomy of restrictions during the operation of the Criminal Procedure Code of the Russian Soviet Federative Socialist Republic and the criminal

⁸⁷ Art.33 *Fundamentals of criminal proceedings of the USSR*.

⁸⁸ Kornukov V. M. *Op. cit.* P. 52.

⁸⁹ Baltabaev K.T. *House arrest in criminal proceedings of the Republic of Kazakhstan: synopsis of a thesis...* PhD in Law. M., 2001. P. 14.

⁹⁰ Petrukhin I. L. *Personal integrity and coercion in criminal proceedings*. M.: Science, 1989. P. 147.

⁹¹ Mikhailov V. A. *Preventive measures in Russian criminal proceedings*. M.: Law and Law, 1996. P. 86.

procedure law of other socialist republics when imposing a preventive measure remained unchanged. Only one preventive measure was subject to application, and when applying it, it was impossible to create more restrictions and oppression for the accused than provided for by the law and the body that initiated its application⁹².

In addition to preventive measures, attention should also be paid to how other restrictions are enshrined in the law, namely the removal of the obligation to appear when called and report a change of place of residence. In accordance with Article 89 of the 1960 Code of Criminal Procedure of the Russian Soviet Federative Socialist Republic, such an obligation occurs in the absence of grounds for the use of preventive measures and is a mandatory provision. Thus, the expression of the content and status of this obligation in the Soviet criminal procedure law were not subject to change.

The criminal procedural law of modern Russia - *the 2002 Criminal Procedure Code of the Russian Federation* - added house arrest to the list of preventive measures, thereby summing up the previously existing scientific discussions about the validity of the existence of such a measure in domestic criminal proceedings.

Another typical feature of the Code of Criminal Procedure of the Russian Federation of 2002 is the identification of an independent institution of other measures of procedural coercion, which includes such restrictions as the obligation to appear, forced arrest, temporary removal of the accused from office, seizure of the property of the suspect and the accused. In relation to a witness, victim, civil plaintiff and defendant, expert, specialist, witness, translator and attesting witness, the possibility of applying an obligation to appear, a summons and a monetary penalty is provided.

Another typical feature of the 2002 Code of Criminal Procedure of the Russian Federation is the identification of an independent institution of other measures of procedural coercion, which includes such restrictions as the personal recognisance to appear, forced arrest, temporary removal of the accused from office, seizure of the property of the suspect and the accused. In relation to a witness, victim, civil plaintiff

⁹² Kulikov M. A. Preventive measures under the legislation of the Russian Federation and other states of the Romano-Germanic legal family (continental system of law): thesis ... PhD in Law. M., 2020. P. 38-39.

and defendant, expert, specialist, witness, interpreter and attesting witness, the possibility of applying a personal recognisance to appear, taking into custody and a monetary penalty is provided.

It is necessary to put special emphasis on this institution due to the inclusion in its composition of a restriction in the form of a personal recognizance to appear, which has usually been part of the institution of preventive measures. It should be noted that the Code of Criminal Procedure of the Russian Soviet Federative Socialist Republic did not establish a separate chapter regulating other measures of procedural coercion. Nevertheless, restrictions in the form of arrest, removal from office or seizure of property existed before but were distributed within other sections of the Criminal Procedure Code.

Z. Z. Zinatullin classified the rap sheet as a measure of criminal procedural restriction, connected with the collection and research of means of criminal procedural evidence. In the same criterion, he uses search, seizure, examination, obtaining samples for comparative research, or placement of a person in a medical institution. The removal of the accused from office and imposition of arrest on property were transferred to the category of criminal procedural restrictive measures aimed at preventing the failure to ensure the behaviour of parties to criminal proceedings⁹³.

The fact of separation of the obligation to appear from the institution of preventive measures cancelled the imperative nature of this restriction. Chapter 13 of the Code of Criminal Procedure of the Russian Federation on preventive measures does not contain instructions for those conducting investigations to apply this obligation. At the same time, the wording on the need to appear and answer to the charge on demand is an integral part of those preventive measures that provide for the possibility of implementing this requirement. In addition, in accordance with Part 1 of Article 112 of the Code of Criminal Procedure of the Russian Federation, the investigator and the interrogating officer currently have the right, not the obligation, to apply other

⁹³ Zinatullin Z. Z. Criminal procedural restriction and its effectiveness. Questions of theory and practice. Kazan: Kazan Publishing House. Univ., 1981. PP. 91-95.

measures of procedural compulsion, including the obligation to appear. We can recognise the separation of the obligation to appear from preventive measures as a reasonable step and agree with the opinions expressed that this restriction does not have a sufficient degree of impact to ensure the implementation of the goals of preventive measures⁹⁴.

During the period of the Code of Criminal Procedure of the Russian Federation the institution of preventive measures has been significantly updated in the area of expanding the possibility of protecting the rights and freedoms of persons under investigation. However, in our opinion, the most significant systemic change is **the introduction of prohibition of certain actions as a preventive measure**.

Concluding the historical and legal analysis of the transformation of the status of restrictions included in the procedural institution of preventive measures in the criminal process of Russia, the following should be noted.

1) The institution of preventive measures was formed and, throughout its existence, has been transformed under the influence of the ideas of humanistic ideas with a view to creating a more advanced model the basis of which was to prevent unreasonable restrictions on the rights of persons under investigation before the guilt of such persons has been determined.

2) Legal norms regulating preventive measures, from the moment of their appearance in 1858, 1864 included a set of restrictions that were not subjected to fundamental changes. This fact reflects the special nature of the institution of preventive measures in the criminal procedural legislation of Russia, which has been modified within the framework of the significant transformation of the national legal system over time.

3) One of the stable characteristics was also the procedure for the operation of restrictions which throughout the entire operation of the institution did not provide for the simultaneous application of two preventive measures. This procedural order was

⁹⁴ Barabash A. S. Restriction of travel order and other preventive measures, the imposition of which does not require a court decision // Russian Law Journal. 2017. No. 1 // Garant SPS.

directly consolidated only in the Code of Criminal Procedure of the Russian Federation of 2002.

CHAPTER 2. SPECIAL CRIMINAL PROCEDURAL MECHANISM FOR IMPOSING AND APPLYING PREVENTIVE MEASURES WITH A PROHIBITION ON CERTAIN ACTIONS

2.1. Grounds, circumstances and conditions for applying the prohibition of certain actions

The Constitution of the Russian Federation directly provides for a prohibition on the arbitrary use of actions that restrict freedom and personal integrity (Part 3 of Article 55 of the Constitution of the Russian Federation). Based on this, it can be concluded that the correct application of a preventive measure is directly based on the specific grounds, circumstances and conditions of its application.

In the literature, there are various approaches to understanding and relating these categories. Their meaning should be determined in respect of preventive measures prohibiting certain actions.

The existing criminal procedure law provides a description of only the grounds and circumstances for applying a preventive measure, while the conditions for their imposition are not determined by law. This allows us to assert that the “conditions for imposing preventive measures” are a theoretical construct that are expressed through the existing provisions and institutions in law.

In accordance with Article 97 of the Code of Criminal Procedure of the Russian Federation, the grounds for imposing preventive measures are the assumption that the accused or suspect may hide from the inquiry, preliminary investigation and trial; continue to engage in criminal activities; threaten a witness or other parties to criminal proceedings; destroy evidence; otherwise obstruct the proceedings in a criminal case.

In our opinion, the position expressed in the literature that Article 97 of the Code of Criminal Procedure of the Russian Federation indicates as grounds the purpose of imposing preventive measures can be justified. In this case, the basis for imposing a

preventive measure is the result of establishing these goals on the basis of existing circumstances that are subject to proof when imposing a preventive measure⁹⁵. A similar interpretation of the grounds for imposing a preventive measure is offered by P. M. Davydov by pointing out that “the grounds for applying preventive measures shall reliably indicate that the accused can hide from the investigative authorities and court...”⁹⁶.

The above statements emphasise that the valid grounds for imposing a preventive measure should be understood as reliable facts and evidence confirming the ability of the accused to obstruct the investigation. V. M. Kornukov also shares this position by noting that the basis for applying a preventive measure is not the very possibility of the accused person’s evading the investigation and trial or obstructing the establishment of the truth in the case but factual data indicating such a possibility⁹⁷.

N. G. Narbikova proposes an approach to understanding the grounds for applying preventive measures based on “circumstances indicating inappropriate behaviour of the suspect, accused, or a sufficient factual data set confirming the possibility of such behaviour.”⁹⁸ This interpretation contrasts the factual data and circumstances underlying the decision to select a preventive measure. This seems to us not entirely correct, since the criminal procedure law directly indicates some circumstances for choosing preventive measures that are not directly related to the person’s inappropriate behaviour in the past.

In accordance with Article 99 of the Code of Criminal Procedure of the Russian Federation, the *circumstances* for imposing preventive measures are an open list of facts characterising the person’s personality and the act he/she is charged with, including the severity of the crime, age, state of health, marital status, occupation and other circumstances.

⁹⁵ Barabash A. S. Goals and reasons for imposing a preventive measure // Existing problems of the Russian law. No. 12 (61). 2015. P. 184-186.

⁹⁶ Davydov P. M. Preventive measures in Soviet criminal proceedings: synopsis of thesis. PhD in Law. L., 1953. P. 58.

⁹⁷ Kornukov V. M. Op. cit. Saratov, 1978. P. 71.

⁹⁸ Narbikova N. G. Preventive measures relating to restriction of freedom: thesis. ... PhD in Law. Chelyabinsk, 2005. P. 62.

I. M. Gutkin notes the role of the circumstances of imposing preventive measures as data making it possible to resolve the issue of the need to impose one preventive measure or another⁹⁹.

V. M. Kornukov points out the close relationship and difference between the circumstances and the grounds for choosing a preventive measure. In his opinion, circumstances are data that make it possible to determine the degree of likelihood of the accused person's committing actions to prevent which a preventive measure is applied¹⁰⁰.

N. A. Simagina means by the circumstances reflected in the materials of the criminal case, objectively existing facts, phenomena and events, which, in addition to the general grounds for imposing preventive measures, make it possible to establish whether it is necessary to impose a preventive measure and what kind of preventive measure needs to be imposed¹⁰¹.

The uniqueness of preventive measures with prohibitions on certain actions is that they imply a several restrictions of various kinds, which involve an impact on various individual rights. Moreover, each of these restrictions can be applied independently. Due to the fact that each of the restrictions affects different individual rights, their application should be conditioned by the existence of special factual data (circumstances) typical of each of the restrictions. This pattern causes a complicated subject of proof for the prohibition of certain actions and the need to develop a *special procedural mechanism* for applying a prohibition of certain actions.

In the theory of preventive measures, along with the grounds and circumstances of their imposition, researchers also separately highlight the *conditions* for imposing preventive measures. In our opinion, it is important to distinguish between these three categories and to use an approach to terminological description that excludes the inclusion of another in the content of one category.

⁹⁹ Gutkin I. M. Preventive measures in Soviet criminal proceedings [Text]: Lecture / Assistant Professor I. M. Gutkin; Higher School of the RSFSR Ministry of Public Order. - Moscow: [without indicating the publisher], 1963. P. 24.

¹⁰⁰ Kornukov V. M. Op. cit. P. 68.

¹⁰¹ Simagina N. A. Preventive measures and circumstances taken into account when imposing them. Tutorial. Vladimir, 2021. P. 43.

One can agree with the position of M.V. Smirnov, which defines the *conditions for imposing preventive measures* as legal provisions, the implementation and (or) existence of which ensures the official the use of procedural restrictive measures¹⁰². The conditions are directly created on the basis of the principles of legality and validity of criminal proceedings, social and political system, legal means of protecting the interests of citizens¹⁰³.

It is customary to divide conditions into *general* and *special* ones. *General conditions* usually include the existence of a criminal case; the subject, who accepted the case for its proceedings; bringing charges, formulating suspicion of committing a crime. *Special conditions* are usually allocated for each individual preventive measure.

Considering the conditions for applying a preventive measure in the form of a prohibition on certain actions, O.D. Vastyanova defined such conditions as “additional circumstances that make it possible to justify and motivate the decision made on the presence (absence) of grounds for imposing a preventive measure.” At the same time, she proposed to understand special conditions as the circumstances specified in Article 99 of the Code of Criminal Procedure of the Russian Federation, and additional special conditions include the special complexity of the criminal case, ineffective organisation of the investigation¹⁰⁴.

In our opinion, it is not entirely correct to draw an identity between the *circumstances* and *conditions* for imposing a preventive measure. Taking into account the interpretation of law and the opinions of researchers, it can be concluded that the former represent confirmed factual data about the circumstances of the past relating to the crime and the personality of the accused, and the latter represent the rules provided by law for the application of a specific preventive measure.

Based on this, we propose to determine the following special conditions for the application of the prohibition of certain actions.

¹⁰² Smirnov M. V. Conditions for the application of procedural restrictive measures during the preliminary investigation // Russian Investigator. 2003. No. 4. P. 24.

¹⁰³ Kornukov V. M. Op. cit. P. 37.

¹⁰⁴ Vastyanova O. D. Op. cit. P. 93-94.

1. Availability of a dwelling place for the accused. The prohibition to leave the residential premises at a certain time, as provided for in clause 1 of Part 6 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation is impossible without the existence of housing as such. In accordance with clause 10 of Article 5 of the Code of Criminal Procedure of the Russian Federation, residential premises are understood as “an individual residential building with residential and non-residential premises included in it, residential premises, regardless of the form of ownership, included in the housing stock and used for permanent or temporary residence, as well as other premises or buildings not included in housing stock but used for temporary residence.”

This condition is naturally singled out by researchers as special for house arrest¹⁰⁵. However, the provisions on house arrest provide that the place of detention for the accused under house arrest can also be a health institution (Part 1 of Article 107 of the Code of Criminal Procedure of the Russian Federation). The effect of restrictions within a health institution also provides for the prohibition of certain actions (Part 12 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation).

2. Whether the accused has the right to drive a vehicle when accused of committing a crime relating to violation of traffic rules and operation of vehicles. It is possible to apply a ban on driving a car or another vehicle (clause 6, Part 6, Article 105.1 of the Code of Criminal Procedure of the Russian Federation) only if the accused has the right to drive a vehicle. Driving a vehicle without a special right constitutes the corresponding administrative offence under Article 12.7 of the Code of Administrative Offences of the Russian Federation. Consequently, the application of a criminal procedural prohibition in relation to a non-existent right of a person will not have legal significance, while the person’s actions themselves create another legal liability.

V.V. Khatuaeva has a different position on this issue. She believes that a person, who has reached the age of 16 and has driven a vehicle, may be subject to liability

¹⁰⁵ For example, Ovchinnikov Yu.G. House arrest as a preventive measure in criminal proceedings: thesis. ... PhD in Law. Omsk. 2006. p. 87.; Svetochev V.A. House arrest as a preventive measure in criminal proceedings in the Russian Federation: thesis ... PhD in Law. Kaliningrad. 2009. P. 102.

under this prohibition¹⁰⁶. In her opinion, the application of the prohibition is determined by the fact of driving a vehicle and not by the presence of the corresponding right to drive it, since the subject of the crime under Art. 264 of the Criminal Code of the Russian Federation can be any person, not just someone who has a driver's licence.

In our opinion, the charge of committing a crime relating to violating traffic rules or operating vehicles is an independent special condition for applying the prohibition under clause 6 of Part 6 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation. It is this that creates the legal prerequisite for the application of the prohibition, which is implemented in restricting the right to drive a vehicle. This position can be confirmed by the provisions of Part 5 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation, which states that the imposition of a prohibition on driving a vehicle is accompanied by the confiscation of the driver's licence and its inclusion in the criminal case files. Obviously, such a procedural procedure cannot be implemented in relation to a person who does not have a driver's licence.

3. Existence of a competent body monitoring compliance with the prohibitions provided for in clauses 1-5, Part 6, Article 105.1 Code of Criminal Procedure of the Russian Federation. In accordance with the law, such a body is determined as an executive body that exercises law enforcement functions, as well as powers of control and supervision in the field of execution of criminal penalties in relation to convicted persons. Such a body is directly the penal enforcement inspectorate of the Federal Penitentiary Service (hereinafter referred to as the Inspectorate).

In its activities to monitor compliance with prohibitions, the Inspectorate cooperates with investigative bodies, inquiry units, courts and other bodies and organisations in accordance with their competence¹⁰⁷. The inspectorate does not

¹⁰⁶ Hatuaeva V. V. Prohibition of certain actions - a novelty in the system of preventive measures // Legislation. 2019. № 8.

¹⁰⁷ Order of the Ministry of Justice of the Russian Federation, the Russian Ministry of Internal Affairs, the Investigative Committee of the Russian Federation and the FSB of Russia dated 31 August 2020 No. 189/603/87/371 Approval of the Procedure for monitoring the presence of suspects or accused at the place of execution of a preventive measure in the

monitor compliance with the ban on driving a vehicle, since it is implemented through the confiscation of a driver's licence by an investigator, inquiry officer or court.

4. Ensuring the right of a suspect or accused to use telephone communications or other communication tools to call emergency health services, law enforcement officers, emergency services in the event of an emergency, as well as to communicate with the investigator, inquiry officer and regulatory authority. This provision is directly enshrined in Part 8 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation. It should be noted that in this list of parties to criminal procedural relations it is advisable to add a mention of the possibility of communication and meetings with a defence lawyer. House arrest provisions provide for the possibility of meetings with a lawyer. A literal transfer of this rule into the context of provisions prohibiting certain actions is inappropriate, since the accused is not limited to complete isolation. However, mention in the law of the possibility of communication with a defence lawyer during the period of prohibitions on communication is possible.

This premise can be confirmed by examples from the judicial practice in which the appellate court makes changes to judgements prohibiting certain actions in terms of allowing the use of communication tools with one's defence lawyer¹⁰⁸.

In our opinion, it is advisable to separate into a separate group those circumstances that cannot directly affect the possibility or impossibility of applying certain prohibitions but can influence the degree of restriction of individual rights when applying these prohibitions.

One of these optional conditions can be identified as the need for the accused to use communication tools and information communication for work, education and other activities that do not contradict the law. The resolution of the Plenum of the Supreme Court of the Russian Federation contained an indication that "when imposing a prohibition on a suspect or accused person to use the Internet information and

form of house arrest and for compliance with court-imposed prohibitions by suspects or accused in respect of whom a prohibition on certain actions, house arrest or bail have been imposed as a preventive measure."

¹⁰⁸ Appellate ruling of the Kaliningrad Regional Court dated December 2, 2019 in case No. 22K-2050/2019.

telecommunications network, the court should indicate cases in which a person is allowed to use this network (for example, for the exchange of information between a person and an educational institution, if the suspect or accused is a student of this institution)”¹⁰⁹. This approach is entirely logical for prohibiting certain actions due to the fact that both preventive measures provide for restrictions on the same person’s right.

It should be noted that for some preventive measures (house arrest, detention), the condition for its application is the charges of a crime of a certain severity. The prohibition of certain actions does not contain such conditions and can be applied to defendants for any category of crime.

Thus, with certain grounds, circumstances and conditions it is possible to apply preventive measures with a prohibition of certain actions. Due to the fact that these preventive measures represent a fairly wide set of restrictions, it is necessary to define each of them.

The Criminal Procedure Code assigns to Article 105.1 the term “prohibition of certain actions.” The logical and lexical interpretation of the title of this article assumes that its content will define a set of certain types of behaviour that are subject to a preventive ban. Part 1 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation gives words to the effect what kind of behaviour is subject to restriction, and also talks about what is meant by the prohibition of certain actions. In accordance with the law, a prohibition of certain actions is a restriction expressed in two types of obligations, to appear promptly when summoned by an inquiry officer, investigator or to court and to comply with one or more prohibitions.

Before proceeding to the analysis of the terms used by the legislator in Article 105.1 of the Code of Criminal Procedure of the Russian Federation, let us pay attention to how restrictions are formulated in the regulatory provisions of other restrictive

¹⁰⁹ Clause 40 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated 19 December 2013 No. 41 Practices of courts applying legislation on preventive measures in the form of detention, house arrest, bail and prohibition of certain actions.”

measures not related to detention. Such a comparison will allow us to trace the logic and sequence of the legislator's use of certain terms.

A restriction of travel order and recognisance to behave, and a personal surety are expressed in the form of a "written undertaking." Specialised preventive measures in the form of *keeping an eye on by the command of a military unit* and *supervision of a minor suspect and accused* express the essence of restrictions in the form of "keeping an eye on" and "supervision." *Bail* primarily provides for "the deposit or transfer of movable and immovable properties," and *house arrest* means "isolation from society in a residential area."

It may be noted that the provisions prohibiting certain actions contain terms expressing restrictions that cannot be found in other provisions of Chapter 13 of the Code of Criminal Procedure of the Russian Federation, namely "prohibitions" and "obligations".

Further analysis allows us to draw attention to the fact that the same restriction, which implies appearance on time when summoned by the investigator and the inquiring court in the context of various preventive measures, has a different definition, "obligation" in the context of a restriction of travel order and recognisance to behave (Part 1 of Article 102 of the Code of Criminal Procedure of the Russian Federation) and the "duty" to prohibit certain actions (Part 1 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation). Despite the obvious fact that both definitions are synonymous in meaning, the difference in terminology can be considered correct due to the origin of duty.

A *duty* is a voluntary acceptance of restrictions, which is fixed in writing. An *obligation*, in turn, is not accepted voluntarily, but is imposed from the outside by an authorised subject without the ability to influence the content of such an obligation.

Let us return to the analysis of the relationship between terminology in the name and content of Article 105.1 of the Code of Criminal Procedure of the Russian Federation. In our opinion, the use of the term "prohibition" twice in both the content and title of the article creates logical contradictions in the interpretation of the norm,

since from a consistent analysis of the text of the article it follows that the prohibition of certain actions is expressed in two obligations, one of which is itself a prohibition or a set of prohibitions. Thus, the term “prohibition” is simultaneously used to designate both a general and a particular category within the same provision of law. Based on the data mentioned above, topics concerning the relationship between such concepts should be considered in more detail.

S.S. Alekseev, pointed out the decisive importance of accuracy in determining the limitations themselves and noted that the correct classification of objects and phenomena creates not only orderliness of the material but also “allows us to avoid the one-sidedness of scientific interpretation, makes it possible to determine criteria, identify new properties and qualitative features of these objects and phenomena¹¹⁰”.

Let us turn to the interpretation of the initial concepts of the main phenomena described, “restriction” and “prohibition”. In explanatory dictionaries, *restriction* is understood as “rules that limit some actions, rights”¹¹¹, an expression of the action “to establish limits, frameworks; definition, restriction of someone’s actions by any conditions”¹¹². The word *prohibition* is understood to mean the expression of actions of “not giving permission to do something; to impose a prohibition - not to allow for application, use”¹¹³. G.V. Nazarenko defines a ban as a *prohibition* to refrain from certain actions, which is backed by state coercion¹¹⁴.

In his work on incentives and restrictions in law, A.V. Malko focused on a detailed analysis of the content of legal restrictions. The research paper defines legal restrictions as “legal restraint of an illegal act creating conditions for satisfying the interests of the counter-subject and public interests in protection and defence; these are the boundaries established by law within which subjects must act, excluding certain opportunities in the activities of individuals”¹¹⁵.

¹¹⁰ Alekseev S. S. Legal remedies: problem statement, concept, classification // Soviet State and Law. 1987. No. 6. P. 16.

¹¹¹ Ozhegov S. I. Explanatory dictionary of the Russian language. M.: Azbukovnik, 2000 [Electronic resource] // URL: <http://lib.ru/DIC/OZHEGOW> (access date 07.11.2022).

¹¹² Large academic dictionary of the Russian language. V.13. M.: Science, 2016. P. 413.

¹¹³ Large academic dictionary of the Russian language. V.6. M.: Science, 2006. P. 329.

¹¹⁴ Nazarenko G. V. Theory of State and Law: Textbook. M., 1999. P. 135.

¹¹⁵ Malko A. V. Incentives and restrictions in law: monograph. M.: Lawyer, 2003. P. 143.

In addition to the fact that a legal restriction is used as an external factor influencing the interests of subjects of law and represents an information-oriented external influence, A.V. Malko characterises it exclusively as a negative means, the impact of which can be expressed in the form of an obligation, prohibition, penal measure etc.¹¹⁶.

In addition to the definition provided, the researcher explains that a legal restriction covers what is aimed at restraining an illegal act, reduces the scope of opportunities and reduces the diversity in the behaviour of subjects to a certain limiting state¹¹⁷.

A. V. Malko considers *prohibition*, *suspension* and *obligation* as separate and independent types of *restrictions*. In his opinion, putting a prohibition on certain actions means an obligation to refrain from prohibited actions. At the same time, restriction is a broader concept and correlates with *prohibition* as generic and specific.

In his other paper focusing on *prohibitions* and *permissions* in law S. S. Alekseev defines *prohibitions* as obligations of passive content, i.e. to refrain from committing an action of a certain kind¹¹⁸. Both scientists, S. S. Alekseev and A. V. Malko, distinguish various aspects of legal obligations, restraining and stimulating, in agreeing that restriction is precisely the key principle of duty¹¹⁹.

Among the above concepts, the term *suspension* also stands out. A. V. Malko considers this type of restriction as a temporary and specific prohibition on the use by specific officials, enterprises and organisations of their functional duties and restrains the onset of possible consequences injurious to the public.

Suspension contains compulsory elements that terminate the existing legal relationship¹²⁰. The type of restriction specified can be implemented not only as a measure of influence on officials and organisations but also as a preventive measure. The criminal procedural institution of preventive measures does not contain any

¹¹⁶ Ibid. P. 139-141.

¹¹⁷ Ibid. P. 146.

¹¹⁸ Alekseev S. S. General permissions and general prohibitions in the Soviet law. M.: Legal literature, 1989. P. 48.

¹¹⁹ Malko A.V. Op. cit. P. 154.

¹²⁰ Ibid. P. 150.

restrictions that could fall under this category. However, the procedural institution of restrictive measures contains, as one of the measures, *temporary removal from office*, which can be attributed to the temporary suspension of the right to carry out certain labour activities. These theoretical grounds make it possible to put forward a proposal to include a criminal procedural measure in the form of removal from office as one of the preventive measures or one of the prohibitions of certain actions.

Based on a study of the above categories and definitions, the conclusions can be drawn as follows:

- *Firstly*, the criminal procedural institution of preventive measures in accordance with existing law includes various types of restrictions, which makes it possible to more accurately record prohibited behaviour.
- *Secondly*, the interpretation of a preventive measure in the form of a prohibition of certain actions contains two types of restrictions, *an obligation* and *a prohibition*. Given its name, prohibition of certain actions is an obligation to refrain from certain actions. However, it should be noted that the list of such prohibited actions may consist of restrictions of various kind having various names with a specific content.

In accordance with the above, we propose to change the name of Article 105.1 of the Code of Criminal Procedure of the Russian Federation and use such a lexical construction as “*restriction of certain actions*.” Thus, the restriction of certain actions will consist of the obligation to appear when called by the investigator, interrogating officer and the court, as well as the obligation to comply with various types of prohibitions. There is no doubt that over time, the development of criminal procedural law will require the introduction of new types of various kinds of restrictions into the law, which may include prohibitions, suspension of rights etc. Such a renaming of the article will provide the basis and will have an impact on the creation of a system for future changes.

In addition to these categories, when describing the existing restrictions of Article 105.1 of the Code of Criminal Procedure of the Russian Federation, you can

use other concepts, for example, *derogation of rights*. A description of this type of restrictions can be found in B.S. Ebzeev¹²¹ and I.M. Prikhodko as “a reduction in the material substantive content of fundamental rights, the volume of social, political and other benefits due to their owner, minimising the guarantees of fundamental rights...”¹²². In some cases, the use of communication bans that exist for suspects and accused persons and the use of Internet communication tools fit the presented description of derogation of rights and can be considered as such. For example, when imposing on the accused a general ban on the use of the Internet information and communication network with the possibility of access to educational resources.

A prohibition on driving a vehicle can also be classified as restrictions in this category. It should be noted that the wording of the restriction does not imply a legal suspension of the right to drive a vehicle but an actual ban on its use, which is also accompanied by withdrawing a driver’s licence.

To summarise the above, it should be noted that securing the place of the prohibition of certain actions in the system of preventive measures and the error-free practice of its application is inextricably linked with the normative systematisation of the definitions.

1) By the *grounds* for imposing a prohibition on certain actions, we propose to understand the totality of factual data that has evidentiary value, which allows us to establish the existence of goals for imposing preventive measures with a prohibition.

2) By the *circumstances* for imposing a prohibition on certain actions, it is necessary to understand the totality of factual data that has evidentiary value and characterise the personality of the suspect, the accused and the crime committed.

3) The *conditions* for imposing a prohibition on certain actions should be understood as based on the basic principles of criminal proceedings and legal

¹²¹ Ebzeev B. S. Principles, limits, grounds for restricting human rights and freedoms under Russian legislation and international law // State and Law. 1998. No. 7. P. 24.

¹²² Prikhodko I. M. Restrictions in the Russian law: Problems of theory and practice: thesis of Ph.D. legal sciences. Saratov, 2001. P. 75.

provisions that ensure the legality of the application of the restrictions provided for in Part 6 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation.

4) Legislative regulation under Article 105.1 of the Code of Criminal Procedure of the Russian Federation as a rule of law containing restrictions of various kinds, allows us to propose changing the name of this article to **“restriction of certain actions.”** Such an approach will eliminate the duplication of the term “prohibition” in the name and content of the article of the Code of Criminal Procedure of the Russian Federation, and will also make it possible to prepare the ground for the introduction of new restrictions in the future.

2.2. Concept and characteristics of a special criminal procedural mechanism for selecting and applying a prohibition on certain actions

The selection of any preventive measure is an orderly legal regulation which has the features of its design in the context of criminal procedural relations. To identify the mechanism of selection of prohibition of certain actions, it is necessary to use the existing base of theoretical developments and law enforcement practice, the analysis of which allows us to trace the implementation of the mechanism and identify its components.

The classic definition of the mechanism of legal regulation is a set of legal means by which legal impact on the public is ensured¹²³. The substantive elements of the mechanism of legal regulation are legal norms, a legal fact, regulated legal relations, acts of realisation of subjective legal rights and obligations, a protective law enforcement act.

In order to use this legal category in the context of criminal procedural relations, it is important to identify a number of additional features that are characteristic of the operation of the norms of any procedural institutions.

¹²³ Alekseev S. S. The mechanism of legal regulation in a socialist state. P. 30.

One of the most important features is the *complex nature* of regulated (procedural) relations with the participation of several subjects, which determines the existence of *proof* necessary for the establishment of certain facts and circumstances, their investigation and evaluation in order to establish the truth in the case¹²⁴.

Along with this, a separate category of elements of “catalysts” of the legal process which play a key role in the work of the mechanism is naturally distinguished. Such elements include certain *events* (serious illness, disability, pregnancy, minority, old age, etc.) and the *behaviour of persons* who have committed a socially dangerous act (acknowledgement of guilt, voluntary compensation for property damage and moral harm, evasion from serving the punishment)¹²⁵.

Of the above list of elements of the mechanism of legal regulation, the category that determines legal relations is of key importance for understanding the procedure for applying the prohibition of certain actions. It is their regularities of emergence and development that create an understanding of the operation of the law mechanism allow to clearly identify the areas in which problems arise, as well as provide ways of resolving these problems.

The expanded nature of the considered protective legal relations has already been the object of attention of researchers, which led to the emergence of *the theory of security measures*. This theory offers a solution to the issue of the correlation between legal security measures and legal liability.

Attention to this theory is also due to the description of the issues of security prediction and development of security measures (using the example of the institution of parole), the norms of which contain provisions similar to individual responsibilities from among those included in the prohibition of certain actions. Such an approach allows us to demonstrate the effect of criminal law policy through a synthesis of various branches of law (criminal law, criminology, forensics, etc.) in the context of considering a specific criminal procedural issue.

¹²⁴ Kirimova E. A. Op. cit. P. 34.

¹²⁵ Esakov G. A., Ponyatovskaya T.G. Criminal legal influence: concept, mechanism, classification: monograph / Ed. A. G. Raroga. M.: Prospekt, 2021. P. 200.

In accordance with its provisions, *security measures* are understood as a type of preventive influence the purpose of which is to prevent the commission of socially dangerous actions by means of compulsory and temporary restriction of opportunities if there are grounds for the application of such measures¹²⁶. The methods and mechanism of security measures are manifested through factors that limit the possibility to commit socially dangerous actions. For this purpose, methods such as creating situations in which it is physically impossible to commit socially dangerous actions are used; exclusion of the subject from the sphere of relations, being a participant of which he poses an increased danger (for example, a ban on engaging in certain activities); forced inclusion of the subject in the system of socially useful relations (obligation to undergo a course of treatment or rehabilitation)¹²⁷.

In the context of this theory, *a preventive measure* is understood as a security measure that is aimed at the source of danger itself isolating its harmful impact on the environment¹²⁸. However, in criminal proceedings, the suspect and the accused, against whom a preventive measure is applied, are both the object of protection of rights and the source of protection which combines the functions of suppression and protection.

The presence of such grounds for the application of criminal procedural measures of restraint as prevention of criminal activity, localisation of threats to the participants in legal proceedings, form certain *aspects of personal security*.

These include personal security of a person (protection of their life and health), civil security (ensuring the implementation of proclaimed rights and freedoms), property security, information security, labour security¹²⁹. In other words, the preventive nature of preventive measures can be aimed at preventing threats to completely different rights of persons who are participants in criminal proceedings.

¹²⁶ Shchedrin N. V. Security measures: development of theory, distinctive features and classifications // News of higher educational institutions. Jurisprudence. 1994. No. 4. P. 93.

¹²⁷ Ibid. P. 95.

¹²⁸ Shchedrin N. V. Conceptual and theoretical foundations of legal regulation and application of security measures: monograph. Krasnoyarsk: Siberian Federal University, 2013. P. 51.

¹²⁹ Salnikov V. P., Morozova L. A. and others. Human security and crime // State and law. 1995. No. 12. P. 110-111.

Taking this circumstance into account also forms one of the parties' ideas about the mechanism for prohibiting certain actions.

We can agree with the position of N.V. Shchedrin that the value of the object of defence also implies the intensity of the measures applied. Special attention in the theory under consideration is paid to the importance of the existence of a proper procedure for the appointment and implementation of security measures. Important elements of the procedure are the subject of the application of security measures - the more the measure restricts rights and freedoms, the more authoritative the body should be; reliance on factual circumstances; the possibility of monitoring the application of such measures.

These provisions help to fully understand the actual nature of the legal relations that arise as a result of the application of preventive measures, and therefore deserve attention. It should be noted that the importance of disclosing the category of the mechanism of legal regulation in criminal proceedings and at the same time its insufficient study was highlighted by the classics of jurisprudence. In this regard, a team of researchers led by M. S. Strogovich put forward the idea of creating models of procedural action and discovering its legal structure¹³⁰, which should also not be ignored when studying this issue.

Over time, the significance of these findings has been confirmed and the potential of such a category as a mechanism of legal regulation has been appreciated. Direct approaches to formulating a legal mechanism for implementing preventive measures were formulated in the works of V. V. Rudich¹³¹, O. I. Tsokolova¹³², S. I. Vershinina¹³³, and K. V. Muravyov¹³⁴. Let us consider some of the proposed

¹³⁰ Strogovich M. S. Soviet criminal procedural law and problems of its effectiveness / Ed. L. B. Alekseeva, A. M. Larina, M. S. Strogovich; Rep. ed.: Savitsky V. M. M.: Nauka, 1979. P. 130.

¹³¹ Rudich V. V. Organisational and legal mechanism for applying preventive measures in criminal proceedings: monograph. M.: Yurlitinform, 2018.

¹³² Tsokolova O. I. Measures of criminal procedural coercion, consisting of isolating the suspect or accused. M: All-Russian Research Institute of the Ministry of Internal Affairs of Russia, 2008.

¹³³ Vershinina S. I. State coercion in criminal proceedings: regulatory nature and functioning mechanism: dissertation. ... Doc. Legal Sci. Tolyatti, 2017.

¹³⁴ Muravyov K. V. Op. cit.

approaches to understanding the mechanisms for selecting and applying preventive measures.

The author's concept of the mechanism for applying preventive measures was formulated by V. V. Rudich in his dissertation research. According to the author, the key conditions for its implementation are the operation of the institution of investigative judges, as well as the "criminal claim" procedures which are intended to reformat the criminal process and ensure the most complete adversarial nature in it. Along with them, other elements are identified: legal standards (fair trial, equality of parties, adversarial nature of the parties, legality etc.); validity of suspicion; legal status of participants in the judicial procedure for applying preventive measures (mandatory participation); formation of evidence (reliance of the evidentiary technique on the provision of information (factual data) by the parties, which can become evidence only after their examination in court and given a procedural form); the grounds for decision-making; the right of the court to apply several preventive measures simultaneously in order to select the optimal option and achieve the effectiveness of the use of preventive measures while maintaining a balance of public and private interests¹³⁵.

K. V. Muravyov noted the purposes of restriction as elements of the mechanism for applying procedural restrictive measures; general conditions and types of basic restrictions, basic and additional obligations; the circumstances taken into account at their selection; the procedure for offsetting the terms of restrictions and obligations; methods of fulfilling restrictions and complying with obligations; issues of particular conditions of the procedural procedure for selection and the timing of the application of procedural restrictive measures¹³⁶.

In his study, I. D. Gainov examines the mechanism for implementing individual preventive measures through problematic issues in their legislative expression and procedural application. As a result of such an analysis, he identified the elements of the mechanism in the form of a sequence of actions of an official. For example, the

¹³⁵ Rudich V. V. Mechanism for applying preventive measures in Russian criminal proceedings: thesis. ...cand. legal Sci. Ekaterinburg, 2020. Pp. 290-298.

¹³⁶ Muravyov K. V. Opere citato. P. 221.

mechanism for implementing a preventive measure in the form of house arrest, according to I. D. Gainov, consists of “1) decision making; 2) issuance by the investigator or the inquirer of a ruling to initiate a petition to the court to impose a preventive measure in the form of house arrest; 3) determination of specific restrictions and the body or official who will be entrusted with the responsibility for supervision; 4) a court decision to impose a preventive measure in the form of house arrest or a refusal to satisfy the relevant petition; 5) supervision of compliance with established prohibitions and restrictions; 6) changing house arrest in case of violation of established restrictions; 7) abolition of house arrest”¹³⁷.

A detailed description of the mechanism of legal regulation of restrictive measures in criminal proceedings is given in the work of S. I. Vershinina. She identifies the elements of the mechanism of legal regulation through their correlation with the elements of the legal norm. Thus, the model of a legal fact corresponds to the hypothesis of a legal norm, the model of a legal relation corresponds to the disposition, and the model of sanctions corresponds to a law enforcement act¹³⁸. The very mechanism of legal regulation in criminal proceedings is understood by her as “a necessary and sufficient set of legal means, methods, and techniques contained in the rule of law and used by the legislator in order to give procedural relations a consistent, stable and systematic nature ensuring the achievement of the goals of legal proceedings”¹³⁹.

At the same time, the stages of implementation of the mechanism of protective norms of restriction are separately highlighted. These include: 1) the emergence of a legal fact; 2) implementation of the hypothesis of a material norm through the implementation of procedural norms; 3) implementation of a substantive norm through the issuance of a law enforcement act; 4) actual use of restrictive measures. Along with this, decision-making procedures are noted among which a simplified procedure is

¹³⁷ Gainov I. D. Mechanism for implementing measures of criminal procedural coercion: comparative legal research: thesis ...cand. legal Sci. M., 2010. P. 137.

¹³⁸ Vershinina S. I. Opere citato. P. 171-172.

¹³⁹ Ibid. P. 175.

recorded (without a written act being issued by the investigative body or court); through the issuance of a written act by the investigative body or court; on the basis of a court decision to apply a restrictive measure issued as a result of consideration of the relevant petition of the investigative body¹⁴⁰.

A. D. Nazarov approaches understanding the procedural mechanism of legal regulation¹⁴¹ as “the technical construction of legal regulation, the technical organisation or co-organisation of its parts and elements in the context of legal activities”¹⁴². At the same time, the following categories are meant as such parts and elements: 1) stages and algorithms of actions of subjects of criminal proceedings, which are an expression of logical patterns that guide procedural activities; 2) main parts or individual mechanisms, which represent the implementation of individual procedural powers within the framework of a certain procedural function; 3) subjects of implementation of the legal mechanism and their legal status; 4) special ways of arranging for the procedural activities of these subjects, procedural interaction of these subjects; 5) the special purpose of the mechanism’s existence¹⁴³.

Thus, researchers have proposed various approaches to understanding the mechanism of legal regulation in criminal proceedings. They are united by an attempt to formalise as an independent category the stipulated procedure and conditions for assigning certain responsibilities to the accused.

In addition to various points of view on the concept of a *legal regulation mechanism*, it is advisable to consider another concept that has similar features, namely the concept of “*proceedings for selecting a preventive measure.*” The simultaneous existence of these concepts makes it necessary to establish their relationship, since the determination of the proceedings for selecting a preventive measure is also based on a certain procedure, conditions and status of individual parties to the criminal process.

¹⁴⁰ Ibid. P. 192, 208.

¹⁴¹ In the context of studying the mechanism for eliminating investigative and judicial errors.

¹⁴² Nazarov A. D. Investigative and judicial errors and the criminal procedural mechanism for their elimination: conceptual foundations: thesis. ... Doctor of Law. St. Petersburg, 2017. P. 151.

¹⁴³ Ibid. P. 151 - 156.

In accordance with the position of O.G. Ivanova, procedural proceedings shall meet several criteria. Among them are 1) multi-subjectivity (carrying out proceedings by several bodies conducting criminal proceedings, with the mandatory participation of the court); 2) occurrence in multiple stages (extension to several stages of the criminal process); 3) evidentiary nature; 4) focus on solving specific problems relating to the goals of the criminal process; 5) the presence of its own subject content which is determined by the circumstances to be proven; 6) regulatory orderliness (regulation by the provisions of the Code of Criminal Procedure of the Russian Federation) and legal completeness (proceedings shall end with a final court ruling)¹⁴⁴. The stated signs of criminal procedural proceedings also characterise implementing the criminal procedural mechanism.

If we proceed from the fact that procedural proceedings imply activities and an ordered set of procedural relations, then the mechanism is not only the expression of the activities in reality but also the existing legal order for organising these activities, the conditions for their implementation and the independent legal meaning that was provided by the legislator for regulation of private criminal procedural relations. The content of the legal regulation mechanism goes beyond the description of the organisation of legal proceedings and presupposes an existing method of influencing social relations, solving general criminal procedural and not individual tasks inherent in the stages of the criminal process.

It should be taken into account that the implementation of a preventive measure occurs in the form of its *selection* and *application*. Thus, we can assume that the action of the mechanism extends within both of these processes.

Thus, under **the special criminal procedural mechanism for selecting and applying preventive measures with a prohibition on certain actions**, we propose to consider the procedural organisation of proceedings provided for by law to establish combinations of restrictions in respect of the accused (suspect, defendant) in order to

¹⁴⁴ Ivanova O. G., Romitsyn V. V., Stoyko N. G. Seizure of property as a separate independent proceeding in a criminal case // Laws of Russia. 2022. No. 1. P. 24.

ensure his/her appearance when summoned to the investigator, interrogator and to court, ensuring the safety of the accused for society, preventing attempts by him/her to commit new crimes, hiding from investigation and trial, and interfering with the establishment of circumstances that constitute the subject of proof in a criminal case.

In connection with adoption of Federal Law No. 72-FZ dated 18 April 2018, new provisions on the grounds for selection of these measures appeared in the special criminal procedure mechanism for selection and application of preventive measures with a prohibition of certain actions, the system of preventive measures itself was supplemented by a prohibition of certain actions both as a separate (self-sufficient) preventive measure and as a modification of a bail and house arrest. Provisions have been introduced on the procedure for offsetting the time of a house arrest to detention time.

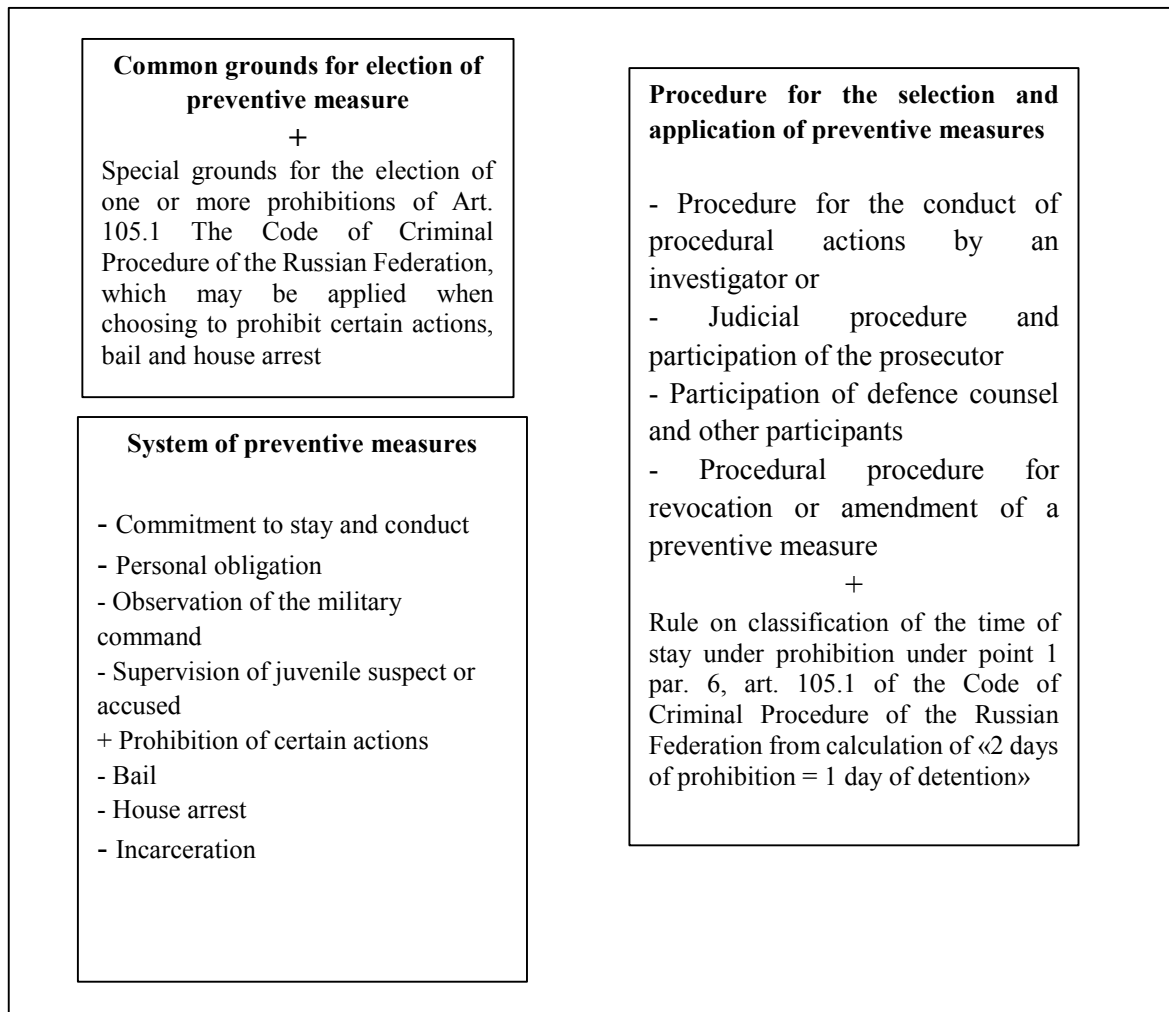


Figure 3 – Changes introduced into the institution of preventive measures by Federal Law 72-FZ of 18.04.2018.

Procedural implementation of the presented legal relations in a form of a right of subjects conducting criminal proceedings to select a certain set of restrictions shall be expressed in a form of a resolution of the inquiry officer or investigator to initiate a petition to the court for selection of a preventive measure and procedural consequences – a court ruling on satisfaction, partial satisfaction or refusal to satisfy such petition. This pattern expresses the act of implementing subjective legal obligations as an element of the mechanism of legal regulation.

Juridical fact as an element of the legal regulation mechanism not only starts the process of legal relations (as the basis for preventive measure selection), but also

determines a set of restrictions (as the circumstances for preventive measure selection), the procedure for making a decision is a key element in the activity of evidence when selecting the preventive measures prohibiting certain actions (figure 4).

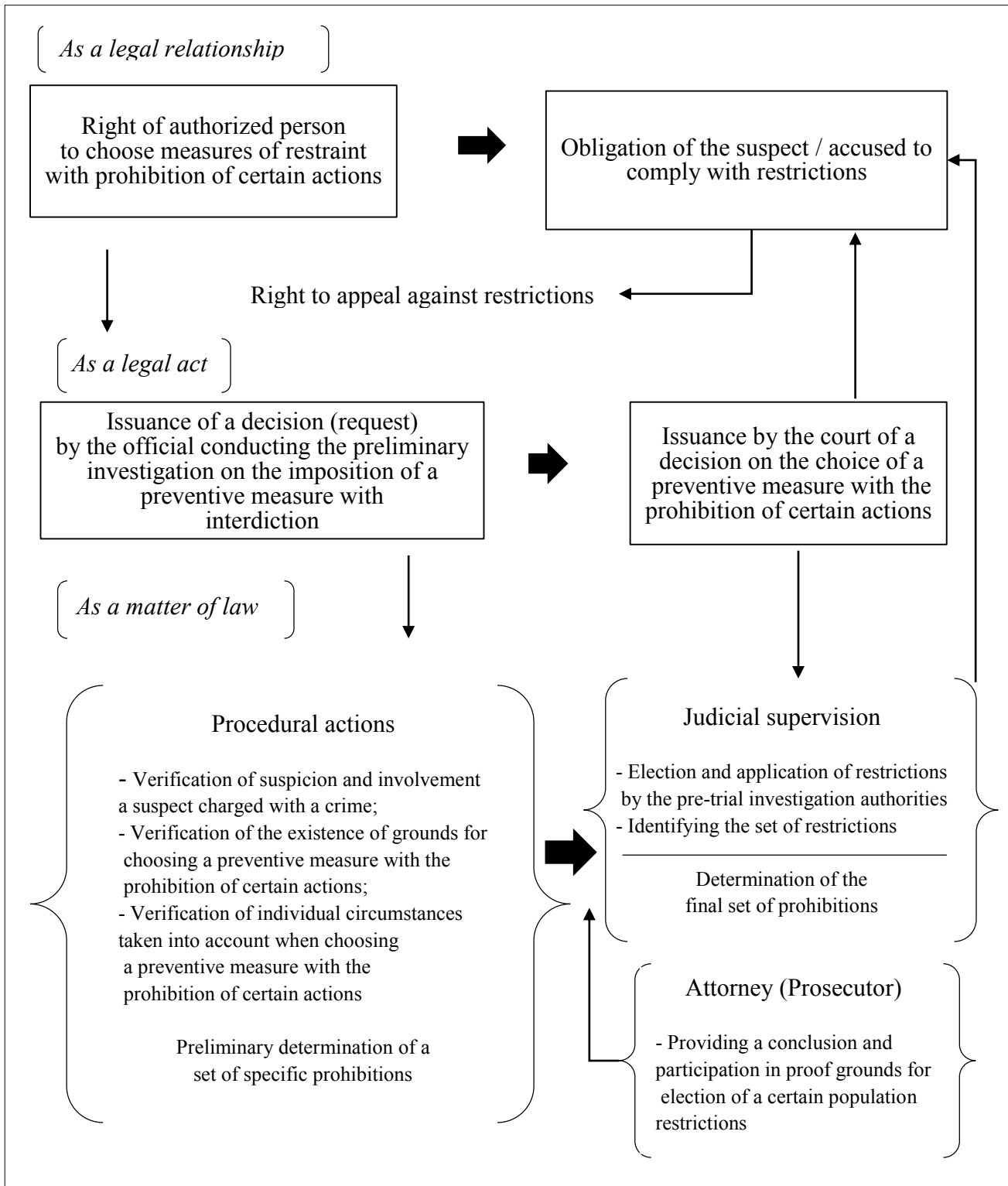


Figure 4 – The mechanism of legal regulation of procedural relations arising from the election and application of restraining measures with prohibitions on certain actions

As we have noted earlier, the emergence of a restriction of certain actions as a preventive measure and the possibility of applying combined restrictions did not

change the composition of the actors involved in this process, *nor did it change the stages and sequence of procedural actions*. In this respect, the approaches of I. D. Gainov and O. G. Ivanova on this issue can be considered relevant.

In accordance with the criminal procedure law, the immediate *subjects of the selection of preventive measures* are the investigator and court (Part 1 Art. 97 CPC). The attorney, or on his behalf, the person who initiated the application, justifies it in the judicial proceedings for the selection of preventive measures (Part 6 Art. 108 CPC). It should also take into account other participants in criminal procedure, implementing their status in the mechanism of prohibition of certain actions.

One of them is the head of the investigative body, who has the power to consent to an investigator to initiate a court motion for the selection of a preventive measure. Aforementioned subject on the basis of a judicial decision is allowed to personally interrogate the suspect, the accused in considering the issue of giving such consent (Art. 4, Art. 39, CPC). The attorney, in the course of carrying out his duties as procedural director of the investigation, is authorized to consent to the investigator to bring before the court a motion for election or change of preventive measures (par. 5, part 2, art. 37). It is normal that the right of such interrogation will be exercised by the prosecutor within the judicial session on selection of a preventive measure.

In this regard, S. S. Lukyanov correctly notes that the consent of the prosecutor to the request of the investigator for the selection of a preventive measure is a fact of entering into the evidentiary process and is accompanied by preliminary examination of the criminal case materials. The lack of consent of the prosecutor in its legal meaning would logically mean annulment of the request of the interrogator. At the same time, the prosecutor's disagreement with the motion of the investigator to select a measure of restraint in court proceedings will not lead to the termination of such motion and will be considered by the court together with the position of other participants of the court procedure¹⁴⁵. Consequently, in our view, the right of questioning of the accused

¹⁴⁵ Lukyanov S. S. To the question of determining the competence of the court to ensure proper judicial control procedure at pre-trial stages of criminal proceedings // Bulletin of the Siberian Law Institute of the Russian Ministry of Internal Affairs. 2023. № 4. P. 65.

by the person exercising control and supervision over the procedural actions of the investigator and the interrogator should be emphasized when describing the mechanism for choosing differentiated preventive measures.

In accordance with the provisions of art. 110 CPC cancellation or change of the preventive measure that, in the context of the implementation of the prohibition mechanism, may be expressed in the exclusion or election of additional restrictions, and is carried out by the same number of entities (investigator, court). As we have noted previously, the cancellation or change of a preventive measure chosen by the court may be carried out by the investigator with the consent of the head of the investigative body or by the interrogator with the consent of the prosecutor without judicial control.

Thus, *in a narrow sense*, the subjects of the implementation of the prohibition mechanism will be the inquirer, the investigator and the court. *In a broad sense*, this list may be supplemented by such participants as the head of the investigative body; the prosecutor who performs the functions of procedural supervision of the inquiry and the prosecutorial oversight of the preliminary investigation. All these power actors in the criminal process are *key participants* in the mechanism under consideration. The lawyer, witness, victim, specialists (translator, teacher, psychologist and others; representative and legal representative), when they are involved in criminal procedure mechanism of implementation of the prohibition of certain actions, *are optional participants* in the mechanism under review.

The abovementioned does not negate the fact that changes introduced to the criminal procedural legislation in 2018 expanded the system of preventive measures and supplemented the set of restrictions, that is, these changes created a new *legal norm* as a new element of the legal regulation mechanism. Changes in the legal norm (legal instrument of influence on public relations) in general *have not affected the procedural order, but have significantly influenced the way of public relations regulation*.

The legislator has created a system of alternative preventive measures to detention with a prohibition of certain actions.

Thus, it can be stated that modernization of the criminal procedural mechanism of legal regulation of selection of preventive measures through registration of restrictions on certain actions is an alternative to detention.

1) The mechanism for prohibiting certain actions exists in the form of criminal procedural rules relating to the use of preventive measures with prohibitions on certain actions.

2) The legal implementation of the mechanism is expressed in various stages, each of which is conditioned by the involvement of certain subjects and the implementation by them of their responsibilities within the framework of the proceedings to impose a prohibition on certain actions.

3) The mechanism for prohibiting certain actions exists to limit the negative influence of the accused (suspect, defendant) on the progress of criminal proceedings.

The purpose of the existence of a mechanism for prohibiting certain actions is fully correlated with the goals of the institution of preventive measures but has its own specifics. This specificity is due to the nature of the prohibition of certain actions and the coercive potential of preventive measures with the prohibition of certain actions, as well as the objects of protection, that is, those rights that are protected through the judicial control procedure.

The components of the mechanism for prohibiting certain actions can be considered: 1) stages and algorithms of actions for their implementation; 2) special subjects involved in the selection of a prohibition on certain actions and their procedural status; 3) models of the mechanism for imposing a prohibition on certain actions.

2.3. Implementation of a special criminal procedure mechanism to limit certain actions

2.3.1. Procedural features of the application of prohibitions of certain actions

Complex nature of the norm of Article 105.1 of the Criminal Procedure Code of the Russian Federation on prohibition of certain actions, along with a novelty of certain restrictions included to this norm, distinguishes this norm from majority of other preventive measures and naturally complicates the mechanism of its implementation. The mentioned complexity consists in the presence of an extensive obligation to comply with one or more of the prohibitions. This feature should also be highlighted when analyzing the compulsory potential of a bail, the normative content of which, in addition to the property obligation, provides for the possibility of applying the prohibitions of Part 6 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation. At the same time, the application of prohibitions provided for in clauses 3-5 of Part 6 of Article 105.1 of the Code of Criminal Procedure with house arrest, in our opinion, should not be considered the same way. These prohibitions have traditionally been a part of the coercive potential of house arrest and are a regular way to ensure isolation of the accused from society along with his/her isolation in a residential building.

On this basis, a full description of the special criminal procedure mechanism for restricting certain actions can be disclosed based on an analysis of the practice of applying each of the individual prohibitions and potential of their combined action, which will be disclosed by us within the framework of the concept of “the model of a prohibition of certain actions”.

Analysis of the practice and specifics of application of a prohibition of certain actions was carried out by us on the basis of 1,034 rulings of the courts of first instance, appeal and cassation instances from 57 regions of the Russian Federation for the period

of 2018-2024. The source of court ruling was the “Garant” legal reference system. Data processing was carried out using the computer program “SPSS Statistics”. As solutions for the analysis, those law enforcement acts were selected that contained indications of application of the provisions of Article 105.1 of the Code of Criminal Procedure of the Russian Federation in relation to suspects and accused. This approach made it possible to identify cases of application of Article 105.1 of the Criminal Procedure Code of the Russian Federation as an independent preventive measure and as additional restrictions imposed simultaneously with house arrest and bail.

The criteria for the analysis were data describing the judicial act and its content. It allowed to identify a region and a year of decision. In addition, the content of the judicial act made it possible to establish the totality of the prohibitions imposed, the reasons for the prohibitions, the scope and gravity of the offence charged, and the individual circumstances of the suspect and accused. They included sex, age, occupation or other activity, family, dependants, personality characteristics and various types of legal responsibility. It is taken into account whether a judicial decision is the first to impose a preventive measure, which is revoked or changed to more or less strict¹⁴⁶. In order to verify the data obtained on similar criteria, a direct analysis of the criminal case files at the disposal of the district courts of Krasnoyarsk (58 criminal cases) was conducted¹⁴⁷. The results of the analysis are presented below.

The prohibition provided for in clause 1 part 6 article 105.1 of the CPC RF (*to go outside the residential premises in which he/she lives as the owner, tenant or on other legal grounds during certain periods of time*) states a measure of coercion regarding the place and time of stay of the suspect or accused.

As noted earlier, this criminal procedural prohibition substantially correlates with one of the prohibitions provided by the criminal punishment in the form of restriction of freedom. I.V. Sokolov reasonably noted that the correct application of such punishment should be based on the determination of the actual place of residence

¹⁴⁶ Annex № 13.

¹⁴⁷ Annexes № 19-24.

of the controlled person; establishment of the presence of legal grounds for the residence of the controlled person at the place of residence¹⁴⁸.

The mentioned order of application of the restriction is no less relevant for pre-trial proceedings. One can also agree with the position of the scientist that the correct establishment of the actual place of residence should not be based solely on the testimony of the controlled person and the entry of registration in the passport. For the most reliable establishment of the actual place of residence of a person, this information should be supported by the testimony of witnesses, reference information of the relevant organizations, etc.

The perspective of researchers who state the expediency for the specific regulation of the lexical formulation of this prohibition is well-founded¹⁴⁹. The literal interpretation of the prohibition to go out of the residential premises at a certain time allows considering that the accused may not come home by the set time, and, accordingly, not violate the specific "prohibition *to go out*". Consequently, it is logical to change the lexical formulation of the prohibition under clause 1 part 6 article 105.1 of the CPC RF to the following: "to go out during certain periods of time..." to "*to be outside the residential premises during certain periods of time...*".

It should be noted that the prohibition to leave the residential premises, associated with the restriction of the right to freedom, directly affects the completeness and possibility of implementation of many other rights of the suspect and accused. Among them, the rights to labor, education, and family rights should be emphasized.

According to the implication of the law and the direction of the judicial practice development, the circumstances that positively characterize the personality of the accused are preferential circumstances for selecting an alternative to complete isolation from society in the form of prohibition of certain actions. For example, the presence of

¹⁴⁸ Sokolov I. V. op. cit. P. 101–103.

¹⁴⁹ Kombarov R. V. The legal status of persons sentenced to punishment in the form of restriction of freedom: dis. ... cand. jurid. sciences. Vologda, 2014. P. 155.

employment, familial obligations, dependents, and social connections may be taken into account. This thesis is confirmed by the conducted survey of practitioners¹⁵⁰.

These circumstances are among those on which the choice of restrictions under article 105.1 of the CPC RF will be made, in particular, provided for by clause 1 part 6 article 105.1 of the CPC RF (the most stringent of these provisions, and the one most frequently applied in conjunction with others¹⁵¹).

Consequently, the practical procedural purpose of the restriction on going out the residential premises is to prevent a negative influence on the suspect, accused, and, in particular, to limit his opportunities to commit new crimes. Furthermore, the legislation does not preclude the court from establishing any temporal limitations on the prohibition to go out the residential premises.

Application of the restriction in question provides for the judicial discretion to determine the period of time when leaving the premises shall be prohibited. Researchers highlighted the need to provide the accused with an opportunity to stay outdoors, as well as to provide themselves with food, as one of the problems of the house arrest¹⁵². The normative consolidation of a new preventive measure, being a prohibition of certain actions, that allows to control restrictions of freedom of movement of the accused, makes it possible to solve these issues.

According to our analysis of the above court rulings on the application of clause 1 of Part 6 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation, the time intervals were selected as follows:

- 1) 22:00 – 06:00 – 34%;
- 2) 23:00 – 06:00 – 9.6%;
- 3) 21:00 – 07:00 – 7.6%;
- 4) 20:00 – 08:00 – 5.5%;
- 5) 20:00 – 06:00 – 5.3%;

¹⁵⁰ Annex № 27, 28.

¹⁵¹ Annex № 2, 3.

¹⁵² Tsokolova O. I., Kostyleva G. V. et al. House arrest and bail as a measure of restraint. URL: http://buisky.kst.sudrf.ru/modules.php?name=press_dep&op=4&did=45 (access date 07.03.2023).

- 6) 22:00 -07:00 – 5%;
- 7) 21:00 – 06:00 – 3.9%
- 8) 19:00 – 07:00 – 3.1%.
- 9) other time intervals – 18.5%¹⁵³.

It can be stated that in the overwhelming majority of cases, when courts apply the prohibition provided for in clause 1 of Part 6 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation, the periods of time during which the accused was prohibited from leaving the residential premises were determined to be evening and night time.

In 7.5% of all decisions on the application of the prohibition provided for in clause 1 of Part 6 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation, the period of the prohibition on leaving the residential premises was interpreted by the courts in a different way: the court ruling did not contain the period of time, during which the accused is prohibited from leaving residential premises, and the prohibition was interpreted through an indication of the period of time during which the accused is allowed to leave the residential premises. For example, the prohibition “is allowed to leave the premises ... with the exception of the period from 12:00 to 14:00”¹⁵⁴. Often this prohibition was accompanied by an indication in the court ruling of the reasons why the accused could leave the residential premises within a specified period of time. For example, for a walk, visiting health institutions, social infrastructure facilities and buying food.

An analysis of the decisions made it possible to identify a third option for interpreting the prohibition on leaving the residential premises. This option was expressed in several time intervals, within which it is prohibited to leave the living premises. For example, the prohibition on leaving the home concerned periods with two time intervals - 22:00 to 09:00 and from 18:00 to 22:00; periods with three time

¹⁵³ Annex № 14.

¹⁵⁴ Appeal ruling of the Supreme Court of the Republic of Crimea dated 18 January 2019 in the case No. 22K-306/2019

intervals - "from 00:00 to 08:00, from 10:00 to 13:00, from 14:00 to 18:00 and from 20:00 to 24:00 daily".

In some cases, the time interval was detailed down to minutes, for example, "from 07:30 to 9:30, from 13:00 to 14:00, from 17:30 to 19:30 ". In other cases, the days of the week, on which it is possible to leave the living quarters, were clarified. For example, a prohibition on leaving residential premises "except for cases of going out to visit health and other social infrastructure institutions on Monday, Wednesday, Friday and Sunday, from 09:00 to 11:00."

In our opinion, the frequency of choosing the evening and night intervals as restrictions on leaving can be explained by the conditions of the special crime situation which is noted by criminologists at this time of day. As some researchers note, "analysis of the crime situation makes it possible to assess the actual state of crime and public order; identification of objective and subjective factors causing this condition..."¹⁵⁵. Consequently, one of the main goals of imposing such a restriction can be considered to be the prevention of the commission of new crimes and the continuation of criminal activities.

Determination as one of the priority goals of imposing a prohibition under clause 1, Part 6, Article 105.1 of the Code of Criminal Procedure of the Russian Federation, as a means of preventing the commission of new crimes, allows us to provide for those periods of time that determine the commission of offenses by persons to a greater extent. In this vein, it is possible to draw semantic parallels between the period of time, which is defined by the legislator as a time of increased crime situation, and the legally established time of restraint on the sale of alcoholic beverages.

Federal law does not allow retail sales of alcohol from 23:00 to 8:00 local time¹⁵⁶. State authorities of the constituent entities of the Russian Federation may establish additional time limits. For example, in St. Petersburg, retail sales of alcoholic

¹⁵⁵ Ulyanov A. D., Abramov A. V. Crime situation as a subject of knowledge // Proceedings of the Academy of Management of the Russian Ministry of Internal Affairs. 2013. No. 3 (27). P. 15.

¹⁵⁶ Federal law of 22 November 1995 No. 171-FZ "State Regulation of the Production and Turnover of Ethyl Alcohol, Alcoholic and Alcohol-Containing Products and Limiting the Consumption (Drinking) of Alcoholic Beverages."

beverages are limited to the period from 22:00 to 11:00. In the Khanty-Mansiysk Autonomous Okrug, similar restrictions are established from 20:00 to 08:00 etc.

The adoption of these laws is due to the concept chosen by the Russian Federation Government for implementing state policy to reduce the level of abuse of alcoholic beverages. In accordance with the provisions of this concept, “numerous crimes are committed annually under the influence of alcohol, such as murder, causing grievous bodily harm, rape, hooliganism, robberies, robberies and car thefts”¹⁵⁷.

With such rules, the law does not rule out purchasing alcoholic products, since it does not prohibit its sale during the daytime. However, the ban on purchasing alcoholic beverages in the evening and at night is intended to limit the possibility and conditions for drinking alcohol.

It is natural that crime rates, that include as an element the state of alcoholic intoxication or the environment for drinking alcoholic beverages, are not exhaustive. When determining the periods of time, during which the accused is prohibited from leaving the residential premises, it is advisable to take into account other crime rates taking into account the classifications established in science and highlighting situational factors of the causes and conditions for the commission of certain crimes¹⁵⁸.

The prohibition set forth in clause 2 part 6 article 105.1 of the CPC RF encompasses three distinct types of limitations: *being in specific locations; being at a certain distance closer than that prescribed from certain objects; and attending and participating in designated events*. The law does not impose any limitations on the discretion of the law enforcement officials in the selection of restrictions. Consequently, within the scope of one legal statutory provision, each of these three prohibitions may be applied to the accused, either separately or in a certain combination.

¹⁵⁷ Order of the Russian Federation Government of 30 December 2009 No. 2128 concerning the Concept for the Implementation of State Policy to Reduce the Level of Alcohol Abuse and Prevent Alcoholism among the Population of the Russian Federation up to 2020.

¹⁵⁸ Pleshakov V. A. Introduction to the criminological theory of situations or situational criminology // *Man: Crime and Punishment*. 2012. No. 1 (76). P. 103, 106.

The Criminal Procedure Law and the explanations of the Plenum of the Supreme Court of the Russian Federation concerning the procedure for imposing restraining measures do not include any indications regarding an approximate list of prohibited places, certain distances, or activities. Concurrently, a comparable prohibition on visiting specific locations and engaging in certain activities is outlined in the Resolution of the Plenum of the Supreme Court of the Russian Federation "On the Practice of Imposing Criminal Punishment"¹⁵⁹.

Paragraph 19 of the Resolution indicates that when establishing a ban on visiting certain places, the court should specify the characteristics of such places. For example, places of public catering where the consumption of alcoholic beverages is allowed, or children's institutions, etc. Furthermore, the provisions of the aforementioned ruling elucidate the concept of the category of "public events."

The prohibition to attend and participate in public events may apply to all such events, as well as to those of them that, in the opinion of the court, will hinder the achievement of the goals of the punishment. For example, public events may include social and political gatherings (meetings, rallies, street processions, demonstrations, etc.), cultural and entertainment events (festivals, professional holidays, public festivities, etc.), and sporting events (Olympics, sports and athletic contests, university games, competitions in various types of sport, etc.).

The prohibition set forth in the law of criminal procedure allows the court to restrict any locations and events, including public events. Part 7 article 105.1 of the CPC RF states the necessity for the establishment of specific conditions for the execution of a proscription on certain actions. However, in the provided list there is no mention of the prohibition to attend certain events, which requires improvement of the legislation in this part.

As noted earlier, the prohibition provided for in clause 2 of Part 6 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation is one of the least

¹⁵⁹ Resolution of the Plenum of the Supreme Court of the Russian Federation of December 22, 2015 No. 58 "On the practice of assigning criminal punishment by the courts of the Russian Federation" // JPS "Garant".

frequently used (in 17.5% of cases)¹⁶⁰. In our opinion, this relationship can be explained by the fact that this prohibition is a novelty in the criminal procedural law of Russia and is complex; it consists of three different prohibitions.

Our research results show that the most common applications in practice are:

- prohibition on visiting a certain place – 57 %;
- prohibition on visiting and participating in certain events was applied in practice in 30% of cases;
- prohibition to be closer than the established distance to a certain object – in 12% of cases¹⁶¹.

Of the total prohibition on approaching certain places:

- 27% account for places where alcoholic beverages are sold, bars, cafes and restaurants;
- 18 % account for a category of places that have a similar meaning but a different denotation, namely places of mass gathering, entertainment venues, shopping centres;
- 5 % account for places of residence of parties to criminal proceedings;
- 1.8 % of cases account for transport hubs (train stations, airports)¹⁶².

In other cases (49%), prohibited from visiting are certain locations, which are the workplace of the accused, the scene of a crime, or another location relevant to the criminal proceedings. For example, “*the territory of a district administration, a military unit, a nature reserve, an office and premises of a law firm, tax authorities, a hunting area*” etc.

An analysis of court rulings has shown that in practice, “entertainment, mass, and sporting events,” as well as “events where alcoholic beverages are sold,” are selected as prohibited events. In some cases, along with a ban on attending

¹⁶⁰ Annex № 4.

¹⁶¹ Annex № 15.

¹⁶² Annex № 16.

“entertainment events,” the accused was prohibited from drinking alcohol while participating in them.

Court rulings on the application of clause 2, Part 6, Article 105.1 of the Code of Criminal Procedure of the Russian Federation *on the prohibition of being closer than the established distance to certain objects* provided for different distances:

- In 30% of cases, a distance of 100 m was determined;
- 20 % account for a distance of 500 m;
- 20 % account for a distance of 1 km.

The smallest value of the determined distance was 2 m to the boundaries of the land plot on which the victim’s home is located. In addition to the place of residence of parties to the criminal proceedings, a certain distance was established to the airport, entertainment venues, shopping centres, and the office of a law firm.

Taking into account the widespread practice of using a *prohibition on visiting a certain place*, it is necessary to consider the interpretation of understanding this restriction. Something, that is firmly established, clear and beyond doubt, is certain¹⁶³. There is no doubt that the designation as a “*certain place*” is a place that has clear identifying features that do not allow it to be confused with others. Such signs may be its functional purpose - an educational institution, a construction site or social significance - a protected object, an object of cultural significance etc.

In practice, certain places are understood not only as a designation of a specific place but also as a general designation of places according to the purpose of their activities. These include entertainment venues, places of mass gathering events etc.

The prohibition on being closer than a set distance to certain objects was used much less frequently in the array of solutions studied. This prohibition involves the specific establishment of two categories, the distance to a certain object and the object itself. The concept of “object” in this prohibition differs from the concept of “place” in the previous type of prohibition and is more specific. This specification consists of

¹⁶³ Ozhegov S. I., Shvedova N. Yu. Explanatory dictionary of the Russian language: 80,000 words and phraseological expressions [Electronic resource] // URL: <https://slovarozhegova.ru/word.php?wordid=18597> (access date 07.11.2022).

indicating the exact address or unique name of an object, for example, the administration of St. Petersburg.

In one of the decisions, the object was not specifically defined, and the prohibition was formulated as follows: “Be in certain places, as well as within 200 metres of certain objects, such as entertainment venues, shopping and entertainment centres...”. In this example, objects prohibited from visiting were not defined but were listed as *places*, that is, a certain space, a piece of terrain on which one can be¹⁶⁴, which does not allow them to be identified as a specific object in space.

Article 105.1 of the Code of Criminal Procedure of the Russian Federation does not disclose the concept of object in its content. The practice of applying this prohibition shows that in all the studied examples, when applying the prohibition under clause 2, Part 6 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation various real estate items are understood under *objects*. In civil law, real estate items can be characterised by their stationarity, durability, state registration, location, uniqueness and other characteristics¹⁶⁵.

It is obvious that in criminally-remedial relations it is irrelevant to use all real estate signs to determine a prohibited object. The category of *object* in criminal procedural relations, that arise when applying a prohibition on certain actions, is used to identify a certain area in space. This object should have uniqueness, which is expressed in the presence of a legal address, coordinates and be perceived by any subject as a unique object. For example, a unique object can be considered a building or premises located at a specific address, a real estate item or a listed building located in a specific location.

The second part of restriction is a certain distance to a certain object, which the accused must follow. The law does not establish a minimum or maximum distance for

¹⁶⁴ Ozhegov S. I., Shvedova N. Yu. Explanatory dictionary of the Russian language: 80,000 words and phraseological expressions [Electronic resource] // URL: <https://slovarozhegova.ru/word.php?wordid=14272> (access date 07.11.2022).

¹⁶⁵ Kosorukova I. V., Mirzoyan N. V. et al. Improving decision-making criteria based on value-based management as the basis for the growth of competitiveness of the Russian economy: monograph / under the editorship of Doctor of Economics, Prof. I. V. Kosorukova. Synergy University, 2019 // SPS “Garant”.

selection. The practice study results show that the shortest distance selected by the courts was 2 m, and the maximum one was 1 km.

Similar to the procedure for selecting any restriction, the imposition of an obligation *to maintain a certain distance* must be justified. Accordingly, the choice of distance to a certain object must be based on certain criteria. The imposed prohibition and the established distance to a certain object are imposed in order to exclude the impact of the accused on protected social relations, which are concentrated in a certain object. Otherwise, the distance can be represented not only in the form of a segment from a person to a certain object but also in the form of a radius that allocates a certain circumferential exclusion territory for the accused. The centre of such an “exclusion boundary” will be the protected object.

The influence by the accused on the protected object within this territory must be excluded. The negative impact from the accused can be expressed in various ways: physically, for example, through an attempt to commit violence against the victim, and psychologically, for example, through a demonstration of threat. Based on this, the protected perimeter around the object should exclude both physical and psychological access to the protected object.

In our opinion, to ensure such a perimeter, it is sufficient to define a distance of 100 m to 200 m to the protected object. An increase in the length of this distance proportionally expands the radius of exclusion in which the accused is not allowed. This radius may also include other objects that the accused needs access to. At the same time, the restriction on visiting any objects, that are not related to the investigation of a criminal case, is inappropriate, exceeds the need to impose a preventive measure and unfairly limits the rights of a person.

In the United States of America, it is common practice to apply a *protective order*, which can determine the distance required for the accused to comply with. In most cases, this distance is 100–200 m. However, depending on the state, this distance can vary, be higher and exceed 1 km.

It is planned to introduce similar methods of protecting rights into domestic legislation. In October 2023, a draft law on the creation in civil legislation of a measure of influence in the form of a ban on the approach and (or) other contacts of a violator with a citizen was introduced into the State Duma¹⁶⁶. The explanatory note to the draft law describes prohibition as “a restriction on the freedom of movement of a violator who could potentially pose a threat to the life and health of the victim.” The draft law does not provide more detailed instructions on the content of the prohibition but it is noted that “studies in countries, in which such a prohibition has been introduced, show that a restraining order reduces the likelihood of repeated violence or crime against the victim”¹⁶⁷.

In the European Union countries, there is a mechanism for applying a *restraining order* that is quite developed at the legislative level. The European restraining order is a judicial decision under which courts take measures to ensure the safety of protected persons¹⁶⁸.

It is noteworthy that, in accordance with the law, the European restraining order is a universal legal remedy and can be used in both criminal and civil proceedings¹⁶⁹. Under the latter, a request for such an order may be made in cases where such an issue has not been considered in criminal proceedings¹⁷⁰.

A restraining order can be manifested by the following prohibitions: on approaching a populated area, district, place of residence or location of a person protected by the order; contacts in any form with a protected person, including by

¹⁶⁶ Text of the draft law No. 452947-8 “Amendments to the Civil Code of the Russian Federation” dated 6 October 2023 // URL: <https://sozd.duma.gov.ru/bill/452947-8> (access date 07.11.2022).

¹⁶⁷ Explanatory note to the draft law No. 452947-8 “Amendments to the Civil Code of the Russian Federation” dated 06 October 2023 // <https://sozd.duma.gov.ru/bill/452947-8> (access date 12.09.2023).

¹⁶⁸ Article 2 of Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order // <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0099> (access date 12.09.2023).

¹⁶⁹ Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters // <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013R0606> (access date 12.09.2023).

¹⁷⁰ URL: <https://www.inimoigustegiid.ee/en/themes/domestic-violence/safe-exit/restraining-order/application-in-civil-proceedings> (access date 12.09.2023).

telephone, electronically, by post or otherwise; approach the protected person closer than the prescribed distance¹⁷¹.

In accordance with regulatory requirements, when determining the distance, that an offender must maintain, the court shall follow the principle of proportionality and circumstances of the case. It is noted that in practice the choice of distance may vary. The total distance is from 100 m to the protected person; a distance of 50 m from the protected person is provided for compliance in public places; 1 m is in public transport. In some cases, a distance exceeding 100 m may be determined. The order may also impose a prohibition on staying in the home, school, or kindergarten of the protected person¹⁷².

Breaching the terms and conditions of a restraining order in both criminal and civil proceedings is a criminal offence under European Union law¹⁷³.

A comparative analysis allows us to highlight the existence of developed legal mechanisms to limit the rights of offenders without detention. Thus, foreign practices of applying similar restrictions to keep a certain distance can be taken into account when applying them in domestic criminal proceedings.

The *third* type of prohibition provided for in clause 2 of Part 6 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation is a *prohibition on attending and participating in certain events*. In all the judicial decisions we studied, “mass entertainment events” were understood as such. In some cases, the prohibition was specified and was associated with restrictions on attendance at “sports events, as well as events accompanied by the consumption of alcohol.”

Clause 3 part 6 article 105.1 of the CPC RF provides for a ban *on communication with certain individuals*. From the perspective of enhancing the efficacy of the prohibition of specific actions, the following issues can be identified.

¹⁷¹ Article 5 of Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order // <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0099> (access date 12.09.2023).

¹⁷² URL: <https://www.inimoigustegiid.ee/en/themes/domestic-violence/safe-exit/restraining-order/what-can-be-ordered> (access date 12.09.2023).

¹⁷³ Van der Aa, S. Protection Orders in the European Member States: Where Do We Stand and Where Do We Go from Here?. *Eur J Crim Policy Res* 18, 183–204 (2012). <https://doi.org/10.1007/s10610-011-9167-6> (access date 12.09.2023).

One of the difficulties encountered in this context is the practical specification of the list of "certain individuals" and the manner in which it is formalized in a procedural act. It is evident that compliance with the prohibition is only possible when the subject of responsibility fully comprehends the prohibition. Consequently, the accused must accurately perceive those individuals with whom communication is prohibited. On the other hand, the list of such individuals during the investigation of specific categories of criminal cases may be voluminous and subject to further additions throughout the investigation. This may present a challenge from a formal standpoint in identifying them as an individual with whom communication is prohibited.

Part 7 article 105.1 of the CPC RF contains an indication that the selection of the described prohibition must include those individuals with whom communication is prohibited. Concurrently, paragraph 40 of the Resolution of the Plenum of the Supreme Court No. 41¹⁷⁴ stipulates that "the court shall specify the data which will allow identifying these individuals".

Let us provide a generalized list of examples of lexical formulation used in applying this prohibition based on an analysis of legal precedents. The list provides examples of how the category of "certain individuals" is understood.

Court rulings on the application of clause 3, Part 6, Article 105.1 of the Code of Criminal Procedure of the Russian Federation contains a prohibition on communication:

1) with parties to criminal proceedings in this criminal case, with the exception of the defence lawyer, outside the framework of the trial and other persons who are not close relatives;

2) with all parties to criminal proceedings in this criminal case, including the accused and their defence attorneys, the witness and his/her representative, officials of the units of the Russian Ministry of Internal Affairs (with the exception of the

¹⁷⁴ Resolution of the Plenum of the Supreme Court of the Russian Federation of December 19, 2013 No. 41 "On the practice of application by courts of legislation on preventive measures in the form of detention, house imprisonment, bail, and prohibition of certain actions" // JPS "Garant".

defendant's own defence lawyer, the investigator and employees of the regulatory body);

3) parties to criminal proceedings in this criminal case, the list of whom the investigator is obliged to set up and communicate to the accused;

4) specific persons listed by name in the ruling;

5) victims, witnesses, accused in this criminal case, their relatives and friends;

6) persons relating to the criminal case, with the exception of the investigator, defence lawyer and employee of the regulatory body;

7) exclusively with witnesses in the criminal case;

8) other accused, suspects, representatives of the victim, witnesses and experts in the criminal case;

9) outsiders and parties to criminal proceedings;

10) persons who are parties to criminal proceedings, with the exception of the defence lawyer and the investigator;

11) all other persons, with the exception of persons living with him/her, as well as persons with whom it is necessary to communicate in connection with the proceedings in this criminal case.

In the majority of the court judgments that were studied, the court did not define a specific scope of individuals when establishing the ban; instead, it specified their procedural status or affiliation with the criminal proceedings. In certain instances, the list of individuals prohibited from communicating should be brought to the attention of the accused by the official conducting the preliminary investigation. In certain instances, the prohibition to communicate extends to relatives of those involved in the case, as well as to an indefinite scope of individuals, such as those falling within the scope of the terms "outsiders" and "all other persons."

Some researchers propose a solution to this problem through the establishment of a legislative framework that would require the specification of a specific list of individuals with whom communication is forbidden, along with the designation of their

procedural status. This framework would also necessitate prompt reflection on any changes to these data.¹⁷⁵

It is our contention that a specific named reflection of individuals with whom communication is prohibited should be accorded a high priority when considering the circumstances of the case under investigation.

In the investigation of crimes that are readily apparent and for which the scope of witnesses, victims, and participants is clearly defined, it is prudent to accurately delineate in the procedural act the individuals with whom communication is prohibited. Conversely, in the investigation of non-obvious crimes, it is advisable to indicate the procedural status of persons falling under the ban on communication, given the difficulty in determining the exhaustive range of witnesses.

It is important to note a peculiarity in the procedure when the investigator is required to supplement the named list of individuals with whom communication is prohibited. In accordance with the procedural order set forth in Article 110 of the CPC RF, a preventive measure may be modified when the grounds and circumstances that led to its initial selection have changed. Part 4 of this article, which established the principle that a preventive measure selected by the court could only be revoked or modified by the court itself, has now been repealed¹⁷⁶. Consequently, the law does not prohibit an inquirer or investigator from cancelling or changing any preventive measure, including prohibitions on communication with certain individuals.

Another issue associated with the implementation of the ban on communication with certain individuals is the relationship between this prohibition and other forms of communication restrictions. It is legitimate to consider that the prohibition on communication is not limited to direct, oral, verbal communication, but encompasses any form of contact between the accused and participants in criminal proceedings.

On this ground, the prohibition on communication is distinct from the prohibition to receive, send postal communication, use means of communication, and

¹⁷⁵ Vastyanova O. D. op. cit. P. 47.

¹⁷⁶ Federal Law of July 4, 2003, No. 92-FZ "On Amendments and Additions to the Criminal Procedure Code of the Russian Federation" // JPS "Garant".

the Internet, which also serves as a conduit for such communication. Consequently, it is necessary to distinguish between the grounds for the prohibition of communication and the use of different means of communication. This is despite the fact that certain means of communication, such as the Internet, may be used for both prohibited activities.

A review of the legal precedents has indicated that the prohibition on communication set forth in clause 3 part 6 Article 105.1 of the CPC RF was selected independently from the other prohibitions on communication outlined in clauses 4, 5, part 6, Article 105.1 of the CPC RF in *only 17.7% of cases*.

It can be reasonably assumed that the majority of prohibitions on communication in practice are associated with the inability to provide effective control over compliance with each prohibition separately. Consequently, the absence of an explicit prohibition on the use of the Internet in the presence of a prohibition on communication may prompt the accused to communicate with participants in criminal proceedings.

In our opinion, the emerging practice of applying the prohibitions provided for in Part 6 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation is influenced by similar prohibitions from the institution of administrative supervision. This pattern was emphasised by O.D. Vastyanov by noting similarities with differences in the purposes of these enforcement actions¹⁷⁷.

When studying punishment in the form of restriction of freedom, E.A. Kapitonova identified several patterns that correlate with the practice of applying individual prohibitions on certain actions. For example, the time of prohibition to leave a permanent place of residence was determined by the courts to be the period from 22:00 to 06:00. E.A. Kapitonova, with reference to regulatory and departmental instruments, also noted the lack of a unified approach to understanding the prohibition on being in a “certain place” and “engaging in certain events”¹⁷⁸.

¹⁷⁷ Vastyanova O. D. Differentiation of prohibitions established in connection with the imposition of a preventive measure, the implementation of administrative supervision, the application of punishment in the form of restriction of freedom // Forensic science: yesterday, today and tomorrow. 2021. No. 1 (17). P 189.

¹⁷⁸ Kapitonova E. A. Restriction of freedom: modern problems of application // Legality. 2014. No. 5 // SPS “Garant” legal reference system.

For example, the Guidelines for the execution of punishment in the form of restriction of freedom provide for the possibility of making a reasoned submission to supplement the imposed restrictions with new ones, visiting the corresponding places when committing offences or receiving information about the antisocial lifestyle of the convict, visiting places associated with the use of alcohol or drugs¹⁷⁹.

The Resolution of the Plenum of the Supreme Court of the Russian Federation “Practice of Imposing Criminal Punishment by the Courts of the Russian Federation” contains information that restrictions on visiting places of mass events and participation in them may apply to both all mass events, and those of them, visiting and participating in which, in the opinion of the court, will interfere with the achievement of the goals of punishment.” At the same time, mass events are understood as social and political (meetings, rallies, street processions, demonstrations etc.); cultural and entertainment (festivals, professional holidays, folk festivals etc.); sports (Olympiads, sports and athletic contests, Universiade, competitions in various sports etc.) events.

It can be noted that the content of the assigned duties within the framework of the prohibition of certain actions in practice remains identical to those provided for punishment in the form of restriction of freedom. At the same time, measures within the framework of restriction of freedom are applied to a person found guilty by a court decision that has entered into force, while similar restrictions are applied to the accused only within the framework of the assumption of his/her possible negative behaviour.

This conclusion emphasises the need to distinguish between the institutions of preventive measures and criminal punishment, the importance of highlighting the described procedural mechanism for imposing prohibitions on certain actions.

The prohibitions provided for in clauses 4, 5 part 6 art. 105.1 of the Code of Criminal Procedure of the Russian Federation *on sending and receiving postal and telegraphic items and using communications and the Internet information and*

¹⁷⁹ P. 49 Instructions for organising the execution of punishment in the form of restriction of freedom // Order of the Ministry of Justice of the Russian Federation dated 11 October 2010 No. 258 “Approval of the Instructions for Organising the Execution of Punishment in the form of Restriction of Freedom.”

telecommunications network were used in 83% of cases in combination with other prohibitions.

The prohibition under clause 6 part 6 art. 105.1 of the CPC RF (driving a car or other type of transport) is naturally the least frequently used in practice (used in 3.09% of cases) due to the existence of a special condition of its application - charges of committing a crime, Traffic and vehicle violations. At the same time, an analysis of practice revealed two decisions in which the prohibition was applied to defendants under other elements of the offence (arts. 159 and 228 of the Criminal Code of Russian Federation), which could be considered as a procedural error. In most cases (in 17 decisions - 53.1%), the ban was applied in conjunction with other restrictions, mainly bans on leaving the residential premises and communication.

Analysis of the application of the bail for 2018-2023 conducted by us on the basis of court decisions of the reference and legal system «Guarantor» allowed to establish 36 decisions on choosing this preventive measure by courts. Only in 12 cases was the imposition of bail accompanied by the imposition of additional prohibitions on the accused under Part 6 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation. At the same time, 8 out of 12 decisions were made by appellate courts when changing the preventive measure in the form of detention.

In most cases, bail with prohibitions on certain actions was applied to those accused of crimes in the economic sector, namely against property in 8 cases, in the economic activities in 1 case; in relation to those accused of crimes against state power in 3 cases, against public safety in 1 case.

In 10 out of 12 rulings, as additional prohibitions, the court established prohibitions on leaving the residential premises at certain times, as well as prohibitions on communication. Only 2 out of 12 rulings with bail involved a prohibition on maintaining a certain distance (together with prohibitions on leaving the living premises and prohibitions on communication).

Analysis of judicial practice allows us to conclude that in most cases, when selecting a preventive measure in the form of bail by law enforcement agencies, no

additional interim prohibitions provided for in Article 105.1 of the Code of Criminal Procedure of the Russian Federation are assigned. On the other hand, when bail is imposed at the court's initiative, such prohibitions are applied to the accused more often. This pattern can be explained by the need to prove additional prohibitions in a request for bail, as well as a simpler and more established procedure for selecting this preventive measure without any additional prohibitions.

In view of the direct connection between the criminal procedural rules governing bail and the prohibition of certain actions, it can be argued that a special mechanism for banning certain actions will also apply to the practice of using bail in combination with additional prohibitions.

The regularities of the application of prohibitions of certain actions allow for the formulation of the following proposals to the legislator and the Plenum of the Supreme Court of the Russian Federation with a view to improving the practice of their application.

1). It is proposed that the lexical formulation of the prohibition set forth in clause 1 part 6 Article 105.1 of the CPC RF be amended as follows: "to be in certain periods of time outside the residential premises in which he resides as owner, tenant, or on other legal grounds."

Due to the fact that the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 41, "On the practice of application by courts of the legislation on restraining measures in the form of remand in custody, house imprisonment, bail, and prohibition of certain actions," does not include a dedicated section to elucidate the procedure for implementing a preventive measure in the form of prohibition of certain actions, it is proposed that the following recommendations be made to enhance the procedure for applying prohibitions that were introduced in 2018.

2) Application of the prohibition provided for in clause 1 part 6 article 105.1 of the CPC RF by the courts must be based on the confirmed fact of the suspect, accused person's place of residence and his permanent residence in this place;

3) The prohibition to remain in a specific location must be delineated by the courts, accompanied by a clear indication of the characteristics of such locations, with the exclusion of erroneous identification. For example, the residence or workplace of the victim, witnesses, locations where alcohol is consumed, educational institutions for children, and other pertinent locations should be identified by the courts.

4) When determining the application of the prohibition to remain at a distance closer than that established from certain objects, courts should ascertain the distinctive characteristics of such objects, which can be identified through the indication of the legal address, coordinates, and the ability to be perceived by any subject as a unique object. For example, a building or premises situated at a specific address, a real estate object, or an architectural monument situated in a particular location may be regarded as a unique object.

The specification of a certain distance to the unique object should preclude the negative impact of the suspect, accused, on the object of legal protection by any means. This impact may be expressed in the form of physical (for example, through an attempt to commit violence) or psychological (for example, through demonstration of a threat) impact.

It should be emphasized that the established border to a certain object forms a certain zone, which may also include objects that are necessary for the accused to access and do not correlate with the purpose of selecting a preventive measure. Consequently, the status of a suspect or accused must ensure the provision of those individual rights that are separated from the purposes of compulsory measures.

2.3.2. Models for restriction of certain actions in the context of the implementation of a special criminal procedure mechanism

Based on the patterns we have identified in imposing prohibitions on certain actions and the analysis of judicial practice, it is possible to identify various procedural models of these prohibitions.

By **models of preventive measures with a prohibition on certain actions** we propose to understand an independent set of restrictions included in the provision of law on the prohibition of certain actions (Part 6 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation). The regular practice of applying these combinations of restrictions allowed us to make our own classification in assigning a name to each of the most commonly used models:

These models provide an example of the application of the prohibition of certain actions in practice. At the same time, we propose an additional classification of models based on a theoretical generalisation of all possible combinations of restrictions of Article 105.1 of the Code of Criminal Procedure of the Russian Federation.

By calculation, it was found that the maximum number of possible different combinations of six different prohibitions is 63 options. However, when combining, it is advisable to combine prohibitions “3-5” into a single group, since they have a common goal of influence, to restrict the right of the accused to communicate. Therefore, the second group will include the remaining restrictions (prohibitions “1”, “2”, “6”).

Based on this, we will present all possible combinations of restrictions based on increasing or decreasing the degree of enforcement of the prohibition of certain actions.

1) **The first model** provides for restrictions solely out of prohibitions on communication, which are applied in aggregate or separately. Thus, the model includes various combinations of restrictions “3-5” (prohibition of communication).

2) **The second model** provides for one separate restriction, which is not a prohibition on communication. Thus, the model includes the combinations as follows:

- a) “1”;
- b) “2”;
- c) “6”.

3) **The third model** provides for a set of restrictions in the form of prohibitions on communication with only one of the remaining prohibitions. Thus, the combinations of restrictions are included in the model as follows:

- a) “1” + “3-5”;
- b) “2” + “3-5”;
- c) “6” + “3-5”.

4) **The fourth model** provides for a set of restrictions that do not include any prohibitions on communication. Thus, the model includes the combinations as follows:

- a) “1” + “2”;
- b) “1” + “6”;
- c) “2” + “6”;
- d) “1” + “2” + “6”.

5) **The fifth model** provides for a set of restrictions, which includes the restrictions of model “B” in combination with prohibitions on communication. Thus, the model includes the combinations as follows:

- a) “1” + “2” + “3-5”;
- b) “1” + “6” + “3-5”;
- c) “2” + “6” + “3-5”;

6) **The sixth model** provides for a complete set of restrictions included in the provisions of Article 105.1 of the Code of Criminal Procedure of the Russian Federation. Thus, the model includes a set of restrictions “1” + “2” + “3” + “4” + “5” + “6”.

Thus, at the theoretical level, we have presented all possible arsenals of prohibitions of certain actions provided for in the par. 6 art 105.1 of CPC RF.

The judicial practice analysis made it possible to establish the factual and legal patterns of imposing each of the prohibitions, as well as the static patterns of imposing the restrictions of Article 105.1 Code of Criminal Procedure of the Russian Federation.

The analysis results demonstrate the uneven application of the prohibitions of Part 6 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation:

- Prohibition № 1 – to leave the premises at certain times – 81,33 %;
- Prohibition № 2 – to be in certain places, closer than the established distance to certain objects, to attend certain events and participate in them – 17,5 %;

- Prohibition № 3 – on communication with certain persons – 87,04 %;
- Prohibition № 4 – to send and receive postal and telegraphic items – 73,31 %;
- Prohibition № 5 – to use communications and the Internet – 77,37 %
- Prohibition № 6 – to drive a car or another vehicle - 3.77 %¹⁸⁰.

The enforcement effect of prohibiting certain actions will be more indicative based on the combinations of restrictions most often used in practice. The combinations are presented below through the serial number of the prohibition in the content of Part 6 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation in descending order.

- **Model A:** (universal model): combination of prohibitions “1 + 3-5” – 59.9 %;
- **Model B:** (prohibition of communications): combination of prohibitions “3-5” – 13.7 %;
- **Model C:** combination of prohibitions “1 + 2 + 3-5” – 11.5 %;
- **Model D:** prohibition “1” – 5.1 %;
- **Model E:** combination of prohibitions “2 + 3-5” – 3,6 % .

The distribution frequency of a given set of combinations consistently appears in each of the given time periods and is a stable trend, which can be seen in the example of the table.

The statistical analysis conducted has revealed *a uniform frequency in distribution of prohibition models in relation to the corpus delicti and personal characteristics of the accused*¹⁸¹. This implies that the aforementioned regularity manifests with overwhelming frequency *in any procedural situation regardless of direct and strict dependence on the actual circumstances (corpus delicti, gender, marital status, etc.)*.

¹⁸⁰ Annex № 4.

¹⁸¹ Annex № 5.

In other words, the rationale behind the implementation of the selection mechanism for the prohibition of certain actions in practice is the legislative rule on the selection of a less strict preventive measure if such a possibility exists. Concurrently, the implementation of this rule occurs subsequent to the selection of a more stringent preventive measure upon the expiration of its validity.

The regularities observed in the implementation of the prohibition mechanism are based on the systematic intention of higher courts to utilize alternatives to detention. However, as evidenced by legal precedents, this does not preclude the possibility that remand in custody remains the primary preventive measure to be employed in fact.

This feature is not a shortcoming but rather a peculiarity of the procedural mechanism for the selection of restraining measures, since it is the social danger of the incriminated crime that is the primary factor in determining the further possible behavior of the accused. The desire to protect society to a greater extent from the presumed negative consequences of such behavior is quite natural.

In this regard, the legislature's efforts to establish explicit exceptions to the use of remand in custody can be regarded as fully justified. The amendments introduced in 2023 established a definitive list of circumstances under which remand in custody may be ordered (part 1.1 article 105.1 of the CPC RF), as well as a mandatory procedure for the consideration of such a preventive measure, which will allow for the continuation of business activities (part 2 article 99 of the CPC RF)¹⁸². However, such a regulatory order of legal regulation rightly causes discussions regarding the allocation of "privileged" participants of legal proceedings and will be appropriate only in exceptional cases, as it is undertaken to stimulate the development of economic relations.

As another way of regulation, we put forward proposals to increase judicial initiative in the selection of restraining measures, including the formulated mechanism of selection of restraining measures with the prohibition of certain actions and

¹⁸² Federal Law of 13 June 2023 217-FZ «On the introduction of amendments to the Criminal Procedure Code of the Russian Federation». «Guarantor».

methodological recommendations for its application, as well as a model approach to the selection of restrictions¹⁸³.

The essence of the model approach consists in the selection of restrictions depending on the establishment of the legal protection object, taking into account the other circumstances of the crime committed and the personality of the suspect or accused.

The selection of each of the prohibitions of certain actions is conditioned by the need to prevent the negative impact on the course of criminal proceedings on the part of the person under investigation. *In this case prevention is based on the assessment and analysis of the personality of the accused and the connection with the incriminated act, which correlates with the issue of predicting criminal behavior.*

In turn, forecasting is based on “an analysis of the patterns of development of criminal situations associated with the commission of various crimes...”¹⁸⁴ and is a probabilistic judgment about “trends in the development of crime, its determinants and consequences, the identity of a criminal, as well as measures to prevent crime”¹⁸⁵.

Despite the fact that the object of analysis in the presented criminological and criminal procedural forecasting is a different procedural subject, a convicted criminal versus a suspect and accused, the application and appeal to criminological forecasting are possible. Consequently, all methods and types of forecasting can be implemented in respect of the purposes of imposing preventive measures.

The theory of criminological forecasting uses a category that is also referred to as “mechanism,” namely, the *criminal behaviour mechanism*. It is understood as “the connection and interaction of external factors of objective reality and internal, mental processes and states that determine the decision to commit a crime, direct and control its execution”¹⁸⁶. In contrast to predicting general patterns of crime development, the

¹⁸³ Annex № 30.

¹⁸⁴ Abyzov R. M., Aliev V. M. et al. Criminology and crime prevention (textbook) / under the general editorship of Doctor of Law, Prof. V.I. Gladkikh. “JUSTICE”, 2019 // SPS “Garant” legal reference system.

¹⁸⁵ Criminology: textbook / under the editorship of V.D. Malkova. M.: Justitsinform, 2006. P. 112.

¹⁸⁶ Kudryavtsev V. N. The mechanism of criminal behaviour (chapters by Kudryavtseva V. N.) / V. N. Kudryavtsev. M.: Norma; Infra-M; Znanium.com, 2016. P. 30.

mechanism of criminal behaviour is concentrated on the individual personality of the offender, the reasons for the deformation of his/her internal psychological processes of motivation and decision-making, the distortion of his/her life plans¹⁸⁷, which leads to criminal behaviour.

To consider the mechanism of prohibition of certain actions under study, in this context we should use the concept of “criminal behaviour” instead of the concept of “unlawful behaviour” as it is more consistent with the procedural status of the accused. However, the implementation of such illegal behaviour in objective reality is based on the same psychological patterns.

These psychological foundations of committing a crime, according to the position of V.N. Kudryavtsev, form three main links in the mechanism of a criminal act, motivation, planning and fulfilment. The objective content of an unlawful act is formed by the nature of the actions, that a criminal commits, and the changes, that occur in a specific situation in which the criminal acts. Subjective content is created in the form of motive, intent of criminal behaviour and accompanies it from the beginning to the end of a criminal act¹⁸⁸. Similar categories can be applied in resolving the issue of forecasting offences on the part of the accused.

An analysis of an individual’s behaviour when selecting prohibitions must be inextricably linked with objective circumstances confirmed by evidence in a criminal case¹⁸⁹. An exhaustive list of such circumstances can be considered a special subject of proof when imposing a preventive measure¹⁹⁰.

Thus, the selection of the most appropriate combination of restrictions and prohibitions on certain actions is based on the circumstances relating to the subject of proof as follows:

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¹⁸⁹ Kostenko D. S. Effectiveness of criminal procedural prohibitions of certain actions against suspects and accused of crimes involving destruction or damage property // Vestnik Sibirskogo yuridicheskogo instituta MVD Rossii. 2022. № 4(49). P. 235-237.

¹⁹⁰ Ustinov A. A. Proof when the court considers criminal case files during pre-trial proceedings: synopsis of thesis... PhD in Law. M., 2022. P. 11, 13.

a) moral, psychological, demographic, intellectual, role-based and other characteristics; features of the crime and the contextual situation (favourable, neutral, unfavourable, excluding the consummation of crime.

b) type of criminal act;

c) type of criminal consequences (property-related, physical, moral, political, organisational, environmental; grave consequences, especially grave consequences, large size, especially large size, large damage, especially large damage, significant size, significant damage, substantial size; simultaneous and lasting)¹⁹¹.

d) *modi operandi* of criminals;

e) instrumentality (crime instruments; weapons; vehicles and other technical equipment, mechanisms; documents; substances; animals; enterprises; information and its material media; computer hardware and software)¹⁹².

f) location of the crime

g) time of the crime (time of year, time of day, emergency event, natural disaster);

h) crime situation;

i) assessment of the internal mental state (personal interest, needs and emotions (self-interest, sexual desire, cowardice, jealousy, revenge etc.), altruism etc.);

j) imputed guilt.

The proposed factual circumstances reveal categories such as *the identity of the suspect, the accused, and the circumstances of the crime committed*. Another key category affecting the mechanism for limiting certain actions is *the public interest, subject to legal protection*. In this context, public interest as an object of legal protection coincides with the object of crime, or more precisely, the type of object of crime, as the narrowest group of social relations.

It is important to note that, according to article 105.1 of the CPC RF, the application of one of the prohibitions of certain actions is directly related to the object

¹⁹¹ Loparev D. A. Types of classifications of socially dangerous consequences // Business in law. 2007. No. 2. P. 81.

¹⁹² Khlus A. M. Means of committing crimes as an element of their forensic structure // Russian law: education, practice, science. 2018. No. 1. P. 30-31.

of the criminal offense and implies a direct dependence in the possibility of its selection. This concerns the prohibition to drive a vehicle which can be applied only in the presence of charges related to the violation of vehicle operation.

It can be argued that the determination of the legal protection object is a direct and primary circumstance for the selection of specific restrictions. This is because the object of legal protection coincides with the essence of the incriminated act and the purpose of selecting a preventive measure.

The analysis of legal precedents allows for the differentiation of the corpus delicti of crimes for which the prohibition of certain actions was selected as a preventive measure¹⁹³.

Crimes against property (articles 158, 159, 159.5, 160, 161, 162, 163 of the Criminal Code of the Russian Federation) – 45%.

The specific object of crimes against property is the formation of property relations, which are constituted through the appropriation and circulation of material goods. In certain instances of criminal activity, such as robbery, the additional object of the crime is the human life and health of the victim. The protection of protected rights can be ensured through the imposition of restrictions on the movement of individuals outside their place of residence at specific times, limitations on communication, a prohibition on visiting locations with a high concentration of people, a prohibition on approaching the scene of a crime, and the storage of documentation related to the commission of a crime.

Crimes against public health and morals (articles 228, 228.1, 238 of the Criminal Code of the Russian Federation) – 12.3%.

The prevention of encroachment on the object of legal protection in crimes against public health and public morals can be achieved by limiting communication with accomplices of the crime, prohibiting the individual from leaving their residential premises during the majority of the day, and prohibiting the individual from visiting establishments related to the sale of alcoholic beverages and entertainment venues.

¹⁹³ Annexes № 5, 6.

Crimes against state power, interests of state service and service in local self-government bodies (articles 286, 290 and 291 of the Criminal Code of the Russian Federation) – 6.9%.

Protecting the object of legal protection when investigating crimes against state power and service in local self-government bodies can be ensured through the imposition of restrictions on communication with accomplices of the crime, persons who are in official dependence on the suspect, accused, prohibition to use communication means and communication networks, Internet, prohibition to approach the place of performance of official duties, certain state institutions.

Crimes against life and health (articles 105, 111 of the Criminal Code of the RF) – 6.7%.

In cases of crimes against life and health, the protection of the object of infringement can be ensured by prohibiting communication with the victims and their close relatives, as well as by limiting the ability of accused to approach their place of residence, work, and study, prohibition from leaving residence at certain times.

Crimes against the traffic safety and transport operations (articles 264, 264.1 of the Criminal Code of the RF) – 4.3%.

The key limitation capable of ensuring the protection of the legal protection object for the duration of the investigation is the prohibition to operate a vehicle. This prohibition may be reinforced by a prohibition on communication with the victim and approaching his property in the event that circumstances are established indicating a risk of negative impact from the accused.

Crimes in the sphere of economic activities (against the interests of entrepreneurship) (articles 171.2, 172 of the Criminal Code of the Russian Federation) – 2.9%.

In this case, the protection of rights can be achieved through the imposition of a prohibition on leaving the residential premises during a specified period of time, as well as the restriction of communication through various means. Additionally, the

prohibition on approaching the locations where illegal activities occur, as well as the premises used for this purpose, can serve to safeguard the rights of those involved.

Thus, the following conclusions can be drawn.

1). The primary elements of the implementation of the prohibition mechanism of certain actions are each of the restrictions set forth in part 6, article 105.1 of the CPC RF. The aforementioned elements are represented by a modified statutory provision, which represents a novel and a basis for changed legal relations in contrast to the procedural procedure for selecting restraining measures which has remained unchanged.

2) Models of prohibitions of certain actions are a key element in the implementation of the criminal procedural mechanism of selection and application of restraining measures according to articles 105.1–107 of the CPC RF. The precise identification of combinations applied in practice allows forming the main trends in the application of restraining measures alternative to detention.

3) Implementation of restraining measures with prohibition of certain actions in practice mainly occurs after the change of a more stringent preventive measure. This allows asserting the need to create conditions for the initial application of measures not related to isolation from society based on the developed algorithms and methodological recommendations.

CHAPTER 3. EFFECTIVENESS OF APPLYING PROHIBITIONS OF CERTAIN ACTIONS THROUGH SELECTING AND APPLYING PREVENTIVE MEASURES

3.1. Concept and classification of errors in the selection and application of preventive measures with a prohibition on certain actions

In the theory of errors in criminal proceedings, an investigative and judicial error is understood as “an unlawful or unreasonable action or inaction of subjects conducting a criminal trial that does not contain any signs of criminal acts, expressed in the incompleteness, one-sidedness and bias of the investigation by the specified subjects of the circumstances of the criminal case, non-compliance with constitutional rights and freedoms of man and citizen, as well as international standards of fair justice, a significant violation of the criminal procedural law, incorrect application of the criminal law corresponding to their subjective attitude towards the purpose of criminal proceedings and objectively preventing its normatively specified achievement in view of receiving (or the possibility of receiving) an incorrect procedural result (ruling)¹⁹⁴.

The procedural arrangements for imposing preventive measures with a prohibition on certain actions are carried out through the exercise of their powers by various parties to criminal proceedings within the framework of the judicial control procedure. The key parties to this proceeding are the interrogating officer, investigator and court, who draw up preliminary (formulated in the form of a motion from the investigator, interrogating officer) and final (formulated in the form of a judge’s resolution, court ruling) restrictions.

Considering the fact that the decision to a prohibition on certain actions is imposed based on the judicial control results, it is judicial errors that will provide the basis for considering the entire complex of errors in the selection and application of a

¹⁹⁴ Nazarov A. D. Op. cit. P. 41.

prohibition on certain actions. This approach does not exclude the analysis of errors of other subjects - the interrogating officer, investigator, prosecutor, head of the investigative body, head of the inquiry unit and inquiry body. We identified investigative errors earlier when considering the mechanism for selecting a prohibition on certain actions.

The selection and application of preventive measures with a prohibition on certain actions is based on the purposes of selecting these measures and the individual circumstances of the criminal case that allow their selection. The imposition of a prohibition on certain actions contrary to the goals (grounds) established in Article 97 of the Code of Criminal Procedure of the Russian Federation, means the illegal nature of the selection of preventive measures and should lead to the cancellation of their effect. The selection of a prohibition of certain actions contrary to proper consideration of the circumstances of the criminal case means the fact of the unreasonable use of criminal procedural coercion and should lead to a change in the prohibition of certain actions.

The previously formulated concept of a mechanism of selection and application of prohibitions of certain actions allows us to believe that incompleteness, one-sidedness and bias will provide the basis for an error in the inaccuracy of the study of the circumstances of the personality of the accused, the crime committed and the public interest protected by law. Taking into account negative criteria for assessing the circumstances of a criminal case is of particular importance when prohibiting certain actions. The differentiated nature of preventive measures and the existence of a list of various prohibitions increases the degree of focus on objectivity factors. At the same time, the completeness, comprehensiveness and objectivity of the assessment of evidence have always been of decisive importance in matters of applying preventive measures.

When considering the practice of applying preventive measures by courts, the Plenum of the Supreme Court of the Russian Federation notes that the right to freedom is a fundamental human right, and its limitation in accordance with the Constitution of

the Russian Federation is possible only to the extent that it is necessary for the purposes specified by law and in accordance with the procedure established by law¹⁹⁵.

Consequently, a prohibition on certain actions can be exclusively applied in the manner provided for in Article 105.1 of the Code of Criminal Procedure of the Russian Federation. It is unacceptable to impose other restrictions not provided for by law when choosing to prohibit certain actions.

A prohibition on certain actions are imposed and the duration of the prohibitions are extended in the manner prescribed for placement in detention.¹⁹⁶ This determines the high legal standard that ensures individual rights when applying a prohibition on certain actions.

Therefore, *the standard for ensuring the rights of the accused when choosing to prohibit certain actions can be expressed in the provisions as follows.*

1) It is possible to impose preventive measures with a prohibition on certain actions if there is a reasonable suspicion of committing a crime;

2) A prohibition on certain actions can be chosen only when considering the possibility of using another milder preventive measure;

3) It is unacceptable to impose a prohibition on certain actions in the absence or unreliability of the grounds for imposing a preventive measure;

4) The severity of a crime when imposing a prohibition on certain actions and the definition of types of prohibitions should be taken into account along with information on the identity of the accused, his age, state of health, marital status, occupation and other circumstances;

5) A preventive measure prohibiting certain actions cannot be applied if there are circumstances that preclude its use;

¹⁹⁵ Resolution of the Plenum of the Supreme Court of the Russian Federation dated 19 December 2013 No. 41 *Practices of Courts Applying Legislation on Preventive Measures in the Form of Detention, House Arrest, Bail and Prohibition of certain Actions.*

¹⁹⁶ Review of the practice of courts considering petitions to impose a preventive measure in the form of detention and to extend the term of detention (approved by the Presidium of the Supreme Court of the Russian Federation on 18 January 2017)

6) The petition for imposing a preventive measure with a prohibition of certain actions and the documents attached to it must comply with the quality of preparation of trial files provided for by law. It is unacceptable to provide incomplete or unreliable information on the identity of the suspect or accused; failure to indicate any information confirming that the person was hiding or could hide from the preliminary investigation authorities, to commit the actions listed in Part 1 of Article 97 of the Code of Criminal Procedure of the Russian Federation, as well as the term for which the preventive measure is imposed; violation of deadlines for submitting a petition.

7) Extension of the prohibition provided for in clause 1, Part 6, Article 105.1 of the Code of Criminal Procedure of the Russian Federation, must be supported by sufficient circumstances, since such circumstances may become irrelevant over time;

8) The need to carry out investigative actions in itself cannot act as the only and sufficient basis for extending the term of validity of the prohibition provided for in clause 1 of Part 6 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation;

9) Specific circumstances indicating the need to extend the period of validity of the prohibition provided for in clause 1 of Part 6 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation should be established each time when the period of validity of a preventive measure is extended;

10) It is necessary to check compliance with the procedure for filing a petition to extend the prohibition provided for in clause 1 of Part 6 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation.

Both national and international standards of respect for constitutional human rights and fair justice ensure the correctness and objectivity of a procedural decision, the achievement of procedural goals and the correct result. Violation of these standards will be an error in selecting and applying preventive measures with a prohibition of certain actions.

An analysis of investigative and judicial practice has shown that errors in the selection and application of a prohibition on certain actions are mainly in the plane of

criminal procedural relations without covering all the patterns of errors that arise during the passage of a criminal case through all stages of the criminal process. Therefore, the provisions of the general theory of errors in criminal proceedings should be adapted to this specificity.

For relations arising in connection with the selection and application of preventive measures with a prohibition on certain actions, we propose to single out *procedural* and *substantive errors*.

A *procedural error* is an unintentional violation of the criminal procedural law consisting in failure to fulfil or improper fulfilment of its provisions by the subject conducting the criminal process, recognised as such by the competent authority in a corresponding regulatory document¹⁹⁷. Taking into account the fact that the selection and application of any preventive measure is entirely within the framework of criminal procedural relations, we will specify the proposed approach to understanding a procedural error. By a procedural error in selecting and applying a prohibition on certain actions, we primarily mean a violation of the criminally-remedial order.

We associate the *substantive error* in selecting and applying preventive measures with a prohibition on certain actions to the incorrect interpretation by a competent authority of the content of the preventive measures when applying them. For example, an incorrect interpretation may consist in applying restrictions not provided for by the criminal procedure law, a discrepancy between the meaning of the terms used in the decision and that intended by the legislator etc.

Our analysis of court rulings on the application of a prohibition on certain actions for 2018–2024 made it possible for us to identify several groups of **substantive errors**.

The first group is errors associated with the court's imposing restrictions on the accused that are not provided for by law.

1) Imposing on the accused an unintended prohibition on leaving the territorial entity. Clause 1 of Part 6 of Article 105.1 of the Code of Criminal Procedure

¹⁹⁷ Baranov A. M. Procedural errors committed at the stage of completion of the preliminary investigation and ways to eliminate them. Omsk, 1996. P. 11.

of the Russian Federation establishes sanctions against the accused in the form of a prohibition “to leave the residential premises in which he/she lives as the owner, tenant or on other legal grounds at certain periods of time.” The rule of law clearly defines the territorial limit for the accused in the form of residential premises and is not subject to broad interpretation.

At the same time, in the judicial practice we studied, in 14.2% of decisions, the courts imposed restrictions not provided for by law, which significantly expand the limits established by law. For example, to go beyond the boundaries of a city district (in 6 rulings), a city (the error occurred in 71 rulings), a region of a constituent entity of the Russian Federation (in 1 ruling), a constituent entity of the Russian Federation (in 4 rulings), the boundaries of a federal district of the Russian Federation (in 2 rulings), cross the border of the Russian Federation (in 4 rulings).

Based on the decisions of the highest courts, we have studied, it can be argued that such prohibitions are erroneous and consist in a broad interpretation of the law. This practice was recognised as erroneous by decisions of higher authorities.

For example, the Kursk Regional Court changed the preventive measure in the form of a prohibition on certain actions, and the prohibition on traveling outside the city of Kursk, Kursk region, was excluded. In support of the decision, the court stated that “based on the meaning of the provisions of Part 6 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation, the list of prohibitions, that can be imposed on a person is exhaustive, and the prohibition on traveling outside the territory of the municipality, which was imposed on I.N. Tsibulsky, is not provided for by this legal provision. In this connection, the appellate court considers it necessary to exclude from the court ruling the assignment to I.N. Tsibulsky of the said prohibition”¹⁹⁸. In this case, the appeal was submitted by the defendant.

The Voronezh Regional Court in a similar case noted that “the imposition of a prohibition on leaving the city of Voronezh without the permission of the investigator or the court is not provided for in Part 6 of Article 105.1 of the Code of Criminal

¹⁹⁸ Appeal ruling of the Kursk Regional Court dated 23 August 2019 in case No. 22-1263/2019.

Procedure of the Russian Federation, in connection with which the imposition of this prohibition is subject to exclusion from the court ruling. Instead, in accordance with clause 1 of Part 6 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation full name is subject to a prohibition on leaving the residential premises located at (“address”) at night (from 22:00 to 6:00)”¹⁹⁹.

A direct analysis of the files of criminal cases on the imposition of preventive measures by district courts of Krasnoyarsk made it possible to establish a similar error in 22.4% of court rulings²⁰⁰. It should be noted that a prerequisite for the occurrence of this miscarriage of justice can be considered the presence of unforeseen prohibitions in the petition of the investigator or interrogating officer. In the studied files of criminal cases, in 34.5% of cases there were petitions from the investigator to impose a prohibition on certain actions containing this error²⁰¹.

This error is also identified through the prosecutor’s engaging in selecting a prohibition on certain actions.

For example, by a ruling of the Primorsky Regional Court, the prosecutor’s appeal regarding the exclusion for the accused from the prohibition on leaving the Primorsky Territory was granted.

The court noted that “the list of prohibitions specified in Part 6 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation is exhaustive; therefore, imposing on the suspected G.RM a prohibition on his/her presence outside the Primorsky Territory until the cancellation or change of the preventive measure in the form of a prohibition on certain actions does not correspond to the provisions of the above norm of the criminal procedure law and is subject to exclusion from the number of prohibitions established by the court of first instance, in connection with which the appeal in this part is subject to satisfaction”²⁰².

The study of judicial practices discovered a different approach.

¹⁹⁹ Appeal ruling of the Voronezh Regional Court dated 18 October 2019 in case No. 22K-2550/2019.

²⁰⁰ Annex № 26.

²⁰¹ Annex № 25.

²⁰² Appeal ruling of the Primorsky Regional Court dated 24 December 2021 in case No. 22K-5262/2021.

Thus, the court of first instance imposed a prohibition on the accused from leaving the city of Krasnodar without permission and notification of the investigative authorities. In the appeal, the lawyer asked to change the preventive measure and pointed out that the accused, in agreement with the investigator, repeatedly travelled to Moscow. In their ruling, the court “believes it is possible to satisfy the appeal in terms of changing the prohibitions previously imposed on A.S.Ya. thereby allowing A.S.Ya. trips to Moscow with notification of investigative authorities. At the same time, the appellate court considered it necessary to indicate that the specified trips of the accused were carried out at a time that did not interfere with the conduct of investigative actions”²⁰³.

Based on the interpretation of legislation and judicial practices, this approach can be considered erroneous. The initial basis for the error is the imposition of an unforeseen prohibition on leaving the city of Krasnodar, which is a substantive miscarriage of justice. Taking into account the fact that the preventive measure was extended in this format, it is necessary to highlight the investigator’s mistake in preparing the petition, as well as the prosecutor’s mistake in maintaining the position on the need to impose this preventive measure. A change in the preventive measure in terms of providing the accused with the opportunity to travel to Moscow does not correct the error but continues its effect.

The justification for the depravity of this approach can also be presented through the interpretation of the meaning of the prohibition of certain actions and restrictions on leaving the residential premises. The use of a prohibition on certain actions makes it possible to determine the time of isolation and the time during which the accused can carry out socially useful activities outside of isolation. This possibility is absent when more stringent measures, house arrest and detention, are used. In this case, there is no need to determine or regulate the accused person’s free time or limit their movement in space. For example, the accused person’s work activities associated with movement

²⁰³ Appeal ruling of the Krasnodar Regional Court dated 11 November 2019 in case No. 22K-7816/2019.

between populated areas may not have a negative impact on the criminal proceedings and therefore is not subject to restrictions.

In this case, a special role is played by the obligation to appear when summoned by the inquirer, investigator and court, as provided for by the prohibition of certain actions. Imposing such a duty on the accused person implies his/her willingness to communicate with law enforcement agencies and the court. In this case, issues associated with regulating the free movement of the accused person throughout the country do not pose a particular problem.

The analysis shows that some of the common mistakes of this group relate to existing legitimate restrictions from foreign legislation. The most significant of these restrictions *is the prohibition to travel outside a certain area*. In the sense of its coercive effect, this restriction is fully consistent with the objectives inherent to the institution of preventive measures. According to the results of a survey of practitioners, this restriction was also highlighted as one of the most in demand for implementation into domestic legislation (45.9% of respondents said it would be introduced). On this basis, it may be assumed that in some cases certain typical substantive errors of judicial practice are not contrary to the principles of the institution of preventive measures and other sections of Russian law, can be seen as a prerequisite for improving the legislation in terms of introducing new restrictions (bans) to its content.

2) The selection of a prohibition not provided for by law to change the place of residence. We determine that the law enforcement officer's approach to imposing such a restriction is erroneous for the same reasons as the previous type of errors, due to the lack of indication in Article 105.1 of the Code of Criminal Procedure of the Russian Federation restrictions in the form of a prohibition on changing place of residence. In some decisions, unintended bans on leaving the city and changing one's place of residence were applied simultaneously.

In the practices of higher courts, the application of this prohibition is also considered an error, which leads to its cancellation and a change in the preventive measure.

For example, the Kaliningrad Regional Court stated in its ruling that “the prohibition applied to the accused - not to change the place of residence indicated in the ruling without the written permission of the investigator, is not provided for by the above provisions of the law, and therefore is subject to exclusion from the ruling”²⁰⁴.

This error also occurs in applying house arrest. Article 107 of the Code of Criminal Procedure of the Russian Federation contains an indication that a court ruling on the imposition of house arrest shall indicate the prohibitions established in respect of the suspect and accused. In accordance with Part 7 of Article 107 of the Code of Criminal Procedure of the Russian Federation, the only prohibitions that can be applied during house arrest are the prohibitions provided for in clauses 3–5 Part 6 Article 105.1 of the Code of Criminal Procedure of the Russian Federation (prohibitions on communication).

It can be assumed that the improper practice of applying a prohibition not provided for by law not to change living quarters without the permission of the investigator when imposing a prohibition on certain actions originates from the improper practice of applying house arrest. A connecting element in this regard is the prohibition to leave the living premises. Based on this, the decision-making official seeks to limit the possibility of abuse by the accused and prevent the change of home not designated as a place of isolation.

Attention to this error with the example of house arrest highlights the differences between restrictions in the form of complete and partial isolation and the procedure for their legal registration. The choice of a prohibition not to change the place of residence can be considered inappropriate if the accused is completely isolated in the form of house arrest. Complete isolation limits any activities outside the living space. Obviously, if you change your place of residence and move outside of it, the prohibition will be violated.

However, when a duty in the form of partial isolation in residential premises is imposed, the accused remains associated with certain premises only for certain periods

²⁰⁴ Appeal ruling of the Kaliningrad Regional Court dated 11 July 2019 in case No. 22K-1200/2019.

of time. It is not difficult to fulfil this duty in this format if the accused is prohibited from leaving the premises at night, when sleep is expected. At the same time, the law does not prohibit the establishment of several periods of time during which the accused is prohibited from leaving the residential premises. For example, during the time periods from 09:00 to 12:00, from 14:00 to 16:00 and from 22:00 to 09:00. In this case, the accused person is obliged to return to certain residential premises during these periods of time without leaving that place.

Consequently, if the accused own several residential premises, their obligation not to change their place of residence may be additionally explained to them. An indication of this obligation may be reflected in Article 105.1 of the Code of Criminal Procedure of the Russian Federation and find expression in the decision to prohibit leaving the residential premises at a certain time.

3) Imposition of the prohibition to abstain from using intoxicating substances not provided for by law.

For example, the Moscow City Court, when changing the preventive measure from house arrest to a prohibition on certain actions imposed on the accused a prohibition on “using alcohol or drugs”²⁰⁵. It is noteworthy that from the files examined by the court, the accused can be characterised as “a caring mother who is fully involved in raising her children, while she is balanced, calm, and rarely drinks alcohol.”

A similar prohibition was subject to consideration in the Sovetsky District Court of the Republic of Crimea, which provided a reason for filing an appeal by the head of the Kirov intermunicipal branch of the Penal Enforcement Inspectorate of Russia for the Republic of Crimea and the city of Sevastopol. The court of first instance imposed a prohibition on the accused “not to use narcotic or psychotropic substances and alcoholic beverages without medical indications.”²⁰⁶ The appellate court with reference to Part 7 of Article 105.1 of the Code of Criminal Procedure of the Russian

²⁰⁵ Appeal ruling of the Moscow City Court dated 14 September 2021 in case No. 10-18480/2021.

²⁰⁶ Decision of the Soviet District Court of the Republic of Crimea dated September 02, 2019. in case 4-17-21/2019.

Federation indicated that the court ruling “in terms of the prohibition of using narcotic or psychotropic substances and alcoholic beverages without medical indications is not subject to execution.”

At the same time, in the operative part of the award, the appeal court did not cancel the prohibition but pointed out the need to clarify that the accused may not comply with a prohibition not provided for by law. In this example, the court does not find it necessary to make a decision to cancel the restriction, since such a restriction does not exist from the point of view of the law. On the other hand, analysis of this situation makes it possible for us to note that restrictions not provided for by law may, quite reasonably, not be followed by the accused, and coercion to comply with them will be an illegal violation of individual rights and freedoms. In our opinion, the approach taken by the appellate court in resolving this error should be considered correct.

4) Imposition of prohibition to engage in certain activities not provided for by law. A preventive measure in the form of a prohibition on certain actions does not provide for any prohibitions limiting the activities or individual actions of a person. The activities are work, occupation in an area²⁰⁷ and action is the influence by a subject on an object.

It will be an error to restrict actions or activities that are not specified in the content of Article 105.1 of the Code of Criminal Procedure of the Russian Federation.

In one of the rulings by the court of first instance, when extending the validity period of a preventive measure in the form of a prohibition on certain actions, along with other prohibitions, a prohibition on engaging in entrepreneurial activities was imposed²⁰⁸. The court determined the following circumstances for imposing this preventive measure, the identity of the accused, his/her age, marital status, charges of

²⁰⁷ Small academic dictionary by Evgenieva A.P. [Electronic resource] // URL: <https://lexicography.online/explanatory/mas/%D0%B4/%D0%B4%D0%B5%D1%8F%D1%82%D0%B5%D0%BB%D1%8C%D0%BD%D0%BE%D1%81%D1%82%D1%8C> (access date 07.11.2022).

²⁰⁸ Ruling of the Kansk City Court of the Krasnoyarsk Territory dated 12 March 2020 in case No. 3-14-5/2020.

committing a crime classified as serious, the existence of real estate on the territory of another constituent entity of the Russian Federation.

In this example, the accused was the director of Department Zaimov LLC and the director of the Bystrye Dengi credit consumer cooperative; he was charged with a crime relating to the theft of funds when receiving payments in the form of maternity (family) capital, as provided for in Part 4 of Article 159.2 of the Code of Criminal Procedure of the Russian Federation.

Currently, the only restrictive measure, that can directly limit a person's ability to engage in certain activities, is temporary removal from office. Other preventive measures may indirectly limit a person's ability to engage in certain activities, for example, through isolating the person from society and means of communication.

In accordance with the position of the Constitutional Court of the Russian Federation, the use of a restrictive measure in the form of temporary removal from office is possible against the director of a for-profit enterprise subject to guarantees of legality, validity and procedure for its application²⁰⁹.

Consequently, in this case, the prohibition on engaging in entrepreneurial activities could be replaced by another restrictive measure in the form of temporary removal from office. The law does not indicate the impossibility of simultaneously applying a preventive measure with other restrictive measures; therefore, in this example, their complementarity may occur through the use of a prohibition on certain actions and temporary removal from office.

However, during the investigation, a situation may arise when the accused has the status of an individual entrepreneur without having the status of being in a certain position. In this case, the accused during the preliminary investigation should be restricted with available restrictive measures, among which there is no prohibition on engaging in business activities. The emergence of these procedural situations confirms

²⁰⁹ Ruling of the Constitutional Court of the Russian Federation dated 27 June 2017 No. 1179-O "Refusal to Accept for Consideration the Complaint of Citizen Vladimir Arturovich Fuks about the Violation of his Constitutional Rights by Clause 3 of Part One of Article 111, Parts One, Two, Three and Six of Article 114 and Part One of Article 165 of the Criminal Procedure Code of the Russian Federation."

the relevance of questions about the restructuring of the entire institution of restrictive measures²¹⁰ and the possibility of a prohibition on carrying out certain activities as part of a preventive measure in the form of a prohibition on certain actions.

The second group is represented by errors associated with not having in the court ruling an indication of the obligation for the accused to appear when summoned by the interrogating officer, investigator and to court.

In accordance with Part 1 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation, one of the components of the preventive measure in the form of a prohibition on certain actions is the obligation of the suspect and accused to promptly appear when summoned by the interrogating officer, investigator or to court.

In accordance with Part 7 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation, a ruling on the prohibition of certain actions must necessarily include an indication of the obligation for the accused to appear independently.

1) Failure to indicate in a court ruling the obligation for the suspect or accused to appear independently will be an error, since the preventive measure has not been imposed in full.

In one of the rulings of the Kaliningrad Regional Court, this error was recognised as a significant violation of the criminal procedural law, which cannot be eliminated in the court of appeal; therefore, the ruling of the court of first instance on the selection of a prohibition on certain actions is subject to cancellation, and the material is to be transferred to a new one trial by another court²¹¹.

The Krasnodar Regional Court, in a similar situation, changed the ruling of the court of first instance and indicated the need to include the obligation to appear for the accused, by citing the fact that failure to indicate such an obligation in the ruling “may lead to doubts and ambiguities in the execution of the ruling”²¹².

²¹⁰ Mandzhieva E. V. Classification of restrictive measures: from a “mixed” criterion to connection with a security object // Current issues of the Russian law. 2020. No. 15(3). P. 154-165.

²¹¹ Appeal ruling of the Kaliningrad Regional Court dated 22 June 2020 in case No. 22K-988/2020.

²¹² Appeal ruling of the Krasnodar Regional Court dated 29 September 2020 in case No. 22K-6244/2020.

This error also became the reason for consideration of the ruling in the cassation instance on a submission from the public prosecutor.

Thus, the Deputy Prosecutor of the Republic of Tatarstan, in a cassation submission, suggested that the absence in the ruling of the obligation for an independent appearance of the accused actually makes the prohibition of certain actions not selected. The Sixth Court of Cassation of General Jurisdiction agreed with these conclusions, and therefore cancelled the appealed ruling and sent the files for a new trial to the court of first instance²¹³.

2) Lack of distinction between the terms “obligation” and “prohibition” in rulings concerning prohibitions on certain actions.

The importance and procedural significance of distinguishing between the concepts of “obligation” and “prohibition” when imposing a prohibition on certain actions can be confirmed by the example of court rulings in which courts identified these concepts.

For example, the operative part of the ruling of the Zheleznodorozhny City Court of the Moscow Region contained an indication of the establishment of the “types of prohibitions” as follows, “1. To oblige N.Yu. Chistyakov appear promptly when summoned by the investigator and to court. 2. Not to go out during the period of time...”²¹⁴.

There is a practice of recognising such an interpretation as erroneous by higher courts.

The Supreme Court of the Republic of Crimea in its ruling indicated that going beyond the limits set out in Part 6 of Article 105.1 of the Code of Criminal Procedure

²¹³ Determination of the Investigative Committee for criminal cases of the Sixth Court of Cassation of General Jurisdiction dated 2 June 2020 in case No. 7Y-3475/2020[77-884/2020]. In a similar way, the duty to appear was interpreted by the courts in the rulings as follows: Appeal ruling of the Supreme Court of the Republic of Sakha (Yakutia) dated 14 February 2020 in case No. 22-323/2020; Appeal ruling of the Supreme Court of the Republic of Crimea dated 24 December 2021 in case No. 22K-3819/2021; Appeal ruling of the Voroshilovsky District Court of Volgograd, Volgograd Region dated 18 November 2021 in case No. 10-9/2021.

²¹⁴ Ruling of the Zheleznodorozhny City Court of the Moscow Region dated 14 January 2020 in case No. 1-24/2020

*of the Russian Federation, prohibitions contradict reasonableness and interfere with the conduct of a preliminary investigation in a criminal case involving the accused*²¹⁵.

Another example of incorrect interpretation can be found in the ruling of the Krasnodar Regional Court.

*In the operative part, the court, when specifying a list of prohibitions and restrictions, consolidated them through the instruction as follows, “to allow independent appearance before the investigator and in court to carry out investigative actions, which should be carried out in agreement with a supervisory authority”*²¹⁶.

From this interpretation it follows that the obligation is indicated in the list of prohibitions and restrictions, but is interpreted as a “permission”, which does not correspond to the meaning of the prohibition of certain actions as a preventive measure that implies mandatory obligations. In our opinion, such an interpretation may also lead to uncertainty in understanding the prohibitions, and, consequently, failure to comply with the preventive measure.

Thus, in the operative part of the ruling on imposing a prohibition on certain actions, the obligation of the suspect or accused to appear when called by an official must be formalised separately as an independent restriction, which is an integral part of the prohibition on certain actions, along with the prohibitions provided for in Part 6 of Art. 105.1 of the Code of Criminal Procedure of the Russian Federation.

The third group of substantive errors is represented by errors associated with the use of incorrect terminology when applying a prohibition on certain actions.

Unlike the errors of the previous group, the incorrect use of terminology is not directly related to the essence of the restrictions that are provided for in Article 105.1 of the Code of Criminal Procedure of the Russian Federation. These errors are related to the stylistic design of court rulings but they can also complicate their execution.

For example, the court of the Khanty-Mansiysk Autonomous Okrug in the operative part upheld the ruling to impose a preventive measure in the form of

²¹⁵ Appeal ruling of the Supreme Court of the Republic of Crimea dated 24 February 2022 in case No. 22K-706/2022.

²¹⁶ Appeal ruling of the Krasnodar Regional Court dated 21 September 2020 in case No. 22K-6194/2020.

“restriction of certain actions”²¹⁷ thereby maintaining the mistake made by the court of first instance.

In the previous sections of the study, we substantiated the need to change the legislative name of Article 105.1 of the Code of Criminal Procedure of the Russian Federation to something similar to what was used in the said decision of the Court of the Khanty-Mansiysk Autonomous Okrug. However, it cannot be considered correct to use in current judicial practices of a different name for an article than that provided by law.

In the introductory part of one of the rulings of the Krasnodar Regional Court, the application of a prohibition on certain actions was described as the application of a “preventive measure in the form of restrictive measures”²¹⁸, which does not correspond to wording of the law either.

In the operative part of the ruling of the 235th Garrison Military Court of Moscow, the court stated “the imposition of a preventive measure in the form of driving a car”²¹⁹.

By the example of the ruling, we can highlight the consequences that result from incorrect interpretation and application of prohibitions. In this ruling, a separate prohibition was applied as an independent preventive measure but the operative part did not include the obligation to appear when called by an official, and the body exercising control over the prohibition was incorrectly identified. The court determined that such a body was “an executive body that carries out law enforcement functions of control and supervision in the field of execution of criminal penalties in relation to convicted persons (Branch No. 3 of the penal enforcement inspectorate of the Federal Penitentiary Service in Moscow)” but the Federal Penitentiary Service of Russia bodies do not exercise control over the prohibition, provided for in clause 6, Part 6, Article 105.1 of the Code of Criminal Procedure of the Russian Federation, which is executed

²¹⁷ Appeal ruling of the Court of the Khanty-Mansiysk Autonomous Okrug dated 22 November 2019 in case No. 22K-2019/2019.

²¹⁸ Appeal ruling of the Krasnodar Regional Court dated 29 October 2020 in case No. 22K-6989/2020.

²¹⁹ Ruling of the 235th Garrison Military Court of Moscow dated 21 January 2022 in case No. 3-14-1/2022.

through the confiscation of the driver's licence by the interrogating officer, the investigator and the court and its inclusion in the criminal case files. Based on this, it can be concluded that the use of incorrect terminology by courts can lead to incorrect application of the law.

An example of correcting such errors is contained in one of the rulings of the Supreme Court of the Republic of Crimea.

*The court noted that when imposing a prohibition on certain actions as a preventive measure in accordance with Part 6 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation. However, "contrary to these provisions, when imposing a preventive measure in the form of a prohibition on certain actions... established restrictions and prohibitions when only prohibitions should be established"*²²⁰. In this connection, the appellate court excluded the word "restrictions" from the operative part of the ruling of the trial court.

*A similar approach can be seen in the ruling of the Voronezh Regional Court, in which, while leaving the prohibitions unchanged, the court changed the wording and replaced the word "obligation" with the word "prohibitions"*²²¹.

A separate category in the practice of selecting and applying a prohibition on certain actions is made up of **procedural errors**, which can also be divided into several groups.

The first group of procedural errors is represented by errors associated with insufficient motivation and justification of prohibitions.

Insufficient motivation and validity of requests for the imposition of preventive measures and the satisfaction of such requests is one of the pressing problems in the application of preventive measures. In the practice of selecting and applying the prohibition of certain actions it can be considered from the point of view of *general* and *special patterns*.

²²⁰ Appeal ruling of the Supreme Court of the Republic of Crimea dated 3 July 2020 in case No. 22K-1781/2020.

²²¹ Appeal ruling of the Voronezh Regional Court dated 19 January 2022 in case No. 22K-207/2022.

From the point of view of *general patterns*, the selection of a prohibition on certain actions is accompanied by insufficient substantiation of conclusions indicating in the decision the specific characteristics of a personality that led to the selection of this particular preventive measure.

Based on our analysis of judicial practice:

- 62% of rulings lack information about whether the accused has a family;
- 33% indications of holding/not holding criminally liable;
- in 79 % of cases the necessary assessment of the characteristics of the accused not found;
- 59 % – there is no information about the person’s employment ²²².

Special patterns are associated with insufficient motivation for individual prohibitions of certain actions. The complex structure of preventive measures with the prohibition of certain actions makes it necessary to prove and justify each of the prohibitions. Moreover, some of them have a certain degree of coercion, which also needs justification and motivation.

In the appellate court practices, one can find rulings to abolish certain prohibitions. For example, a prohibition on leaving a living space at a certain time.

Thus, the court agreed with the arguments of the appeal about the excessive severity of the application to the accused of the prohibition provided for in clause 1 of Part 6 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation, since “the accused is not employed due to the fact that he is a full-time student at college, has no previous convictions, has not been brought to administrative responsibility, has a place of residence in ..., and therefore challenges the court’s conclusion that he can continue engage in criminal activities”²²³.

The need to justify the choice of time during which the accused is prohibited from leaving the residential premises is indicated by the ruling of the Moscow City Court.

²²² Annexes № 7-12.

²²³ Appeal ruling of the Murmansk Regional Court dated 26 January 2022 in case No. 22K-189/2022.

*The appellate court determined the time of the prohibition from 22:00 to 06:00 by justifying this by the need to “meet **** from college, taking into account her state of health, her having ****, and who cannot go home independently”²²⁴.*

The second group of procedural errors is represented by errors relating to determining the validity period of the prohibition of certain actions and counting this period against the period of detention. The most characteristic types are represented by the examples as follows.

1) The court ruling has no an indication of the duration of the prohibition provided for in clause 1 of Part 6 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation. In accordance with Part 9 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation, this prohibition applies until the preventive measure is lifted or until the expiration of its application. The period of application of the prohibition may not exceed 12 months in criminal cases of crimes of minor and medium gravity, 24 months for serious crimes and 36 months for especially serious ones.

Our analysis of practice showed that this type of error accounts for 10.9% of all procedural errors.

2) Establishing the validity period of the prohibitions provided for in clauses 2–6 Part 6 Article 105.1 of the Code of Criminal Procedure of the Russian Federation. In accordance with Part 9 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation, these prohibitions apply until the preventive measure is cancelled or changed and do not have any special pre-trial periods of application.

Our analysis of practice showed that the occurrence of this error is 9.8% of all procedural errors we studied. This error also manifests itself through the extension by the appellate court of the validity period of these prohibitions.

3) No account of the period of validity of the prohibition of certain actions towards the period of detention. In accordance with Part 10 of Article 105.1

²²⁴ Appeal ruling of the Moscow City Court dated 20 October 2020 in case No. 10-185689/2020.

of the Code of Criminal Procedure of the Russian Federation, the period for applying the prohibition provided for in clause 1, part 6, art. 105.1 of the Code of Criminal Procedure of the Russian Federation is established and extended by the court in accordance with Article 109 of the Code of Criminal Procedure of the Russian Federation. Part 10 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation indicates that the term of detention includes the time of the prohibition provided for in clause 1 of Part 6 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation at the rate of two days of its application for one day of detention.

In the practice of appellate courts we studied, this error is quite common and accounts for 28.5% of all procedural errors. In appellate rulings, courts amend the sentence and indicate that the period of prohibition of certain actions is included in the term of imprisonment.

As a result of the analysis of judicial practice conducted, for example, by the Samara regional court, such error was also highlighted as typical, «on the basis of which the predominant number of sentences changes». In the wording of the court of appeal, its content is disclosed as an incomplete or incorrect statement in the resolution of the sentence of the order of detention of persons, house arrest and prohibition of certain acts during the execution of the sentence:

- as "sentence being served" instead of "terms of imprisonment";
- no indication of the paragraph, article or calculation order;
- "on the commencement of the sentence" instead of "until the judgment of the court is final"²²⁵.

The decision of this issue was also taken into consideration by the Supreme Court of the Russian Federation. The Supreme Court changed the sentence and corrected the error of lower courts, related to incorrect booking in the term of final

²²⁵ The Reference of the Samara regional court dated 27.09.2022 Generalization of errors made by judges in applying art. 72 CC and p. 1.1 ch. 10 St. . 109, p. 1.6 Art. 105.1 of the CPC in the Russian Federation when recording persons' detention, house arrest and prohibition of certain actions during the execution of a sentence». SPS Garantor.

punishment of pre-trial detention, including in isolation from society and under the ban provided for by cl. 1 par. 6. art. 105.1 CPC RF.

In the court's definition it was *noted that the preventive measure is a prohibition of certain actions, provided for by cl. 1 par. 6 art. 105.1 CPC RF, shall be counted towards the term of imprisonment by means of the consistent application of the provisions of cl. 1.1 par. 10 art. 109 of the CPC RF and its provisions, cl. b. par. 3.1 art. 72 CC of the Russian Federation, that is, first - for a period of detention and then - for a period of imprisonment, which was not taken into account by the court of appeal*²²⁶.

Thus, the existence of rules on the crediting of time limits contained in the Criminal and Criminal Procedure Codes of Russia require a more careful application of them and a distinction between the concepts of «period of detention» and «period of deprivation of liberty». The lack of attention to this issue may lead to judicial errors in the imposition of certain types of punishment whose duration differs from the legal duration of detention (such as serving a sentence in a colony-settlement).

The third group of procedural errors is represented by errors associated with non-compliance with procedural requirements (conditions) for imposing a prohibition on certain actions.

Each of the prohibitions of Article 105.1 of the Code of Criminal Procedure of the Russian Federation provides for conditions that must be established and observed during the consideration of the issue of a preventive measure. As a result of our analysis of practices, the most common mistakes of this group were those associated with imposing prohibitions on communication. The appellate courts amended the rulings on the imposition of a preventive measure and pointed to the possibility of the accused to use means of communication in emergency situations with law enforcement officers, since such an indication was absent in the ruling.

²²⁶The JC Criminal Case Ruling of the Supreme Court of the Russian Federation dated 15 May 2024 № 16-UD23-34-K4. SPS Guarantor.

In several cases, the appellate court overturned the prohibitions on receiving and sending postal and telegraph messages and using the Internet, since such prohibitions limited the accused in his educational and work activities.

The error we are considering also manifested itself when applying a prohibition on driving a vehicle. In accordance with clause 6, part 6, art. 105.1 of the Code of Criminal Procedure of the Russian Federation, this prohibition applies if the crime committed is related to violation of traffic rules and operation of vehicles. Our analysis of practices showed that the prohibition was also applied to defendants in other categories of crimes, which makes its application unlawful.

To summarise the study of errors in the practice of applying prohibitions on certain actions, we can draw the conclusions as follows.

1) The basis for preventing errors when selecting and applying a prohibition on certain actions is to ensure the legal rights and interests of the accused, as well as judicial control procedures.

2) A *substantive error* when selecting and applying preventive measures with a prohibition on certain actions will be an error associated with an incorrect interpretation of the legislative meaning of the preventive measure and the prohibition itself.

Substantive errors in selecting and applying preventive measures with a prohibition on certain actions can be divided into the groups and types as follows²²⁷.

- *Errors associated with the court's imposing unprovided restrictions (prohibitions) on the accused):*

- a) Leave the territorial entity;
- b) Change the place of residence;
- c) Refrain from using intoxicants etc.;
- d) Engage in specific activities.

* *Errors associated with not having in the court ruling of the obligation for the accused to appear when summoned by the interrogating officer, investigator and court:*

²²⁷ Annexes № 17, 18.

a) Failure to indicate in a court ruling the obligation for the suspect or accused to appear independently will be a mistake since the preventive measure was not imposed in full;

b) The absence of a distinction between the terms “obligation” and “prohibition” in rulings on imposing a prohibition on certain actions will also be a mistake.

- *Errors associated with the use of incorrect terminology when applying a prohibition on certain actions.*

3) We define a *procedural error* as an unintentional violation of the criminal procedural law consisting in failure to fulfil or improper fulfilment of its provisions by the subject conducting the criminal process recognised as such by the competent authority in the corresponding regulatory instrument.

Procedural errors in applying a prohibition on certain actions can be divided into the groups and types as follows.

- *Errors associated with insufficient motivation and justification of prohibitions.*

- *Errors relating to determining the validity period of the prohibition of certain actions and counting this period against the period of detention:*

a) Not having in the court ruling an indication of the duration of the prohibition provided for in clause 1 of Part 6 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation;

b) Establishing the validity period of the prohibitions provided for in clauses 2–6 Part 6 Article 105.1 of the Code of Criminal Procedure of the Russian Federation;

c) Lack of offset of the validity period of the prohibition on certain actions under clause 1, Part 6, Article 105.1 of the Code of Criminal Procedure of the Russian Federation against the term of detention and, accordingly, during the term of imprisonment.

- *Errors associated with failure to comply with procedural requirements (conditions) for imposing a prohibition on certain actions.*

3.2. Methods for assessing the effectiveness of prohibiting certain actions

The concept, indicators and conditions for the effectiveness of criminal procedural restrictive measures were studied in detail by Z. Z. Zinatullin and came to the conclusion that “effectiveness is understood in theory and practice as performance”²²⁸.

The performance (effectiveness) regarding a preventive measure is a key factor in determining its value as a measure regulating social relations. Researchers have proposed different approaches to determining the performance (efficiency) and assessing its degree.

Z. D. Enikeev understands the effectiveness of a preventive measure as “the accumulated ability of a system of preventive measures to ensure the behaviour of the accused (suspect, defendant) prescribed by law during the criminal case until its final resolution, strictly within the framework of the law at the lowest social costs”²²⁹.

V. M. Kornukov defines the effectiveness of preventive measures as the ratio between the results achieved through the use of these measures and the goals for which the law provides for their use”²³⁰.

You can agree with the presented positions on assessing the effectiveness of a preventive measure depending on the fact of achieving the goal and the procedure for imposing it.

Based on this approach, researchers have identified various *effectiveness criteria* for preventive measures.

By the efficiency criteria, D. S. Zlydenko understands factors that influence the use of restrictive measures, and among them he highlights such as the balance between public and private interests; fairness and compliance of the restrictive measure with the

²²⁸ Zinatullin Z. Z. Criminal procedural coercion and its effectiveness (issues of theory and practice). – Kazan: Kazan University Publishing House, 1981. P. 19.

²²⁹ Enikeev Z. D. Social value and effectiveness of criminal procedural measures. Ufa, 1979. P. 32.

²³⁰ Kornukov V. M. Op. cit. P. 74.

gravity of a crime; timeliness; rationality and adequacy of application; humanity as the absence of prerequisites for causing suffering²³¹.

N. A. Andronik identifies the maximum degree of achievement of the goal of preventive measures as criteria for effectiveness; (moral, material) costs and expenses when imposing a preventive measure; the result obtained²³².

O. G. Ivanova names forecasting a person's individual behaviour based on the scientific method and special knowledge as one of the key criteria for the effectiveness of applying a preventive measure²³³.

N. V. Tkacheva proposed a distinctive approach to assessing the effectiveness of preventive measures based on conditions, criteria and levels of effectiveness, where the criteria are objective factors indicating the ability of the preventive measure to beneficially influence the behaviour of the accused (suspect) during the entire period of their action according to the purposes of imposing them²³⁴.

O. D. Vastyanova proposes to understand assessing the effectiveness of prohibiting certain actions through the actual implementation of a proper legislative procedure for its selection and application, as well as the reliability of ensuring the lawful behaviour of the suspect, accused²³⁵.

We made an attempt to supplement the proposed approaches and determine the performance (degree of effectiveness) of prohibiting certain actions based on several theories.

1. Assessing the performance (effectiveness) of prohibiting certain actions based on investigative and judicial errors. A team of authors led by I.L. Petrukhin made a significant contribution to the development of the issue of the effectiveness of justice. One of the criteria for effectiveness was the correctness of the courts' resolving

²³¹ Zlydenko D. S. Determination of criteria for the effectiveness of measures of criminal procedural coercion // Humanities, socio-economic and social sciences. 2018. No. 12. P. 105.

²³² Andronik N. A. Theoretical and legal aspects of the effectiveness of preventive measures // Bulletin of the Kaliningrad branch of the St. Petersburg University of the Russian Ministry of Internal Affairs. 2016. No. 4 (46). P. 32.

²³³ Ivanova O. G. Op. cit. P. 111.

²³⁴ Tkacheva N. V. Preventive measures not relating to detention in Russian criminal proceeding: Monograph / Scientific editor A. V. Kudryavtseva. Chelyabinsk: South Ural State University Publishing House, 2004.

²³⁵ Vastyanova O. D. Effectiveness of applying a prohibition on certain actions // Forensics: yesterday, today and tomorrow. 2020. No. 1 (13). P. 122.

criminal cases on the basis of facts, qualifications, sentencing, and resolving issues concerning material evidence.

The direct assessment of this criterion is expressed through a calculation using a formula, the main variables in which are the errors made by courts. The formula is as follows: $K_e = \frac{S_{tot.} - (P_{proc.} + L_{proc.}) - (P_{crim.} + L_{crim.})}{S_{tot.}}$. In this formula, S tot. – total number of sentences; P proc. – number of sentences containing procedural errors recorded in statistics; L proc. – latent procedural errors; L crim. – latent errors of a criminal legal nature ²³⁶.

This formula in the research team of I.L. Petrukhin was applied to evaluate the final judicial acts. However, a similar calculation model can be applied to the assessment of interim judicial acts, rulings on the imposition of preventive measures with a prohibition on certain actions. In this case, efficiency can be assessed with the following formula: $K_e = \frac{S_{tot.} - P}{S_{tot.}}$, where S tot. is the total number of court rulings to impose preventive measures prohibiting certain actions; P is the number of court rulings containing errors recorded in statistics. Taking into account our earlier classification of the errors under consideration into substantive and procedural, the expanded formula for assessing the criterion for the effectiveness of the courts' applying preventive measures with a prohibition on certain actions will look like this:

$$K_e = \frac{S_{tot.} - (P_{subst.} + P_{proc.})}{S_{tot.}}$$

For the objectivity of the assessment results, the inclusion of a particular court ruling in the set P proc. should be carried out if there are official rulings in the practice of higher courts that confirm the fact of an error made during the legal proceedings.

An analysis of court practices on the use of preventive measures with a prohibition on certain actions for errors in 2018–2024 was performed based on 1,034 solutions. Of these, 264 (25.5%) rulings contained errors that were officially stated in

²³⁶ Baturov G. P., Morshchakova T. G., Petrukhin I. L. Theoretical foundations of the effectiveness of justice. M.: Nauka, 1979. P. 263.

rulings of higher courts. It should be noted that out of 264 rulings containing errors, 164 had substantive errors, and 79 rulings had procedural errors.

Taking into account the stated values, the coefficient of effectiveness of the use of preventive measures with a prohibition on certain actions in judicial practice for 2018–2024 according to the given parameters amounted to: $K_e = \frac{1034 - (164 + 79)}{1034} = 0.76$ %.

We especially emphasise that the calculation of the efficiency coefficient according to the specified model is based on errors recognised as such through the change or cancellation of a court ruling when it was considered by a higher instance. Consequently, the calculation does not include any latent errors, nor it implies the division of errors according to their degree of significance. For example, the category of “rulings with a miscarriage of justice” equally includes unmotivated and unfounded rulings to prohibit certain actions, along with rulings in which there was no mention of a supervisory authority.

The value obtained with this calculation method, as indicated by its author I.L. Petrukhin, will make it possible to more accurately identify the percentage of cancellations and changes in court rulings in specific divisions of the court²³⁷.

2. Assessing the effectiveness of prohibiting certain actions based on the proper behaviour of the accused. A.E. Pashkov and L.S. Yavich point out a different approach and a different mathematical model for assessing the effectiveness of a legal norm. They evaluate efficiency as achieving a result taking into account “the least cost of maintaining and implementing a norm, including not only material costs but also waste of human time, possible moral and political costs”²³⁸.

To evaluate effectiveness, the authors propose the following formula: $C = (A - B)/K$, where C is an indicator of effectiveness; A – the result of the norm; B – initial state; K – costs incurred.

²³⁷ Petrukhin I. L. Op. cit. P. 266.

²³⁸ Pashkov A. E., Yavich L. S. The effectiveness of the legal norm // Soviet state and law. 1970. No. 3. P. 41; Quote according to Tkacheva N. V. Preventive measures not relating to detention in criminal proceedings in Russia: Monograph / Scientific editor A. V. Kudryavtseva. Chelyabinsk: South Ural State University Publishing House, 2004.

In our opinion, it is difficult to virtually apply this model regarding the assessment of preventive measures in practice. The major difficulty comes from the ambiguity of the variables used in the assessment. The “result of the norm” (preventive measures) and the “initial state” can be described with a binary system through indicators 1 and 0, where 1 is the achievement of a result, and 0 is zero result. However, it is difficult to estimate and apply in calculations the exact statement of the costs incurred. Despite the difficulties of analysing empirical data with this model, in our opinion, it can be considered logical to assess effectiveness through the ratio of the result of applying a norm to the costs incurred for its implementation.

The expected and positive result of the prohibition of certain actions can be considered the achievement of the goals of imposing a preventive measure in the form of the absence of any obstacles to the progress of the investigation on the part of the accused. Consequently, disruption of the course of the criminal process on the part of the accused will be an ineffective action of the preventive measure, as will all intellectual, organisational, material and other costs incurred for this purpose.

Our analysis of 1092 court rulings concerning the application of restrictions provided for in Article 105.1 of the Code of Criminal Procedure of the Russian Federation, as well as court files on the imposition of preventive measures with a prohibition on certain actions, made it possible to identify only 15 cases of changing the preventive measure to a more stringent one (*1.3% of the total number of court rulings*).

Of these, in 12 cases, a change in the preventive measure from a prohibition of certain actions to a more stringent preventive measure was accompanied by a violation of the established restrictions on the part of the accused. A change in the preventive measure with a prohibition of certain actions in other cases was not associated with a violation of restrictions and was accompanied by a change in the preventive measure imposed by the court of first instance when the initial grounds for its imposition were reviewed by the appellate court.

In accordance with the practice of changing preventive measures from prohibiting certain actions to a more stringent preventive measure, the basis for imposing house arrest was an insufficient assessment of the circumstances of the defendant's personality by the court of first instance. The imposition of a more stringent preventive measure was motivated by the fact of violation of restrictive measures in the past, the existence of drug addiction, despite the fact that the restrictions of Article 105.1 of the Code of Criminal Procedure of the Russian Federation was not violated by the accused. In all cases of violations imposed on the accused in accordance with Article 105.1 of the Code of Criminal Procedure of the Russian Federation, the previously imposed preventive measure was changed to detention.

The accused, who violated prohibitions and restrictions provided for by Article 105.1 of the Code of Criminal Procedure of the Russian Federation, the categories of crimes were incriminated as follows:

- in 58 % cases – offences against the property;
- in 17 % – offences against public health and public morals;
- crimes against life and health – 8 %;
- in economic activities – 8 %;
- crimes against state power, interests of civil service and service in local government bodies – in 8 %.

In addition:

* in 50% of cases the accused violated the prohibition on leaving the residential premises at a certain time;

* 25 % – prohibition on communicating with certain people;

* 17 % – obligation to independently and timely appear when summonsed by the interrogating officer, investigator and court;

* 8 % of cases – violation of the functionality of the electronic control device.

3. Assessing the effectiveness of prohibiting certain actions through comparative analysis with other preventive measures. Another way to measure the

effectiveness of a preventive measure is a comparative analysis of the degree of coercion of various preventive measures. According to this approach, the most effective preventive measure is the one that provides for a greater number or greater degree of severity of restrictions that makes it possible to most completely control the behaviour of the accused. Therefore, according to Z.Z. Zinatullin, detention is the most effective preventive measure, while bail is ineffective, since the payment of a bail amount does not completely guarantee the proper behaviour of the accused.

S.I. Vershinina, with reference to the position of V.M. Kornukov, rightly notes that this approach does not fully take into account the general and legal nature of preventive measures. One should agree with her opinion that the legislator has purposefully provided a comprehensive system of preventive measures, in which each measure is an effective means of ensuring proper behaviour taking into account respect for the legal rights of the accused²³⁹. Consequently, it cannot be assumed that a more stringent preventive measure will a priori be a more effective means of influencing the accused, contrary to the assessment of the personality characteristics and the event of the crime.

At the same time, the approach to assessing the performance (effectiveness) of preventive measures, depending on their degree of restriction of the rights of the accused, deserve to be highlighted.

In the domestic system of preventive measures, the restrictive potential of a more stringent measure absorbs the restrictive potential of a milder one, that is a more stringent preventive measure includes restrictions on milder measures and increases the degree of their impact. Thus, the mildest of the preventive measures - a restriction of travel order and recognisance to behave - represents a personal obligation of the accused to comply with the rules of criminal proceedings and to refrain from committing offences. The next most stringent preventive measures - personal guarantee, supervision of a minor, supervision of the command of a military unit -

²³⁹ Vershinina S. I. Bail in the system of preventive measures: thesis. ... PhD in Law. Samara, 1998. P. 116-117.

provide, in fact, a similar restriction, by transferring the responsibility for keeping an eye on the accused to another person.

The prohibition of certain actions does not provide for the dispositive permission of the accused not to interfere with the progress of criminal proceedings. This goal can be achieved through imperative duties-prohibitions that limit individual rights of a personality. In turn, more stringent house arrest and detention represent the isolation of the accused from society without having differentiated restrictions regarding individual rights of a personality.

Thus, the restrictive potential of more restrictive measures represents a restriction on a broader range of individual rights, thereby increasing the degree of restriction or the “restrictive effect.” However, as we noted earlier, the performance (effectiveness) of a preventive measure is not solely based on the degree of its restrictive influence.

In the considered ratio of preventive measures, bail was not mentioned. Bail is indeed a strict preventive measure, since it provides for the restriction of property rights with the possibility of applying all prohibitions on certain actions (clauses 1–6, Part 6, Article 105.1 of the Code of Criminal Procedure of the Russian Federation). However, pledge of property as an independent restrictive measure is a kind of psychological influence and cannot exclude the accused person’s immediate interfering with the investigation and committing an offence.

Based on this, it can be concluded that bail, being a more stringent preventive measure, completely absorbs the restrictive potential of prohibiting certain actions, but at the same time, the potential of its actual impact on the accused leaves open the possibility of obstructing the investigation, as is provided by house arrest and detention, since they are associated with restrictions on an individual’s right to freedom. Consequently, bail and, to some extent, prohibition of certain actions can be separately identified as a special category of preventive measures, which are associated with the restriction of a wide range of individual rights that do not affect the right to freedom of

movement. This makes comparing the effectiveness of a prohibition on certain actions and bail the most relevant.

Researchers of bail in criminal proceedings have in the past already expressed an opinion on ways to increase the effectiveness of this preventive measure through the inclusion of additional coercive influence on the accused in the form of technical means, a prohibition on leaving the premises²⁴⁰.

However, the emergence of a prohibition on certain actions in the system of preventive measures allows us to consider the relationship between the performance (effectiveness) of these measures from a different perspective.

The prohibition of certain actions has been used much more often than bail since its introduction in legislation:

- *in 2018, a prohibition on certain actions as an independent preventive measure was imposed 2.7 times more often than bail;*
- *2019 – by 16 times;*
- *2020 – 7,5 times;*
- *2021 – by 102.6 times;*
- *2022 – by 43.4 times;*
- *2023 – by 47 times (see figure 2).*

It is typical that in some other states of the Romano-Germanic legal system, the practice of using bail is also significantly inferior to other preventive measures. For example, as researchers note, bail in Germany is used extremely rarely. Germany's bail statistics are compared with those in the US, where more than a third of detained defendants are released on bail pending investigation²⁴¹.

In the United States of America, bail has been one of the most frequently selected preventive measures for quite some time. Borrowed from the provisions of English

²⁴⁰ Fokin A. S. Problems and trends in improving bail in Russian criminal proceedings: abstract of thesis. ... PhD in Law. Rostov-on-Don, 2007. P. 11.

²⁴¹ Morgenstern C., Kromrey H.. Detour –Towards Pre-trial Detention as Ultima Ratio: 1st National Report on Germany, Ernst Moritz Arndt University of Greifswald. 2016. P. 8-11 // URL: <http://www.irks.at/detour/DE%201st%20National%20report%20031116.pdf> (access date 12.11.2022)

law, bail has been included as a measure of regulation of social relations from the very beginning of the existence of the American state. Since then, the procedure for applying bail has been improved.

When considering bail as a legal phenomenon and one of the alternatives to detention in the United States of America, focus should be put on the differences in its terminological and substantive expression compared to domestic legislation. Unlike the legislation of the Russian Federation, in which bail is expressed *in the transfer of money and other valuables* to the accused in order to ensure compliance with the requirements of persons conducting preliminary investigations, bail in the United States is of a more complex nature and can be expressed in non-monetary form.

For example, the Texas Code of Criminal Procedure²⁴² defines bail as providing a guarantee in respect of a defendant that he/she will appear in court and answer the charges brought against him/her. Such guarantees may include a *bail bond* and a *personal bond*²⁴³.

The bail bond can be provided by the accused himself/herself through the payment of the assigned bail amount. If the accused does not have enough funds to post bail, he/she can enter into an agreement to post bail with a special bondsman / bail bond agent²⁴⁴.

A personal guarantee²⁴⁵ implies the release of the accused on his/her personal obligation to appear in court without any financial security but with the imposition of other security restrictions²⁴⁶. The most common examples of such restrictions are

²⁴² It should be noted that the legislative provisions of various US states are similar in terms of regulating the procedure for imposing bail.

²⁴³ Tex. Code Crim. Proc. art. 17.01 [Electronic resource] // <https://casetext.com/statute/texas-codes/code-of-criminal-procedure/title-1-code-of-criminal-procedure/chapter-17-bail/section-1701-definition-of-bail> (access date 12.11.2022).

²⁴⁴ Tex. Code Crim. Proc. art. 17.02 [Electronic resource] // <https://casetext.com/statute/texas-codes/code-of-criminal-procedure/title-1-code-of-criminal-procedure/chapter-17-bail/section-1702-definition-of-bail-bond> (access date 12.11.2022).

²⁴⁵ In the legislation and legal environment of the United States, personal guarantee is enshrined through the definitions of “personal bond”, “release on your own recognisance (ROR)”, “own recognisance (OR)”, “personal recognisance (PR)”. In this case, there is a distinction between the content of some terms. For example, the interim measure “personal bond” implies payment to the accused of a certain amount of money if he/she fails to appear in court. While the “personal recognisance (PR)” measure in this case does not provide for the payment of a monetary amount.

²⁴⁶ Tex. Code Crim. Proc. art. 17.03 [Electronic resource] // <https://casetext.com/statute/texas-codes/code-of-criminal-procedure/title-1-code-of-criminal-procedure/chapter-17-bail/section-1703-personal->

requirements to remain in the state until a court hearing; not to consume any alcohol or drugs; to perform job activities; regularly record your appearance at the regulatory authority; notify the regulatory authority of a change of residence; renounce the right to own firearms. Those accused of aggravated assault may be prohibited from communicating with or coming within a certain distance of the victim. Those accused of drunk driving may be subject to the need to install a vehicle ignition lock system. Also, depending on the charge, the accused may be subject to *curfew restrictions*, as well as a requirement to undergo counselling for reasons for violence or substance abuse²⁴⁷.

Thus, the core of bail as a preventive measure in the United States *is not the provision of money or any other valuables but the provision of security guarantees to the accused, the creation of a special legal connection between him/her and the court expressed in the form of an obligation (bond)*.

At the moment, bail in the system of preventive measures of the Russian Federation also provides for an expanded list of restrictions along with property ones.

American researchers consider the obligation to appear, electronic surveillance, and house arrest to be the most effective alternatives to cash bail.

Thus, the United States is currently developing a system of preventive measures alternative to not only detention but also bail.

Reform at the *US state* level was expressed in various areas through the creation of a presumption of release on non-cash bail; establishing rules for what must be examined by the court in order to impose bail; regulation of the involvement of a lawyer at the hearing on selecting a preventive measure; Establishment of clear deadlines for scheduling a court hearing on the selection of a preventive measure; abolition of the possibility of assigning cash bail for certain types of crimes; creation of infrastructure

bond?__cf_chl_tk=Q.6QWFkyrqd8kVFXLYhhAxWbzSSl.Bm5yfM371307sA-1678020237-0-gaNycGzNDDs (access date 12.11.2022).

²⁴⁷ What are Bond Conditions? [Electronic resource] // Neal Davis Law Firm. URL: <https://www.nealdavislaw.com/criminal-defense-guides/bond-conditions-overview.html> (access date 12.11.2022).

to ensure that preventive measures are applied; abolition of the presumption of detention for certain crimes; setting a maximum bail amount.

A comparative analysis of the current patterns of development of the system of restrictive measures in the United States allows us to come to the following conclusions about the general patterns of development of bail and other security guarantees for the accused during the preliminary investigation in Russia.

1) The modernisation of bail in domestic legislation after the 2018 changes transformed the essence of this preventive measure from a purely property obligation into a broader *security obligation*. At the same time, the property obligation remained a key and defining component of the preventive measure, and the inclusion of a prohibition of certain actions in its composition formalised this transformation.

2) Bail in the Russian Federation is the least popular preventive measure imposed by court rulings. Our analysis of using bail based on data from the Garant SPS legal reference system in 2018–2023 showed the preferential use of this preventive measure without any additional restrictions of Article 105.1 Code of Criminal Procedure of the Russian Federation. Of the 28 rulings presented by the system, only 4 (or 14%) included a prohibition on certain actions.

This makes it possible to draw the conclusion that in Russian law enforcement practice bail is not currently used as a broad security obligation, and the established trend of bail as a restrictive measure of an exclusively property nature continues.

3) The experience of the United States of America as a state with a significant population and an established tradition of using bail allows us to assert that the existence of a property obligation of the accused does not in itself determine the primary effectiveness (performance) of the preventive measure.

4) The existence in the system of preventive measures of the Russian Federation of a group of interim measures of an obligatory nature (bail and prohibition of certain actions) confirms its diversified nature and the availability of alternatives to

detention²⁴⁸. At the same time, the preferential practice of applying a prohibition on certain actions in relation to bail can be considered justified.

To summarise what has been said about the performance (effectiveness) of preventive measures with a prohibition on certain actions, we can draw the conclusions as follows.

In the criminally-remedial science, there is no uniformity of approaches in assessing the effectiveness of preventive measures, which is fully consistent with the lack of uniformity in understanding effectiveness in the general theory of law. I. P. Kozhokar rightly notes that the search for a uniform definition of the effectiveness of law is associated with the diversity of ideas about law, different types of legal understanding. At the same time, the common link in understanding efficiency is the “*correspondence*” between the socially significant goals of the legal norm and the legislator’s goals, the actual and desired behaviour of the addressee of the norm, the results of legal influence and the costs of its implementation. The confusion of philosophical and sector-specific understanding of efficiency makes it difficult to unambiguously apply this term to the assessment of specific legal relations²⁴⁹.

Due to the impossibility of applying a uniform approach to understanding the effectiveness of legal regulation, it is logical to use the concepts of “effectiveness” and “performance” equally when assessing preventive measures as a kind of legal regulation. This point of view was substantiated by Z. Z. Zinatullin noting that legal regulation consists of particular concepts, such as the effectiveness of a procedural legal norm (“their own, internal qualitative properties of a legal norm”) and the effectiveness of activities for its application (“the ability to ensure implementation of

²⁴⁸ For example, S.B. On this basis, Rossinsky identifies house arrest and detention in the group of measures of a “prisoner’s nature.” See: Rossinsky S. B. Criminal process: textbook / S. B. Rossinsky. – M.: Eksmo, 2009. P. 259–268.²⁴⁹ Kozhokar I. P. Efficiency of law in the categorical apparatus of legal theory // Newsletter of the Perm University. Legal sciences. 2020. No. 48. P. 218.

²⁴⁹ Kozhokar I. P. Efficiency of law in the categorical apparatus of legal theory // Newsletter of the Perm University. Legal sciences. 2020. No. 48. P. 218.

legal norms consistent with legal provisions, which at the lowest cost had the most positive impact on regulated social relations and the behaviour of their parties”)²⁵⁰.

At the same time, the understanding of the “effectiveness” of applying a preventive measure should not consist in a purely applied aspect as achieving a result in the form of the most severe restriction for the accused with ignoring the need to ensure the minimum necessary restriction of individual rights.

Thus, an equivalent approach to understanding the performance and effectiveness of preventive measures with a prohibition of certain actions can be presented as follows:

1. The greatest performance (effectiveness) of preventive measures with a prohibition on certain actions can be realised through the consistent procedural mechanism provided for in the criminal procedure law, the clear implementation of which does not lead to investigative and judicial errors and ensures that the goals of imposing a preventive measure can be achieved.

2. The (low, high) effectiveness of preventive measures with a prohibition on certain actions can be assessed based on the activities of the subjects conducting criminal proceedings²⁵¹, namely:

- the number of investigative and judicial errors made;
- monitoring statistics of appropriate behaviour of the accused;
- comparative analysis of effectiveness with other preventive measures.

3.3. Prospects for increasing the effectiveness (performance) of preventive measures with a prohibition of certain actions

Researchers have proposed a variety of approaches to increasing the effectiveness (performance) of preventive measures with the prohibition of certain actions.

²⁵⁰ Zinatullin Z. Z. Criminal procedural coercion and its effectiveness. Kazan: Kazan Publishing House. university, 1981. P. 22-26.

²⁵¹ Nazarov A. D. Achieving the effectiveness of preventive measures in criminal proceedings.

From the point of view of O. D. Vastyanova, increased effectiveness can be achieved through improving the procedure for applying this preventive measure. This requires the development of a departmental regulatory document on the interaction of employees of the Federal Penitentiary Service and the Ministry of Internal Affairs of Russia. This document shall contain provisions on measures for additional control by local police commissioners over suspects and accused persons. Additional control may consist of “carrying out actions aimed at preventing crimes, carrying out individual preventive activities against suspects, accused... to provide for the possibility of additional control over the execution of a preventive measure at night”²⁵². In addition, the effectiveness of prohibiting certain actions, according to O. D. Vastyanova, can be increased through monitoring compliance with the prohibition provided for in clause 6 of Part 6 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation for driving a vehicle.

According to N. A. Andronik, the increased effectiveness of the prohibition of certain actions can be achieved through the introduction in the law of a special norm that establishes the basis for changing the prohibition of certain actions to a more stringent restrictive measure in the event of a violation by the suspect or accused of the duties assigned to him/her²⁵³.

Increased effectiveness of bail was considered through improving its legislative regulation in criminal proceedings (specification of the subject of the bail, the bail giver and other aspects of its application)²⁵⁴, compliance with the procedural arrangements for applying bail²⁵⁵, the use, along with property restrictions, of the prohibitions provided for in clauses 1-6 Part 6 Article 105.1 of the Code of Criminal Procedure of the Russian Federation²⁵⁶.

²⁵² Vastyanova O. D. Op. cit. P. 150-153.

²⁵³ Andronik N. A. Op. cit. P. 164-165.

²⁵⁴ Fokin A. S. Problems and trends in improving the institution of bail in Russian criminal proceedings: abstract of thesis. thesis...PhD in Law. Rostov-on-Don, 2007. P. 9-10.

²⁵⁵ Vershinina S. I. Op. cit. P. 113.

²⁵⁶ Tsareva Yu. V. Bail as a preventive measure in Russian criminal proceedings: doctrine, legal technique, law enforcement practice: thesis ... PhD in Law. Nizhny Novgorod, 2018. P. 100.

Studies suggest increasing the effectiveness of house arrest through simplifying the mechanism of its application²⁵⁷, more detailed regulation of methods for monitoring compliance with restrictions on communication and expanding the powers of regulatory authorities²⁵⁸, and improving electronic control means²⁵⁹.

In our opinion, a qualitative increase in the effectiveness of prohibitions on certain actions as a means of legal regulation in criminal proceedings can be achieved through the practical and conceptual aspects of the mechanism for selecting and applying preventive measures with the prohibition of certain actions.

The *practical aspect* is expressed in improving the mechanism for selecting and applying preventive measures with the prohibition of certain actions. For this purpose, we have developed *methodological guidelines* for interrogators and investigators²⁶⁰.

The practical effectiveness (efficiency) of the prohibitions is also inextricably linked to the quality and effectiveness of the technical means used to monitor the actions of suspects and accused persons. The procedure for monitoring the prohibitions of certain acts imposed on suspects and accused persons is regulated by an inter-ministerial order, which assigns monitoring duties to prison inspectors (hereinafter referred to as the Inspectorate).

At present, the most effective means of control are digital surveillance devices that record the whereabouts of the accused and also have a psychological impact by encouraging compliance with restrictions. These include an electronic bracelet, a stationary control device, a mobile control device, a repeater, a personal tracker, an audio-visual monitoring device²⁶¹.

²⁵⁷ Pilyushin I. P. Effectiveness of house arrest in criminal proceedings // Scientific Bulletin of the Omsk Academy of the Ministry of Internal Affairs of Russia No. 2 (69). 2018. P. 18-19.

²⁵⁸ Zhilyaev R. M. House arrest: "a tribute to fashion" or a real alternative to detention // Legislation and Law. No. 12. 2021. P. 157.

²⁵⁹ Shamsunov S. Kh. House arrest: an alternative to detention? // Public service and personnel. No. 1. 2021. P. 180.

²⁶⁰ Annex № 30.

²⁶¹ Resolution of the Government of the Russian Federation of 18 February 2013 № 134 "On the procedure for the use of audio-visual, electronic and other technical means of control, which may be used to monitor the presence of a suspect or accused at the place of execution of the measure of house arrest, as well as for compliance with court-ordered prohibitions of a suspect or an accused against whom a prohibition of certain actions, house arrest or bail is imposed as a preventive measure".

Many researchers have noted problems in monitoring the accused through this list of equipment. In fact, the employees of the Inspectorate cannot fully control the implementation of the bans on receiving and sending of postal and telegraphic messages, the use of the “Internet” network²⁶². As rightly noted by I. V. Dvoryanskov, the regulation of functions related to the control of these prohibitions is provided only in the conduct of investigative actions: inspection, seizure and removal of copies of postal and telegraphic parcels, control and recording of telephone and other conversations, and obtaining information about connections between subscribers and (or) subscriber devices. The mobile operator also does not have the authority to provide information on the subscriber’s shipments and negotiations on its own initiative. Data can be obtained only at the request of the investigator²⁶³.

The examination of criminal records confirms this conclusion. Only one of the materials examined found a violation of the prohibition of the accused from speaking with witnesses in a criminal case, which was revealed by the prompt action that resulted in the accused meeting with a witness being recorded on video²⁶⁴.

On this basis, it can be argued that the further development of electronic surveillance systems and devices is a key element in the question of increasing the effectiveness (efficiency) of interdiction measures with the prohibition of certain actions. This activity is to be based on existing developments in forensic technology²⁶⁵. However, in our view, the study of such a subject should be carried out within the framework of separate thematic works.

Along with the practical aspect, it is necessary to highlight *the conceptual aspect*, which goes beyond the scope of these proposals. The need to highlight the conceptual

²⁶² Himicheva G. P. Juvenile accused (suspect): preventive measures // Criminal proceedings. 2014. № 4 P. 20-24; Zhilyaev R. M., Pervozvansky V. B., Medvedeva I. N. On some problems of courts choosing a measure of restraint in the form of house arrest and ways of their decision // Russian justice. 2013. № 11. P. 49-52.

²⁶³ Dvoryanskov I. V. Legal bases of execution of sentences, other criminal-legal and criminal-procedural measures, not connected with isolation from society : monograph. M. Prospect 2023. P. 56.

²⁶⁴ Copy of criminal case file 123020400020022 // Archive of Krasnoyarsk Regional Court.

²⁶⁵ Kostenko D. S. Theoretical basis for the use of scientific and technical equipment in forensic enforcement // Zakon I vlast. 2021. № 2. P. 57.

aspect (approach) is due to the lack of a precisely defined method for assessing the performance of preventive measures.

The previous paragraph described several approaches to understanding performance criteria. In turn, the proposed practical approaches to improve the mechanism for selecting and applying restrictions alternative to detention should take into account trends in updating the institution of preventive measures, the emergence of new prohibitions on certain actions and the peculiarities of their application in practice.

As an independent preventive measure, the prohibition of certain actions originates in such a preventive measure as house arrest, which began to operate in Russia during the period of judicial reform in the noughties of this century. The emergence of a prohibition on certain actions in the criminal procedural law of Russia was due to the general focus on humanising the state's criminal legal policy. In this regard, it is logical to assume that the improvement of preventive measures relating to the use of a prohibition on certain actions should also occur in line with this policy.

The humanisation of legislation is justified by contemporary ideas about substantive and procedural guarantees of ensuring the rights of individuals, mitigation of measures of criminal repression, and the need to maintain a balance of private and public interests²⁶⁶.

In the context of criminal proceedings and restrictive measures, this trend can be directly expressed in the expansion of the scope of application of measures not relating to isolation from society, an increase in the range of grounds for their use, and improved regulation of their implementation²⁶⁷. One can agree with the position of V.P. Kashepov, who expands the humanity of the relationship between the state and individual through the legislator's concern for the health of a person involved in the criminal process (the requirement to take into account the state of health when

²⁶⁶ Nudel S. L., Pechegin D. A. Trends in criminal policies in the field of protection of economic activities in the context of digitalisation // Newsletter of the Perm University. Legal sciences. 2022. No. 2 // SPS "Garant" legal reference system.

²⁶⁷ Dvoryanskov I. V. Legal basis for the execution of sentences, other criminal legal and criminal procedural measures not relating to isolation from society: monograph. M.: Prospekt, 2023 // SPS "Garant" legal reference system.

imposing and changing a preventive measure or changing it), mutual responsibility between a person and the state, taking measures to compensate for damage, which was caused by illegal actions taking into account other rights and interests of the individual²⁶⁸.

By elaborating on the principle of humanism of criminal proceedings, it can be established that in order to enhance the performance of the prohibition of certain actions, it is completely natural to expand the list of restrictions, each of which may have an impact on rights. Moreover, such restrictions should not exceed in their coercive force the restriction on freedom of movement expressed in the prohibition to leave the residential premises at a certain time.

As noted earlier, taking into account the proper behaviour of the accused is one of the methods existing in the literature for assessing the effectiveness (performance) of a preventive measure. Therefore, it is also possible to use this criterion when assessing performance improvement prospects.

Our analysis of more than 1,092 court rulings on the imposition of preventive measures with prohibitions on certain actions allowed us to identify only 15 cases of changing the preventive measure to a more stringent one. Only 13 of them (about 1.5%) were accompanied by a violation of established prohibitions.

The most common violations were the prohibition on leaving the residential premises at a certain time - in 46% of cases, the prohibition on communicating with certain persons - in 20%, the accused fled or failed to appear when called in 13% of cases, and committed a new crime during the period when a preventive measure was imposed - in 12% of cases.

Analysis of identified situations relating to violation of established restrictions does not allow us to identify certain cause-and-effect relationships between specific characteristics of the accused person's personality and the likelihood of him/her violating one or more prohibitions. We noted that among the accused, who committed

²⁶⁸ Kashepov V. P. Humanisation of criminal proceedings as a principle of regulation of Russian justice // Journal of Russian Law. 2015. No. 12 // SPS "Garant" legal reference system.

violations of the prohibitions, there were people who had no previous convictions, were employed, and had social connections. At the same time, we found that 14% of the accused, who were previously brought to criminal or administrative liability, 13% of those who were unmarried, did not violate the restrictions imposed on them.

At the same time, most court rulings do not contain any information on individual circumstances of the accused person's personality, which are of direct importance when imposing restrictions. For example, in 64.7% of cases, a ruling lacked data on the marital status of the accused, in 64.9% - on the existence of any dependents, in 82% - on the personality characteristics of the accused, in 29% - on criminal liability²⁶⁹.

Thus, at the moment, it is difficult to use the performance criterion for restrictions (the degree to which the accused complies with restrictions during the investigation) to resolve the issue of prospects for improving the procedure for selecting and applying preventive measures. In our opinion, the use of the performance criterion can take place in a systematic analysis of the relationship between the personal characteristics of the accused in connection with all the files presented in the criminal case.

In our opinion, greater objectivity in respect of prospects for improving the list of prohibitions in Article 105.1 of the Code of Criminal Procedure of the Russian Federation will have those restrictions that already have an established practice of application and are used in the former USSR countries. As noted earlier, the development of the institution of preventive measures in Russia had certain patterns that are common to all states of the former USSR. However, at the moment, the legislation of each of these countries provides for a significantly different system of preventive measures. This gives grounds to consider some of the restrictions as possible additions to the content of Article 105.1 of the Code of Criminal Procedure of the Russian Federation.

²⁶⁹ Annexes № 7-12.

Before moving on to a comparative analysis and consideration of foreign methods of organising the institution of preventive measures, it is worth focusing on those restrictions for the accused contained in the domestic law, which can fully complement the prohibition of certain actions.

We are talking about such a restriction as *temporary removal from office*, which is included by the legislator as part of other measures of criminal procedural coercion. In this regard, it plays an important role to consider the relationship between procedural institutions of preventive measures and other restrictive measures. In accordance with Article 111 of the Code of Criminal Procedure of the Russian Federation, the goals of imposing other restrictive measures are to ensure the established procedure for criminal proceedings and execution of the sentence. Noteworthy is the fact that this goal is correlated with the goals of selecting preventive measures, although it is of a more general nature.

One can agree with the existing opinion in the literature that the institution of other measures of procedural coercion in domestic legislation has an uncertain procedural nature. For example, L. V. Golovko rightly believes that the procedural institution of other restrictive measures is created on a residual principle and combines heterogeneous measures that can be applied to a variety of parties to criminal proceedings to ensure proceedings in criminal cases. For this reason, it is difficult to establish any characteristic features for this group of measures²⁷⁰.

Several researchers also share the position that the wording chosen by the legislator is inaccurate for the purpose of imposing other measure of procedural compulsion. As general grounds for their election, it is proposed to consider the manifestation of opposition to an investigation or trial and the need for proper execution of the sentence²⁷¹. N. V. Lugovets also considers the basis for imposing other restrictive measures to be the presence of information on the improper performance of

²⁷⁰ Course in criminal procedure / Under the editorship of Doctor of Law, Prof. L. V. Golovko. 2nd ed., rev. - M.: Statute, 2017. P. 560-561.

²⁷¹ Melnikov Yu. V., Garayeva T. B. Grounds, conditions and purposes of applying other measures of procedural coercion. P. 191.

their duties by parties to criminal proceedings²⁷². O. V. Mikhailova identifies the goals of using other restrictive measures and coercive measures in general, including in their list the prevention and suppression of crimes, the removal of obstacles to the proceedings²⁷³. We cannot but agree with the latter.

The goal of preventing crimes and other negative impacts on the course of the criminal process should be considered formative exclusively for the procedural institution of preventive measures. Measures to influence specific parties on the part of the prosecution - the suspect and the accused - are of a preventive nature, which is especially clearly reflected in the activities to prove the grounds for their imposition.

Other restrictive measures do not have a preventive nature and represent a stimulating and protective effect on a wide range of parties to criminal proceedings (if there are grounds for such an impact). At the moment, most of the restrictions correspond to this goal, such as the obligation to appear, detention, seizure of property and monetary penalty. However, a restriction in the form of temporary removal from office, based on its purpose, the nature of the coercive influence, and its focus on the suspect and accused, can naturally be considered a preventive measure.

Based on this example, we can conclude that when studying the legislation of the states of the former USSR, one should pay attention to not only preventive measures but also other restrictive measures applied to suspects and accused.

The comparative table in the appendix contains an indication of all restrictive measures that are applied in the legislation of the countries of the former USSR to suspects and accused to ensure the progress of the preliminary investigation²⁷⁴.

Particularly noteworthy are the provisions of the Code of Criminal Procedure of the Republic of Belarus (hereinafter referred to as the Code of Criminal Procedure of the Republic of Belarus), which also provides for a preventive measure in the form of a prohibition on certain actions. Unlike the Russian analogue, the prohibition of certain

²⁷² Lugovets N. V. Detention of a suspect and other measures of procedural coercion: thesis. ...PhD in Law. Saratov, 2004. P. 121.

²⁷³ Mikhailova O. E. Other measures of procedural coercion in criminal proceedings in Russia: thesis. ...PhD in Law. Kaliningrad, 2009. P. 49.

²⁷⁴ Annex № 29.

actions under the Code of Criminal Procedure of the Republic of Belarus contains two unique prohibitions: *to stay in a common residential area with the victim and to dispose of common joint property* (for a suspect or accused of committing a crime against a family member or former family member); *make attempts to find out the location of the victim and other parties to the criminal process* (clauses 2, 2.1, Part 3, Article 123.1 of the Code of Criminal Procedure of the Republic of Belarus).

We can agree with the opinion that it may be difficult to essentially control over compliance with the prohibition on making attempts to find out the whereabouts of the victim, which may affect the effectiveness of its action²⁷⁵. At the same time, the prohibition on staying with the victim in the same residential premises beneficially complements the system of preventive measures representing a tool for resolving a controversial situation in the legal relationship between the accused and the victim living in the same premises.

In our opinion, improving the prohibition of certain actions will be promising through the introduction of the following prohibitions contained in the existing law of the states of the former USSR:

- *suspension of monetary transactions;*
- *temporary restrictions on traveling abroad;*
- *temporary restriction on traveling outside a certain area;*
- *prohibition to engage in certain activities;*
- *deprivation of the right to keep weapons;*
- *obligation to live separately from the victim.*

Suspension (limitation) of monetary transactions can be a restriction that can complement the prohibition of certain actions, since it corresponds to the goals of imposing a preventive measure and allows preventing the accused from selling money obtained by criminal means without isolating him/her from society. This restriction is

²⁷⁵ Kuzur A. I. Prohibition of certain actions as a preventive measure in the criminal process of the Republic of Belarus // Criminal justice: legislation, theory and practice [Electronic resource]: electronic. Sat. scientific Art. / A. S. Pushkin Brest State University; Editorial Board: G. I. Zaimist, I. A. Zaranka. – Brest: BrSU, 2023. Pp. 81-84.

of a property nature and differs on this basis from those presented in Part 6 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation at the moment. In this regard, property restrictions will advantageously complement the arsenal of means of influencing the accused person capable of having both psychological and material effects.

The Criminal Procedure Code of the Azerbaijan Republic, in part 255.0.7, provides for the possibility of *seizing money transfers*. The essence of a money transfer according to the norm of this article is interpreted in accordance with the Azerbaijani Code of Criminal Procedure in a similar manner to postal and telegraph correspondence which can be seized.

The criminal procedural law of the Russian Federation contains similar restrictions presented in the form of another preventive measure - *seizure of property*, as well as investigative actions in the form of *seizure of postal and telegraph items, their inspection and seizure*. Researchers have noted the peculiarities of the relationship between these two actions²⁷⁶. The difference between the seizure of postal and telegraph items is that its purpose is to search for evidence, while the seizure of property is intended for property recovery.

It should be noted that the restrictive measure in the form of seizure of property can be applied to not only the suspect and accused but also persons who, in accordance with the norms of civil law, are financially liable for the actions of the suspect or accused. This circumstance excludes the possibility of classifying the seizure of property as a preventive measure. However, it is advisable to separately consider coercive influence on the accused and other involved persons.

This division is justified by the fact that the use of coercion against a suspect or accused, which is associated with the goals of choosing preventive measures, establishes this method of influence as a preventive measure. Consequently, the manifestation of similar means of influence as part of various procedural institutions

²⁷⁶ Criminal Procedure Course / Under the editorship of Doctor of Law, Prof. L. V. Golovko. 2nd edition., revised. - M.: Statute, 2017. P. 692-693.

will not contradict each other, since they provide for influence on different subjects and have different goals.

Such a restrictive measure as restricting travel outside the country exists in the criminal procedural legislation of the Republic of Belarus, Moldova and Latvia.

In the Code of Criminal Procedure of the Republic of Belarus, *temporary restriction of the right to travel* abroad is classified as other restrictive measures (Article 132.1). In accordance with Part 1 of Article 132.1 of the Code of Criminal Procedure of the Republic of Belarus, this measure applies to suspects and accused “if there are sufficient grounds to believe that the suspect or accused, who is not in custody, may evade participation in investigative actions or court proceedings, or from appearing when summoned without good reason, by leaving the Republic Belarus”. In accordance with Belarusian law, the body of inquiry, the investigator, the prosecutor and the court have the power to restrict travel abroad, and a corresponding resolution (definition) is issued. This decision may be cancelled by the body conducting the criminal proceedings, which is handling the criminal case, when this measure is no longer necessary.

In this case, the recipient of the restrictive measure and the purposes of its application fully correspond to those provided for preventive measures, and therefore can be included in their composition. Some researchers also believe that restrictions on traveling abroad “make it possible to “diagnose” a person’s behaviour for the conscientiousness of his/her performance of his/her duties”²⁷⁷. In our opinion, the assignment of this responsibility can indeed have a preventive effect and prognostic significance.

The Code of Criminal Procedure of the Republic of Moldova (hereinafter referred to as the Code of Criminal Procedure of the Republic of Moldova) provides for two types of subscriptions, *a restriction of travel order outside the country* and *a restriction of travel order outside a certain area*, which, unlike a similar restriction in

²⁷⁷ Kudryavtsev D. S. Importance of procedural restrictive measures under the Code of Criminal Procedure of the Republic of Belarus to overcome resistance to the detection and investigation of crimes // Newsletter of the Moscow University of the Russian Ministry of Internal Affairs. 2018. No. 4. P. 271-272.

the Code of Criminal Procedure of the Republic of Belarus, are preventive measures. Another distinctive feature is that in Moldova these preventive measures are obligations not responsibilities, that is, they are taken by the suspect or accused voluntarily and are documented in writing.

The Criminal Procedure Code of the Republic of Latvia (hereinafter referred to as the Code of Criminal Procedure of the Latvian Republic) also contains, as a preventive measure, a *prohibition on leaving the country* (clause 4, Part 1, Article 243 of the Code of Criminal Procedure of the Latvia). According to the European Prison Observatory, this measure was imposed by the prosecutor in the Republic of Latvia in 2012 – 34 times, in 2013 – 43, in 2014 – 17. For comparison, the prohibition on changing the place of residence was imposed in 2012 – 272 times, in 2013 – 198, in 2014 – 132. No data for later periods were provided²⁷⁸.

Based on the examples given, it can be argued that the *prohibition on traveling abroad* is practiced as a preventive measure expressed in the form of an obligation. Noteworthy are the various forms of ensuring this obligation. In Belarus, the responsibility can be assigned by a wide range of participants, the inquiry body, the investigator, the prosecutor and the court. In Moldova, the obligation is accepted voluntarily by the accused, and in Lithuania, the decision to ban travel abroad is made by the investigating judge.

As noted in the previous chapter, Russian courts made decisions to ban certain actions, which erroneously established a prohibition on traveling abroad. Consequently, in some cases there were grounds for such a restriction in practice. It is advisable to consider the implementation of this restriction in the provisions on the prohibition of certain actions taking into account the practice of its use in foreign countries. On this basis, it is necessary to take into account the possibility of both the voluntary acceptance by the accused of the obligation not to leave the territory of the state, and the judicial proceedings to impose a prohibition on traveling abroad.

²⁷⁸URL:<http://www.prisonobservatory.org/alternatives/ALTERNATIVES%20TO%20PRISON%20IN%20EUROPE.%20LATVIA.pdf> (access date 12.11.2022).

Prohibitions to carry out certain activities and engage in a certain profession are provided for in Part 2 of Article 199 of the Code of Criminal Procedure of Georgia (hereinafter referred to as the Code of Criminal Procedure of Georgia). In accordance with the Georgian law, this obligation is not a preventive measure and can be applied in conjunction with them.

Domestic legislation provides for a similar restriction in the form of temporary removal from office, which is another restrictive measure. However, this restriction does not cover the prohibition to engage in certain activities. It may be appropriate to apply this prohibition when the type of criminal behaviour is not related to the professional activities of the accused. For example, on State Duma deputy V. Rashkin accused of illegal hunting a preventive measure was imposed in the form of a prohibition on certain actions, including a prohibition on visiting any hunting grounds²⁷⁹. This example demonstrates that the behaviour of the accused is limited through other prohibitions, namely the ban on visiting certain places. In this situation, a more appropriate restriction, that directly determines the behaviour of the accused, would be a *restriction to engage in certain activities*, hunting.

Based on this, we can highlight the prerequisites and necessity for the introduction of such a restriction in domestic legislation. Its introduction as part of a prohibition on certain actions will make it possible to extend the procedure of judicial control to this prohibition as well. At the same time, its introduction as an autonomous restriction will make it necessary to expand the list of preventive measures chosen by court decision, which will complicate the system of preventive measures.

In direct connection with the previous example, *the deprivation of the right to possess weapons* also seems to us as a logical measure for introducing restrictions on the prohibition of certain actions.

The grounds for choosing such a restriction would be the right of the suspect or accused to acquire and possess weapons, as well as specific circumstances suggesting that this right could be abused by any means to obstruct an investigation. The list of

²⁷⁹ Appeal ruling of the Moscow City Court dated 24 January 2022 in case No. 10-1328/2022.

such circumstances includes information on alcohol or substance abuse, information on past misuse of weapons in the case of offences committed against family members.

In our view, the introduction of such a restriction in Russia is appropriate and will further ensure the safety of victims during the investigation.

To improve the enforcement mechanism and legislative structure, there are not enough examples of the use of similar preventive measures in other states. At the same time, these examples demonstrate the objective presence of restrictions in the legislative system, the basis of which was the legislation of the Russian state in the past. A necessary element of the implementation of a particular restriction is the existence of conditions for its implementation. Under the conditions of the effectiveness of the legal institution of preventive measures N. V. Tkacheva identified “a variety of circumstances that in one way or another influence the manifestation of the effectiveness of legal institutions in objective reality”²⁸⁰. In her opinion, such conditions are: social value, perfection of legislation, legality, proper level of implementation of legal norms, the degree of awareness of recipients about their content, the level of legal awareness and legal culture²⁸¹.

We can agree with the position that the absence of these conditions will be an obstacle to the effectiveness of preventive measures. Therefore, any innovations should not reduce the level of any of the above performance conditions.

The social value of the appearance of the proposed prohibitions in domestic legislation is due to the expansion of the list of restrictions alternative to detention. The further diversification will provide a greater number of possible combinations of constraints. The existing set of six restrictions allows you to form 63 different combinations, a set of seven restrictions will allow you to form 127 different combinations²⁸², thereby significantly expanding law enforcement capabilities. This

²⁸⁰ Tkacheva N. V. Op. cit.

²⁸¹ Ibid.

²⁸² The number of combinations from a set without repetitions is traditionally calculated in combinatorics with the formula $C_n^k = \frac{n!}{(n-k)! \times k!}$, where C – required number of combinations, n – the total number of elements (prohibitions), k – number of elements in combination.

modernisation is fully consistent with the general trend towards the humanisation of criminal procedure law. However, none of the proposed prohibitions exceeds the severity of existing limits.

The level of perfection of legislation is quite rightly taken into account when considering the degree of effectiveness of a norm. As noted earlier, the potential of preventive measures associated with the prohibition of certain actions makes it possible to expand the number of restrictions contained in it. In this regard, the existence of a “combined” preventive measure makes it possible to maintain the rule on applying only one preventive measure to the accused, without introducing a division of the entire system of measures into basic and additional restrictions.

Thus, based on the development trends of the criminal procedural institution of preventive measures, it is possible to forecast the potential expansion of the list of restrictions with new types. The emergence of new restrictions on certain actions, in turn, will proportionally increase the number of alternatives to detention available for selection and use and ways to regulate the behaviour of the accused.

The use of our proposed mechanism for selecting and applying prohibitions on certain actions creates additional conditions for increasing efficiency (the performance of their application).

CONCLUSIONS

The consistent inclination of the Russian Federation towards the humanization of criminal policy and criminal procedural legislation has resulted in the emergence of a novel preventive measure in the form of a prohibition of certain actions. There has been a consistent rise in the prevalence of the prohibition of certain actions, accompanied by a decline in the number of cases where remand in custody has been selected. Currently, prohibition of certain actions represents a viable alternative to remand in custody. The implementation of this legal provision into criminal proceedings should be recognized as a positive phenomenon.

The study of the genesis, legal nature of the prohibition of certain actions, and the legal precedents allowed drawing a number of conclusions presented below.

1) The humanization of criminal proceedings and the search for alternatives to detention are global trends. One method of implementing this approach is through the diversification of coercive measures employed during the preliminary investigation period. A comparative analysis of the legislation of foreign countries has revealed a fairly extensive list of such measures, each of which could potentially be considered for implementation and improvement of domestic legislation. Concurrently, the implementation of coercive measures should be conducted in accordance with the established norms and procedures for the development of the institution of restraining measures in Russia.

2) The implementation of prohibition of certain actions represents a pivotal moment in the evolution of the system of restraining measures. Researchers at the restraining measures institution proposed a number of potential avenues for enhancing the correlation, combination, and differentiation of coercive measures. The legislator determined that a comprehensive preventive measure, comprising a set of restrictions, should be created and applied in conjunction with other restraining measures (such as house imprisonment or bail), as assigned by the court. This decision naturally leads to

the prioritization of expanding the list of restrictions as part of the individual preventive measure.

3) The prohibition of certain actions, as well as other restraining measures, should be considered an autonomous preventive measure. The property of autonomy allows for the differentiation between restraining measures and the resolution of any contradictions in their correlation.

4) The consequence of diversification of restraining measures will result in the natural complication of statutory provisions and institutions. Consequently, the risk of judicial errors in the law enforcement practice, violations of the rights and freedoms of suspects and accused persons will increase. The most crucial aspect in preventing judicial errors is the precise delineation of the criminal procedural mechanism governing the selection and application of restraining measures, with the prohibition of certain actions. The category of legal mechanism encompasses all elements utilized to regulate social relations. The defining feature of the criminal procedural mechanism of selection and application of restraining measures with the prohibition of certain actions is its expression in procedural proceedings along with performing evidentiary activities.

5) The distinctive feature of restraining measures that prohibit certain actions is their comprehensive nature. This feature has a significant impact on the mechanism of their selection and application. The existence of a condition whereby one or more prohibitions may be selected in respect of the accused allows for the formation of various combinations (models) of these restrictions.

6) The analysis of the legal precedents pertaining to the prohibition of certain actions in 53 regions of the Russian Federation permitted the identification and classification of judicial errors in the application of the provisions set forth in article 105.1 of the CPC RF. The detailed classification of judicial errors can serve a basis for methodological manuals and subsequent research in this area.

7) The general assessment of the effectiveness (efficiency) of restraining measures with prohibition of certain actions can be implemented through several

approaches based on the following: 1) examining investigative and judicial errors; 2) considering the appropriate conduct of the accused; 3) carrying out a comparative analysis with respect to the effectiveness of other restraining measures. At the same time, the greatest efficiency can be ensured through the full implementation of the criminal procedural mechanism of selection and application of restraining measures with the prohibition of certain actions.

8) The prohibition of certain actions and the imposition of bail represent two of the most similar restraining measures in terms of their coercive potential. The application of all the restrictions set forth in Article 105.1 of the CPC RF in conjunction with the property restriction in the form of bail can be regarded as a positive development in the evolution of legislation. However, it cannot be argued that the selection of property restrictions will contribute to a significant increase in the effectiveness of the impact on the accused.

9) The enhancement of the efficacy of the prohibition of specific actions should be pursued within the context of the conceptual framework, which underscores the pivotal role of historically established and pertinent patterns in the evolution of criminal procedural law. The modernization of criminal procedural legislation may be achieved through the further expansion of the list of restrictions set forth in Article 105.1 of the CPC RF, the improvement of law enforcement practice, the raising of the qualification level of officials involved in the proceedings on the selection of restraining measures with prohibition of certain actions, the strengthening of the technical level of electronic surveillance, and other similar measures are the main vectors for further progressive development of restraining measures with prohibition of certain actions.

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ANNEXES

Annex № 1

Correlation of restrictions in the format of such measures as prohibition of certain actions, restriction of freedom and administrative arrest²⁸³

№	Prohibition of certain actions²⁸⁴ (Art. 105.1 Code of Criminal Procedure of the Russian Federation)	Restriction of freedom²⁸⁵ (Art. 53 Code of Criminal Procedure of the Russian Federation)	Administrative supervision²⁸⁶
1.	Obligation to appear in a timely manner when summoned by an inquirer, investigator and court	Obligation to appear before a specialised state body that supervises the serving of sentences by convicts in the form of restriction of freedom	Compulsory appearance at the internal affairs body at the place of residence, stay or actual location for registration
2.	Prohibition to leave the premises during certain periods of time	Prohibition to leave the place of permanent residence (stay) at certain times of the day	Prohibition to stay outside the dwelling or other premises which is the place of residence or stay of the supervised person at certain times of the day and night
3.	Prohibition to stay in certain places, as well as closer than a specified distance to certain objects	Prohibition to visit certain places located within the territory of the relevant municipality	Prohibition of staying in certain places
4.	Prohibition to attend and participate in certain events	Prohibition to visit places of mass and other events and participate in these events	Prohibition of visiting places of mass and other events and participation in such events

²⁸³ Federal Law of 6 April 2011 No. 64-FZ Administrative Supervision of Persons Released from Prison // Garant SPS legal reference system.

²⁸⁴ To designate restrictive measures, the legislator used the terms “obligation” and “prohibition”.

²⁸⁵ The legislator used the term “restriction” to designate restrictive measures of influence.

²⁸⁶ The term “administrative restriction” was used by the legislator to denote restrictive measures of influence.

№	Prohibition of certain actions²⁸⁴ (Art. 105.1 Code of Criminal Procedure of the Russian Federation)	Restriction of freedom²⁸⁵ (Art. 53 Code of Criminal Procedure of the Russian Federation)	Administrative supervision²⁸⁶
5.	Prohibition to communicate with certain persons	Prohibition to leave the territory of the respective municipality	Prohibition of leaving the territory established by the court
6.	Prohibition to send and receive postal and telegraphic items	Prohibition to change the place of residence or stay, place of work and (or) study without the consent of a specialised government agency	-
7.	Prohibition of using communication means and the Internet information and telecommunications network	-	-
8.	Prohibition to drive a car or another vehicle	-	-

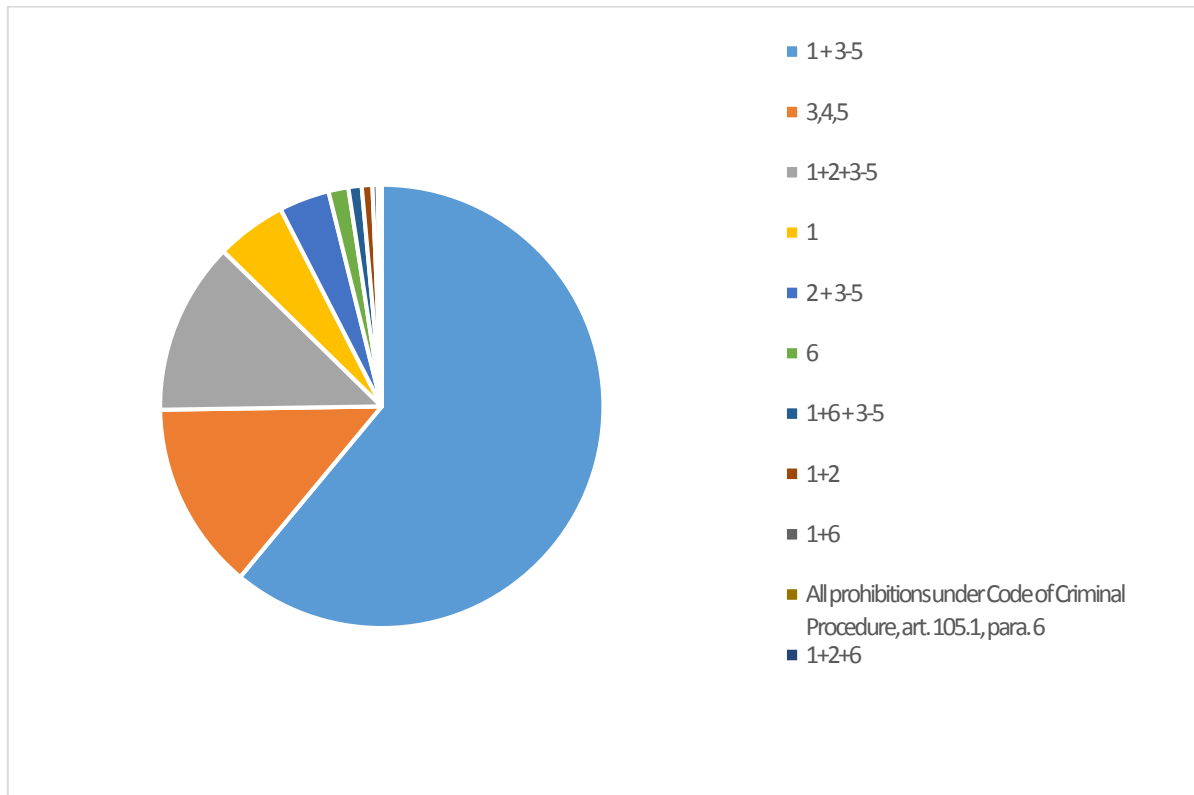
**The results of data analysis of court practice of the prohibition of certain actions
as an independent measure of restraint for 2018-2024 published in legal system
«Garant».**

Annex № 2

The frequency with which certain acts are prohibited as a measure of restraint

Body of prohibitions	Frequency	Interest
1 + 3-5	631	61.03
3-5	142	13.73
1+2+3-5	130	12.57
1	53	5.13
2 + 3-5	38	3.68
6	15	1.45
1+6 + 3-5	10	0.97
1+2	8	0.77
1+6	4	0.39
All prohibitions under Code of Criminal Procedure, art. 105.1, para. 6	2	0.19
1+2+6	1	0.1
Totaling	1034	100

Frequency of the use of prohibitions of certain actions as an independent measure of restraint



Frequency of application of each individual restriction in the list of items Art. 6. 105.1 of the CPC RF in the general practice of applying the prohibition of certain actions

Restriction number corresponding to its instruction in par. 6, art. 105.1 of the CPC RF	Frequency	Interest
Restriction 1	841	81.33
Restriction 2	181	17.5
Restriction 3	900	87.04
Restriction 4	758	73.31
Restriction 5	800	77.37
Restriction 6	39	3.77

Ratio of practical combinations of prohibitions and incriminated elements of crimes from 2018 to 2024

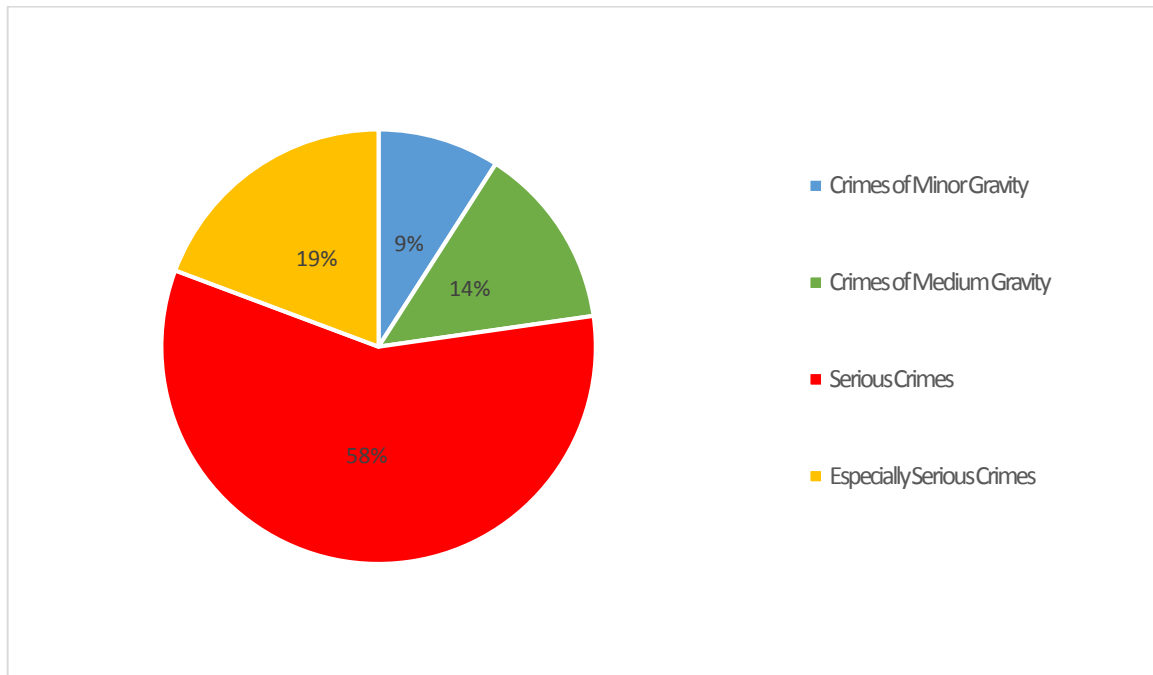
Corpus delicti / combination of restrictions	1 + 3-5	1 + 2 + 3-5	3-5	1	2 + 3-5	6	1 + 6 + 3-5	1 + 2	1 + 6	1 + 2 + 6	All restrictions	Total
105	12	5	2	0	0	0	0	0	0	0	0	19
107	1	0	0	0	0	0	0	0	0	0	0	1
109	2	0	1	0	1	0	0	0	0	0	0	4
111	33	11	4	2	1	0	0	0	0	0	0	51
112	3	0	0	0	0	0	0	0	0	0	0	3
115	1	0	0	0	1	0	0	0	0	0	0	2
118	1	0	0	0	0	0	0	0	0	0	0	1
119	0	0	1	0	0	0	0	0	0	0	0	1
126	4	0	1	0	0	0	0	0	0	0	0	5
131	1	0	0	0	0	0	0	0	0	0	0	1
137	0	0	1	0	1	0	0	0	0	0	0	2
139	4	0	0	0	0	0	0	0	0	0	0	4
157	0	0	1	1	0	0	0	0	0	0	0	2
158	94	17	11	13	2	0	0	2	0	0	0	139
159	161	27	43	11	5	0	0	2	0	0	0	249
159.1	1	1	2	0	0	0	0	1	0	0	0	5
159.2	2	0	0	0	0	0	0	0	0	0	0	2
159.3	1	0	0	0	0	0	0	0	0	0	0	1
159.4	1	1	0	0	0	0	0	0	0	0	0	2
159.5	7	0	1	1	0	0	1	0	0	0	0	10
160	19	5	5	1	1	0	0	0	0	0	0	31
161	23	5	4	2	1	0	0	0	0	0	0	35
162	8	0	2	1	0	0	0	1	0	0	0	12
163	8	2	1	1	0	0	0	0	0	0	0	12
164	1	0	0	0	0	0	0	0	0	0	0	1

Corpus delicti / combination of restrictions	1 + 3-5	1 + 2 + 3-5	3-5	1	2 + 3-5	6	1 + 6 + 3-5	1 + 2	1 + 6	1 + 2 + 6	All restrictions	Total
165	1	0	1	0	0	0	0	0	0	0	0	2
166	2	0	0	1	0	0	0	0	0	1	0	4
167	2	1	1	0	0	0	0	0	0	0	0	4
168	1	0	0	0	0	0	0	0	0	0	0	1
169	2	0	0	0	0	0	0	0	0	0	0	2
171	0	0	1	0	0	0	0	0	0	0	0	1
171.1	2	1	1	0	0	0	0	0	0	0	0	4
171.2	2	6	0	0	2	0	0	0	0	0	0	10
171.3	0	1	0	0	0	0	0	0	0	0	0	1
172	10	1	4	3	2	0	0	0	0	0	0	20
172.1	1	0	0	0	0	0	0	0	0	0	0	1
173.1	1	1	0	0	0	0	0	0	0	0	0	2
174.1	1	0	0	0	0	0	0	0	0	0	0	1
180	0	2	0	1	1	0	0	0	0	0	0	4
185.3	1	0	0	0	0	0	0	0	0	0	0	1
186	1	0	0	0	0	0	0	0	0	0	0	1
187	0	0	0	0	1	0	0	0	0	0	0	1
194	0	0	0	1	0	0	0	0	0	0	0	1
198	1	0	0	0	0	0	0	0	0	0	0	1
199	0	1	1	0	0	0	0	0	0	0	0	2
199.2	0	0	0	1	0	0	0	1	0	0	0	2
201	7	1	3	0	0	0	0	0	0	0	0	11
204	5	0	0	0	0	0	0	0	0	0	0	5
205.2	1	0	2	0	0	0	0	0	0	0	0	3
208	0	1	0	0	0	0	0	0	0	0	0	1
210	4	1	1	0	0	0	0	0	0	0	0	6
213	7	2	2	0	0	0	0	0	0	0	0	11
214	1	0	0	2	0	0	0	0	0	0	0	3
216	2	0	0	0	1	0	0	0	0	0	0	3

Corpus delicti / combination of restrictions	1 + 3-5	1 + 2 + 3-5	3-5	1	2 + 3-5	6	1 + 6 + 3-5	1 + 2	1 + 6	1 + 2 + 6	All restrictions	Total
222	1	1	0	0	0	0	0	0	0	0	0	2
226	1	0	0	0	0	0	0	0	0	0	0	1
226.1	0	1	0	0	0	0	0	0	0	0	0	1
228	36	4	3	1	2	0	1	0	0	0	0	47
228.1	48	7	8	1	4	0	0	0	0	0	1	69
232	1	0	0	0	0	0	0	0	0	0	0	1
234	2	0	0	0	0	0	0	0	0	0	0	2
236	1	0	0	0	0	0	0	0	0	0	0	1
238	5	2	3	0	0	0	0	0	0	0	0	10
239	0	0	0	1	0	0	0	0	0	0	0	1
241	0	0	1	0	0	0	0	0	0	0	0	1
244	2	0	0	0	0	0	0	0	0	0	0	2
256	2	0	0	0	0	0	0	0	0	0	0	2
258	0	2	1	0	1	0	0	0	0	0	0	4
260	4	0	1	0	2	0	0	0	0	0	0	7
263	1	0	0	0	0	0	0	0	0	0	0	1
264	10	0	1	1	0	6	7	0	1	0	1	28
264.1	1	0	1	1	0	9	1	0	3	0	0	16
268	1	0	0	0	0	0	0	0	0	0	0	1
282.2	6	0	1	0	0	0	0	0	0	0	0	7
285	4	0	1	0	1	0	0	0	0	0	0	6
286	14	1	7	0	1	0	0	0	0	0	0	23
290	22	3	8	2	3	0	0	0	0	0	0	38
291	5	0	3	1	1	0	0	0	0	0	0	10
291.1	6	0	1	0	0	0	0	1	0	0	0	8
291.2	0	1	0	0	0	0	0	0	0	0	0	1
292	4	1	0	0	1	0	0	0	0	0	0	6
292.1	1	0	0	0	0	0	0	0	0	0	0	1
293	1	3	0	0	1	0	0	0	0	0	0	5

Corpus delicti / combination of restrictions	1 + 3-5	1 + 2 + 3-5	3-5	1	2 + 3-5	6	1 + 6 + 3-5	1 + 2	1 + 6	1 + 2 + 6	All restricti ons	Total
294	0	0	3	0	0	0	0	0	0	0	0	3
303	3	0	0	0	0	0	0	0	0	0	0	3
318	3	2	1	0	0	0	0	0	0	0	0	6
319	0	1	0	0	0	0	0	0	0	0	0	1
322.1	4	1	0	0	0	0	0	0	0	0	0	5
322.2	0	1	0	0	0	0	0	0	0	0	0	1
327	1	0	1	1	0	0	0	0	0	0	0	3
330	1	0	1	2	0	0	0	0	0	0	0	4
354	1	0	0	0	0	0	0	0	0	0	0	1
354.1	1	0	0	0	0	0	0	0	0	0	0	1
Total	636	124	143	53	37	15	10	8	4	1	2	1034

Ratio of application of the prohibition of certain actions as an independent preventive measure to crimes of varying gravity



Ratio of the frequency of application of the prohibition of certain actions to persons of different gender

Sex of suspects, accused	Frequency	Interest
Male	910	88
Female	124	12
Totaling	1034	100

Ratio of frequency of application of prohibition of certain actions to suspects accused with different types of employment

Employment records of suspects, accused persons	Frequency	Interest
No data	631	61
Employed	248	24

Employment records of suspects, accused persons	Frequency	Interest
Unemployed	124	12
Student	21	2
Pensioner	5	0,5
Totaling	1034	100

Annex 9

Ratio of frequency of prohibition of certain actions to suspects accused with different marital status

Marital status of the suspect, accused	Frequency	Interest
No data	672	65
Married	228	22
Unmarried	134	13
Totaling	1034	100

Annex 10

Ratio of frequency of prohibition of certain actions to suspects, accused with dependants

Dependants of suspect, accused	Frequency	Interest
No data	672	65
Minors	196	19
Minors	114	11
Other	41	4
Older parents	9	0,9
Totaling	1034	100

Annex 11

Ratio of frequency of application of prohibition of certain actions to suspects with different personality characteristics

Description of the suspect, accused	Frequency	Interest
No data	848	82
Positive	134	13

Description of the suspect, accused	Frequency	Interest
Negative	31	3
Satisfactory	21	2
Totaling	1034	100

Annex № 12**Prosecution of suspects and accused persons**

Prosecution of suspects and accused persons	Frequency	Interest
No previous trial	569	55
No data	310	30
Criminal	134	13
Administrative	21	2
Totaling	1034	100

Annex № 13**Information on changes in the preventive measure**

Information on changes in the preventive measure	Frequency	Interest
The prohibition of certain actions has been extended	424	41
The prohibition of certain actions was elected for the first time	217	21
Remand in custody amended to prohibit certain actions	196	19
House arrest changed to ban certain actions	176	17
Prohibition of certain actions changed to detention	10	1
Ban on certain actions changed to house arrest	3	0,3
Ban certain actions changed pledge	1	0,1

Information on changes in the preventive measure	Frequency	Interest
Bail changed to ban certain actions	1	0,1
Prohibition of certain actions is abolished	1	0,1
Totaling	1034	100

Annex № 14

Frequency of the election of different periods of time in the application of the prohibition under p. 1, par. 6 art. 105.1, of the CPC RF (to leave a dwelling)

Time period	Interest (%)
22:00 – 06:00	34
23:00 – 06:00	9,6
21:00 – 07:00	7,6
The Court sets permissible time periods for leaving the premises	7,5
20:00 – 08:00	5,5
20:00 – 06:00	5,3
22:00 – 07:00	5
21:00 – 06:00	3,9
19:00 -07:00	3,1
Different period of time	18,5

Annex № 15

Frequency of selection of one of the types of prohibitions provided for under p. 2. par. 6 of art. 105.1 of the CPC RF

Prohibition	Frequency	Interest
To be in certain places	104	57
To attend and participate in certain events (total)	54	30
Being closer to a specified distance to a specific object	22	12
Totaling	181	100

Annex № 16

**Frequency of selection of a specific place when applying the ban under p. 2
par. 6 of art. 105.1 of the CPC RF**

Locating	Frequency	Interest
Places selling alcoholic products, cafes, bars, restaurants	28	27
Places of mass gathering, places of entertainment	19	18
Residence of participants in criminal proceedings	5	5
Railway stations, airports	1	178
Other	51	49

Annex № 17

Frequency of incorrect decisions to ban certain actions

Type of error in judicial decisions	Frequency	Percent
Informative	164	16
Procedural	79	8
Total decisions	1034	100

Annex № 18

**Frequency of reflection of substantive errors in court decisions on the
prohibition of certain actions**

Meaningful error reflection rate	Frequency	Percent
Errors in imposing undue restrictions (prohibitions) on the accused by the court	96	59
Errors related to the absence of an obligation in a court decision to appear the accused upon summons of the person conducting the initial	10	6

Meaningful error reflection rate	Frequency	Percent
inquiry, the investigator and the court		
Errors in using incorrect terminology when applying a ban on certain actions	6	4
Other mistakes	51	31
Total decisions	164	100

Results

analysis of criminal case files in the district courts of Krasnoyarsk on the application of preventive measures with the prohibition of certain actions

Annex № 19

Application of the prohibition of certain actions to persons of different sexes

Sex	Frequency	Interest
Male	54	93,1
Female	4	6,9
Totaling	58	100

Annex № 20

Frequency of application of prohibitions of certain actions (for each of the prohibitions separately)

Action ban	Frequency	Interest
Restriction 1	23	39,7
Restriction 2	23	39,7
Restriction 3	46	79,3
Restriction 4	30	51,7
Restriction 5	32	55,2
Restriction 6	2	3,4

Annex № 21

Family of the accused

Family status	Frequency	Interest
Married/ Married	33	56,9
Single/ unmarried	18	31
No data	7	12,1
Totaling	58	100

Dependants of the accused

Dependant status	Frequency	Interest
Children	28	48,3
Other relatives	3	5,2
No dependants	16	27,6
No data	11	19
Totaling	58	100

Information on the employment of the accused

Information on the employment of the accused	Frequency	Interest
Employed	29	50
Unemployed	11	19
No data	18	31
Totaling	58	100

Conviction of the accused

Criminal record	Frequency	Interest
Previously tried	8	13,8
No previous trial	50	86,2
Totaling	58	100

Frequency of errors in decisions (petitions) of the investigator on the prohibition of certain actions

Error information	Frequency	Interest
There is an error in the investigator's request	20	34,5
No errors in the investigator's request	38	65,6
Totaling	58	100

Frequency of errors in court decisions on the prohibition of certain actions

Error information	Frequency	Interest
There is an error in the judgement	13	22,4
There are no errors in the court decision	45	77,6
Totaling	58	100

Survey of judges, law enforcement officials

1. In your opinion, in respect of the accused, in which categories of crimes is it most appropriate (effective) to apply preventive measures with the prohibition of certain actions? (several options are allowed)

- a) Minor and moderate offences against the person;
- б) Offences against constitutional human and civil rights and freedoms;
- в) Offences against the family and minors;
- г) Offences against property;
- д) Offences in the sphere of economic activity;
- е) Offences against the interests of service in commercial and other organizations;
- ж) Environmental offences;
- з) Offences against traffic safety and traffic exploitation;
- и) Crimes in the field of computer information;
- к) Crimes in the sphere of state power, interests of the state service and the sphere of local self-government;
- л) Offences in the justice sector;
- м) Other crimes _____.

2. To which criminological and psychological characteristics would you apply preventive measures with the prohibition of certain actions?

(Has/ no criminal record; Has / has no permanent residence; Has/ no permanent employment; Minor / person of age; Has a family/ no family; has dependants / has no dependants, etc.) _____.

3. In what criminal and procedural situations the use of preventive measures with the prohibition of certain actions is the most appropriate?

(For minor and moderate crimes, For crimes for which serious consequences have not occurred; For one-off crimes; With regard to persons who are positively assessed; repent of what they have done; Accused is ready to make reparation for damage; Old age; Have diseases; Do not abuse alcohol and addictive substances, other: _____.

4. At what times of the day, it is most appropriate to prohibit a suspect or accused person from leaving his or her residence when applying the prohibition under point. 1, par. 6. art. 105.1 CPC RF?

_____.

5. What places is it appropriate to prohibit a suspect/ accused from visiting when applying the prohibition of point 2 par. 6 art 105.1 CPC RF?

- a) Entertainment facilities;
- б) Bars, cafes, restaurants, night clubs;
- в) Crime scene;
- г) Known place of residence;
- д) Other _____.

6. What distance is most appropriate for the suspect/ accused in applying the prohibition of point 2 par. 6 art 105.1 CPC RF?

- a) More than 1 km
- б) 1 km
- в) 500 m
- г) 100 m
- д) Less than 100m
- е) Other (what?) _____.

7. Where is it appropriate to prohibit a suspect or accused person from attending or participating in any of the activities provided for point 2 par. 6 art 105.1 CPC RF?

- a) Places accompanied by a massive gathering of people;
- б) Places with distribution of alcohol beverages;
- в) Places related to gambling activity;
- г) Other (which ones?) _____.

8. Which of the following categories are the most appropriate for limiting the communication with a suspect or accused person?

- a) With prosecution witnesses
- б) With victims
- в) Other suspects/ accused
- г) Different (by whom?)

9. Do you consider that the prohibition of sending and receiving postal and telegraphic correspondence must be imposed on the accused in each case when determining the measure of restraint?

- a) Yes, it is necessary in every case;
- б) No, it is necessary in certain cases (what cases?) _____.

10. Do you consider that the ban on the use of communication and the Internet should be imposed on the accused in each case when deciding on the measure of restraint?

- a) Yes, it is necessary in every case;

б) No, it is necessary in certain cases (what cases?)_____.

11. In your opinion, is it advisable to apply the prohibition under p. 6 par. 6 art. 105.1 CPC RF, not only for offences related to the violation of traffic rules and the operation of vehicles, but any other criminal offence?

a) Yes, it is possible;
 б) No, the application of the prohibition is appropriate only for the above mentioned crimes.

12. What additional prohibitions (restrictions) could you recommend that the legislature add to the list of art. 105.1 CPC RF?

- a) Suspension of cash transactions;
- б) Temporary restriction on travel abroad;
- в) Temporary restriction on departure from a certain area;
- г) Prohibition to engage in certain activities;
- д) Suspension
- е) Deprivation of the right to possess and bear arms
- ж) Obligation to live separately from the victim
- з) Electronic monitoring;
- и) Other_____.

13. Do you consider possible the possibility of applying a restriction of certain actions with such restrictive measures as a recognizance not to leave and a personal guarantee?

- a) Yes, it is possible;
- б) No, it's impossible (why?).

14. Do you consider it necessary, to interrogate an accused person about his or her attitude to the prohibitions imposed and the objective, subjective ability to comply with those prohibitions before the decision to prohibit certain actions?

a) Yes, this must be done (who should conduct the interrogation?)_____.

б) That won't be necessary.

15. Was there a need for judicial review of the revocation or amendment of a prohibition of certain actions?

a) Revocation of the restrictive measure is only advisable on the basis of a court decision;

б) Yes, it is possible (under what circumstances?)_____.

16. What control mechanisms, in your opinion, are the most effective for each of the prohibitions?

- a) Electronic tracking («electronic bracelets» etc.).
- б) Use of video surveillance systems (electronic neuronetworks, programs «Safe City» type and etc.).
- в) Contact control by law enforcement officials_____.
- г) Other_____.

17. Which of the obligations and prohibitions will be the basis for changing the prohibition of certain actions to a more severe preventive measure?

- a) Violation of at least one prohibition
- б) Systematic violation of one or more prohibitions
- в) Repeated failure to appear at the request of the investigator
- г) Other.

18. In your opinion, is the same procedure for calculating the duration of detention and the penalty for house arrest and the prohibition to leave a residence at a certain time: two days in custody per day is judicially fair and available?

- a) The current arrangements are fair.
- б) It would be advisable to change the procedure for setting off periods of house arrest and prohibiting certain actions.
- в) Other.

**Questionnaire results of survey of
judges and law enforcement officials concerned with the use of prohibition of certain actions**

№	Question	Answer option	Frequency	Survey result (%)
1.	In your opinion, in respect of the accused, in which categories of crimes is it most appropriate (effective) to apply preventive measures with the prohibition of certain actions? (several options are allowed)	Offences against traffic safety and traffic exploitation	37	59,5
		Economic crime	34	54,1
		Computer information crime	32	51,4
		Environmental crime	29	45,9
		Minor and moderate offences against the person	20	32,4
		Property crime	19	29,7
		Crimes against the interests of service in commercial and other organizations	19	29,7
		Crimes in the sphere of state power, interests of state service and local self-government	9	13,5
		Crimes of justice	5	8,1
		Offences against constitutional human and civil rights and freedoms	2	2,7
		Crimes against the family and minors	2	2,7
		Others	5	8,1
2.	To which criminological and psychological characteristics would you apply preventive	Domiciled	53	83,8
		Judge not before	51	81,1
		Has dependents	51	81,1
		Minor	48	75,7

№	Question	Answer option	Frequency	Survey result (%)
	measures with the prohibition of certain actions?	Has a family	41	64,9
		Has a permanent job	49	78,4
3.	In what criminal and procedural situations the use of preventive measures with the prohibition of certain actions is the most appropriate?	Minor and moderate crimes	34	54,1
		No serious consequences	34	54,1
		Positive characterization of the accused	24	37,8
		Willingness of the accused to pay damages	22	35,1
		Serious illness of the accused	19	29,7
		Advanced age of the accused	17	27
		Remorse of the accused	15	24,3
		The accused does not abuse alcohol or drugs	14	21,6
		When investigating one-off crimes	12	18,9
4.	At what times of the day, it is most appropriate to prohibit a suspect or accused person from leaving his or her residence when applying the prohibition under point. 1, par. 6. art. 105.1 CPC RF?	In the evening and at night	63	100
5.	What places is it appropriate to prohibit a suspect/ accused from visiting when applying the prohibition of point 2 par. 6 art 105.1 CPC RF?	Bars, cafes, restaurants, nightclubs	55	86,5
		Entertainment	51	81,1
		Crime scene	36	56,8
		Known place of residence of participants in the proceedings	19	29,7

№	Question	Answer option	Frequency	Survey result (%)
		Other	9	13,5
6.	What distance is most appropriate for the suspect/accused in applying the prohibition of point 2 par. 6 art 105.1 CPC RF?	500 m	22	35,1
		1 km	15	24,3
		More than 1 km	9	13,5
		100 m	9	13,5
		Less than 100 m	3	5,4
		Other	5	8,1
7.	Where is it appropriate to prohibit a suspect or accused person from attending or participating in any of the activities provided for point 2 par. 6 art 105.1 CPC RF?	Activities related to alcohol consumption	49	78,4
		Activities related to mass gatherings	43	67,6
		Activities related to gambling	41	64,9
		Others	9	13,5
8.	Which of the following categories are the most appropriate for limiting the communication with a suspect or accused person?	With prosecution witnesses	41	64,9
		With other suspects, accused	41	64,9
		With victims	39	62,2
		Other	17	27
9.	Do you consider that the prohibition of sending and receiving postal and telegraphic	A ban is necessary in each case	48	75,7

№	Question	Answer option	Frequency	Survey result (%)
	correspondence must be imposed on the accused in each case when determining the measure of restraint?	Prohibition is necessary in certain cases	15	24,3
10	Do you consider that the ban on the use of communication and the Internet should be imposed on the accused in each case when deciding on the measure of restraint?	A ban is necessary in each case	41	64,9
		Prohibition is necessary in certain cases	22	35,1
11	In your opinion, is it advisable to apply the prohibition under p. 6 par. 6 art. 105.1 CPC RF, not only for offences related to the violation of traffic rules and the operation of vehicles, but any other criminal offence?	Yes, perhaps	39	62,2
		No, the application of this prohibition is advisable only for specified crimes	24	37,8
12	What additional prohibitions (restrictions) could you recommend that the legislature add to the list of art. 105.1 CPC RF?	Ban on travel abroad	31	48,6
		Prohibition of leaving a certain area	29	45,9
		Deprivation of the right to bear and possess arms	27	43,2
		Obligation to live separately from the victim	27	43,2

Nº	Question	Answer option	Frequency	Survey result (%)
		Interdiction	19	29,7
		Electronic monitoring	19	29,7
		Suspension of cash transactions	15	24,3
		Suspension	14	21,6
		Other	3	5,4
13	Do you consider possible the possibility of applying a restriction of certain actions with such restrictive measures as a recognizance not to leave and a personal guarantee?	No, it's impossible	36	56,8
		Yes, it's possible	27	43,2
14	Do you consider it necessary, to interrogate an accused person about his or her attitude to the prohibitions imposed and the objective, subjective ability to comply with those prohibitions before the decision to prohibit certain actions?	This is not necessary	41	64,9
		Interrogation is necessary	22	35,1
15	Was there a need for judicial review of the revocation or amendment of a prohibition of certain actions?	Revocation may be made without judicial control	34	54,1
		Removal of bans requires judicial review	27	43,2

№	Question	Answer option	Frequency	Survey result (%)
16	What control mechanisms, in your opinion, are the most effective for each of the prohibitions?	Electronic surveillance with electronic bracelets and other devices	55	86,5
		Use of video surveillance systems (neuronetworks, programs like «Safe City» etc.	36	56,8
		Contact control by law enforcement officials	32	51,4
		Other	2	2,7
17	Which of the obligations and prohibitions will be the basis for changing the prohibition of certain actions to a more severe preventive measure?	Violation of at least one prohibition	44	70,3
		Systematic violation of one or more prohibitions	26	40,5
		Repeated failure to appear at the request of an official	22	35,1
		Other	2	2,7
18	In your opinion, is the same procedure for calculating the duration of detention and the penalty for house arrest and the prohibition to leave a residence at a certain time: two days in custody per day is judicially fair and available?	Existing order is fair	43	67,6
		It is advisable to change the set-off of periods for house arrest and the prohibition of certain actions	19	29,7
		Other	0	0

Comparative table of restrictive measures in the modern criminal procedure legislation of the former USSR republics

Restrictive measure / Country	Azerbaijan	Armenia	Belarus	Georgia	Kazakhstan	Kyrgyzstan	Latvia	Lithuania	Moldova	Tajikistan	Turkmenistan	Uzbekistan	Ukraine	Estonia
Recognizance of not to leave	preventive measure	preventive measure	preventive measure	preventive measure	preventive measure	preventive measure	preventive measure	preventive measure	preventive measure	preventive measure	preventive measure	preventive measure	as a part of judicial supervision	
Personal guarantee	preventive measure	preventive measure	preventive measure	preventive measure	preventive measure		preventive measure		preventive measure	preventive measure	preventive measure	preventive measure	preventive measure	
Supervision of the commander of a military unit	preventive measure	preventive measure	preventive measure	preventive measure	preventive measure	preventive measure		preventive measure	preventive measure	preventive measure	preventive measure	preventive measure		preventive measure
Surveillance of minor suspects or accused person	preventive measure	preventive measure	preventive measure		preventive measure	preventive measure	preventive measure	preventive measure	preventive measure	preventive measure	preventive measure	preventive measure	preventive measure	
Prohibition of certain actions			preventive measure											
Bail	preventive	preventive	preventive	preventive	preventive	preventive	preventive	preventive	preventive	preventive	preventive	preventive	preventive	preventive

Restrictive measure / Country	Azerbaijan	Armenia	Belarus	Georgia	Kazakhstan	Kyrgyzstan	Latvia	Lithuania	Moldova	Tajikistan	Turkmenistan	Uzbekistan	Ukraine	Estonia
	measure	measure	measure	measure	measure	measure	measure	measure	measure	measure	measure	measure	measure	measure
House arrest	preventive measure		preventive measure		preventive measure	preventive measure	preventive measure	preventive measure	preventive measure	preventive measure		preventive measure	preventive measure	preventive measure
Incarceration	preventive measure	preventive measure	preventive measure	preventive measure	preventive measure	preventive measure	preventive measure	preventive measure	preventive measure	preventive measure	preventive measure	preventive measure	preventive measure	preventive measure
Obligation to appear			other restrictive measure	other restrictive measure	other restrictive measure	other restrictive measure			other restrictive measure + as a part of judicial supervision		other restrictive measure		as a part of judicial supervision	
Transfer to police	other restrictive measure	other restrictive measure	other restrictive measure	other restrictive measure	other restrictive measure	other restrictive measure	preventive measure (separately)	other restrictive measure	other restrictive measure	other restrictive measure	other restrictive measure	other restrictive measure	other restrictive measure	other restrictive measure
Suspension	preventive	other restrictive	other restrictive	other restrictive	other restrictive	other restrictive	preventive		other restrictive	other restrictive	other restrictive	other restrictive	other restrictive	other restrictive

Restrictive measure / Country	Azerbaijan	Armenia	Belarus	Georgia	Kazakhstan	Kyrgyzstan	Latvia	Lithuania	Moldova	Tajikistan	Turkmenistan	Uzbekistan	Ukraine	Estonia
	measure	ive measure	ive measure	ive measure	ive measure	ive measure	measure		ive measure	ive measure	ive measure	ive measure	ive measure	ive measure
Seizure of property	other restrictive measure	other restrictive measure	other restrictive measure	other restrictive measure	other restrictive measure	other restrictive measure		other restrictive measure	other restrictive measure	other restrictive measure	other restrictive measure			other restrictive measure
Monetary penalty			other restrictive measure		other restrictive measure				other restrictive measure	other restrictive measure	other restrictive measure		other restrictive measure	other restrictive measure
Police supervision	preventive measure			other restrictive measure			preventive measure							preventive measure
Organization's surety	preventive measure	preventive measure							preventive measure		preventive measure			
Suspension of a monetary transactions	other restrictive measure													
Temporary restrictions			other restrictive				preventive		preventive					

Restrictive measure / Country	Azerbaijan	Armenia	Belarus	Georgia	Kazakhstan	Kyrgyzstan	Latvia	Lithuania	Moldova	Tajikistan	Turkmenistan	Uzbekistan	Ukraine	Estonia
on travel abroad			measure				measure		measure					
Restriction on organizing of public meeting	as a part of house arrest													
Restriction of taking action in meetings	as a part of house arrest		as a part of prohibition of certain actions											
Suspension of certain work or profession				other restrictive measure										
Electronic monitoring	as a part of house arrest		as a part of prohibition of certain actions	other restrictive measure	as a part of house arrest				as a part of house arrest	as a part of house arrest			as a part of judicial supervision	preventive measure
Obligation to be in a certain place	в составе надзора полиции		в as a part of prohibition of certain actions	other restrictive measure	other restrictive measure									

Restrictive measure / Country	Azerbaijan	Armenia	Belarus	Georgia	Kazakhstan	Kyrgyzstan	Latvia	Lithuania	Moldova	Tajikistan	Turkmenistan	Uzbekistan	Ukraine	Estonia
Obligation not to leave a certain place	as a part of house arrest			other restrictive measure			preventive measure							
Obligation not to be in a certain place	as a part of house arrest						preventive measure		as a part of judicial supervision				as a part of judicial supervision	other restrictive measure
Prohibition of contact with certain persons	as a part of house arrest		as a part of prohibition of certain actions	other restrictive measure	as a part of house arrest	as a part of house arrest	preventive measure		as a part of house arrest + суд. контроль	as a part of house arrest		as a part of house arrest	as a part of judicial supervision	other restrictive measure
Prohibition to approach certain persons						other restrictive measure								
Ban on the use of means of communication and the			as a part of prohibition of certain actions		as a part of house arrest	as a part of house arrest			as a part of house arrest	as a part of house arrest		as a part of house arrest		

Restrictive measure / Country	Azerbaijan	Armenia	Belarus	Georgia	Kazakhstan	Kyrgyzstan	Latvia	Lithuania	Moldova	Tajikistan	Turkmenistan	Uzbekistan	Ukraine	Estonia
«Internet» network														
The obligation to surrender personal ID				other restrictive measure				preventive measure	as a part of judicial supervision				as a part of judicial supervision	
Prohibition of leaving the area						as a part of house arrest			as a part of judicial supervision					
Deprivation of the right to drive a vehicle			as a part of prohibition of certain actions						preventive measure				other restrictive measure	
Deprivation of the right for hunting													other restrictive measure	
Deprivation of the right to own and bear arms													other restrictive measure	

Restrictive measure / Country	Azerbaijan	Armenia	Belarus	Georgia	Kazakhstan	Kyrgyzstan	Latvia	Lithuania	Moldova	Tajikistan	Turkmenistan	Uzbekistan	Ukraine	Estonia
Deprivation of the right to be engaged in business activity													other restrictive measure	
Suspension from driving a vehicle									preventive measure					
Judicial supervision									preventive measure				preventive measure	
Seizure of orders and medals of the detainee											other restrictive measure			
Weaponry withdrawal,				other restrictive measure										
Recognizance of a voluntary organization or collective body												preventive measure		

Restrictive measure / Country	Azerbaijan	Armenia	Belarus	Georgia	Kazakhstan	Kyrgyzstan	Latvia	Lithuania	Moldova	Tajikistan	Turkmenistan	Uzbekistan	Ukraine	Estonia
Suspension of passport (travel document)												other restrictive measure		
Personal obligation													preventive measure	
Temporarily seizure of property													other restrictive measure	
Temporary limitation of the use of special right													other restrictive measure	
Obligation to appear before a public authority for registration	as a part of police supervision			other restrictive measure			preventive measure	preventive measure		as a part of house arrest				
Restriction of changing the residence	as a part of house arrest													

Restrictive measure / Country	Azerbaijan	Armenia	Belarus	Georgia	Kazakhstan	Kyrgyzstan	Latvia	Lithuania	Moldova	Tajikistan	Turkmenistan	Uzbekistan	Ukraine	Estonia
Change of residence notice	as a part of police supervision						preventive measure						as a part of judicial supervision	
Obligation to live separately from the victim			as a part of prohibition of certain actions					preventive measure						
Restrictions of attempts to ascertain the whereabouts of the victim and other participants			as a part of prohibition of certain actions		as a part of restraining order									
Obligation to undergo treatment for alcoholism, drug addiction, substance abuse or sexually transmitted diseases	as a part of house arrest												as a part of judicial supervision	

Restrictive measure / Country	Azerbaijan	Armenia	Belarus	Georgia	Kazakhstan	Kyrgyzstan	Latvia	Lithuania	Moldova	Tajikistan	Turkmenistan	Uzbekistan	Ukraine	Estonia
Make an effort to find work or education													as a part of judicial supervision	

Guidelines
for interrogators and investigators to determine the prohibition of certain actions

1. The purpose of developing methodological recommendations (algorithm)

- a description of the procedure for determining specific prohibitions to limit the potential of the accused to negatively influence the course of the criminal process and commit new offenses;
- increasing the efficiency and effectiveness of law enforcement in terms of imposing preventive measures with the prohibition of certain actions minimising investigative and judicial errors.

2. Conceptual apparatus

The prohibition of certain actions in this algorithm means the application of restrictions provided for in Part 6 of Art. 105.1 of the Code of Criminal Procedure of the Russian Federation as an independent preventive measure, as well as an additional restriction on bail and house arrest.

3. Empirical data

As an **empirical basis** for the development of this algorithm, materials from criminal cases were used in which preventive measures were taken against the accused with a prohibition on certain actions; results of a survey of judges and law enforcement officers, scientific and pedagogical workers, in-depth interviews with judges of district and regional courts.

4. Key elements of the criminal procedural mechanism for selecting and applying preventive measures with a prohibition on certain actions.

The algorithm for selecting a prohibition on certain actions is based on the current criminal procedural mechanism for selecting and applying preventive measures with these prohibitions in a specific procedural situation. The operation of the mechanism for selecting any of the preventive measures is associated with the

determination of three main categories: the identity of the accused, the object of protection (legal interests to be protected) and the restrictions provided by law. The proper choice of restrictions is designed to prevent negative impact on the object of protection with minimal impact on those rights of the accused that do not need to be limited. These patterns are presented in the figure.

5. General patterns of imposing a prohibition on certain actions

1) The choice by an official to prohibit certain actions can be carried out in procedural situations when in relation to the person under investigation:

- a) a preventive measure has not previously been chosen in criminal proceedings;
- b) previously, a preventive measure had been imposed.

If a preventive measure is chosen for the first time within the framework of a criminal investigation, it is necessary to establish the procedural status of the person under investigation.

2) If the person under investigation has the procedural status of a suspect:

a) a prohibition on certain actions should be imposed according to the proposed algorithm, taking into account the provisions of Article 100 of the Code of Criminal Procedure of the Russian Federation and the established deadlines for filing charges.

3) If the person under investigation has the procedural status of an accused, then the following steps must be performed:

3.1) Establishing the existence of a reasonable suspicion capable of convincing the court that a socially dangerous act has been committed by a person.

In accordance with the explanations of the Plenum of the Supreme Court of the Russian Federation, reasonable suspicion presupposes “the presence of sufficient data that a person could have committed a crime (the person was caught committing a crime or immediately after its commission; the victim or eyewitnesses pointed to this person as having committed a crime; obvious traces of a crime were found on this person or his/her clothes, on him/her or in his/her home, etc.)”²⁸⁷.

²⁸⁷ Paragraph 2 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated 19 December 2013 No. 41 “Practice of Courts’ Application of Legislation on Preventive Measures in the Form of Detention, House Arrest and Bail.”

The validity of suspicion is not equivalent to the validity of the accusation, since the first indicates a certain involvement of a person in the crime committed, the validity of a legal claim, while the second one indicates whether the person is guilty of committing it.

3.2) Highlighting the object and the objective side of the crime.

The object of the crime is the social relations protected by criminal law on which a criminal attack has been carried out.

The criminal law directly establishes the following 19 objects of crimes in Chapters 16 – 34 of the Special Part of the Criminal Code of the Russian Federation:

- a) life and health of the individual;
- b) freedom, honour and dignity of the individual;
- c) sexual integrity and sexual freedom of the individual;
- d) constitutional rights and freedoms of man and citizen;
- e) family and minors;
- f) property;
- g) scope of economic activity;
- h) interests of the service in commercial and other organisations;
- i) public safety;
- j) public health and public morality;
- k) ecology;
- l) safety of traffic and operation of vehicles;
- m) the field of computer information;
- n) the fundamentals of the constitutional order and security of the state;
- o) state power, interests of civil service and service in local government bodies;
- p) justice;
- r) management procedure;
- s) military service;
- t) peace and security of mankind.

The objective side of the crime is the external manifestation of a socially dangerous criminal attack which includes:

- a) Criminal act (action, inaction);
- b) Criminal consequences (property damage, physical harm);
- c) Crime scene;
- d) Methods of committing a crime (methods of carrying out a criminal act);
- e) Means and instruments for committing a crime;
- f) The context of the crime (the conditions and circumstances in which the crime is committed).

The fixing of the object and the objective side of the offence when deciding on the choice of differentiated restrictions is necessary to determine the circumstances that constitute the object of legal protection and the way to influence it in material reality. Establishing a connection between the object, the objective side of the crime and the object of legal protection through specific evidence is necessary to increase the degree of validity of the choice of restrictions.

3.3) Studying the personalities of the suspect and the accused, and the subjective side of the offence.

When deciding on the choice of the most appropriate restriction, it is necessary to take into account **the personality of the accused**, and not the legal category of the subject of the crime. The characteristics inherent in the subject of a crime, namely: an individual, sanity, reaching the age of criminal responsibility belong to substantive law and will not be the basis for the choice of procedural restrictions.

On the contrary, the circumstances characterising the personality of the accused are of direct importance when selecting an effective (resultative) restrictive measure. Some of these circumstances are listed in Article 99 of the Code of Criminal Procedure of the Russian Federation, including:

- a) Age (minor, mature, elderly, senile);
- b) State of health (has no diseases, has chronic diseases or a disability);

- c) Marital status (has a family, does not have a family);
- d) Availability of dependents (has dependents, has no dependents);
- e) Occupation (employed, not employed, unofficially employed and studying) etc.

The subjective side of a crime is the mental activity of a person directly related to the commission of a crime. Taking into account this category is necessary to assess the expected method of influence of the accused on the object of protection and the likelihood of such influence.

- a) Guilt (intention, negligence);
- b) Motive (factors that prompted the commission of a crime, human need);
- c) The purpose of the crime (the result that the criminal seeks to achieve).

3.4) Establishing an object of legal protection.

The object of legal protection may be:

- a) the rights of the victim;
- b) the rights of witnesses;
- c) the rights of other participants in criminal proceedings (experts, specialists, etc.);
- d) the interests of law enforcement agencies on the part of the prosecution (the possibility of destruction and concealment of evidence);
- e) the public safety (the possibility of the accused committing new crimes).

3.5) Establishing the expected methods of influencing the object of protection

The conclusion obtained as a result of the analysis regarding the expected ways of influencing the suspect or accused on the object of legal protection must be correlated with the grounds proposed in the law for imposing a preventive measure. Thus, taking into account the specific circumstances of a criminal case will make it possible to highlight the purpose of imposing a preventive measure and present its legal form. The specified cause-and-effect relationship must be supported by the evidence available in the case.

4) Selecting the most appropriate restriction

Taking into account the fact that preventive measures prohibiting certain actions do not imply complete isolation from society, it can be argued that the goal provided by law in preventing the possibility of escaping in order to impose this preventive measure is not a priority. On the contrary, the basis for selecting preventive measures with a prohibition on certain actions is sufficient confidence that the accused will not make attempts to escape from the investigation. This conviction is formed on the basis of relevant data about the identity of the accused: presence of a family, place of work, positive characteristics, assistance in the preliminary investigation etc.

Having formed the conviction that the accused will not attempt to escape, it is necessary to ensure compliance with other goals of selecting a preventive measure - preventing the possibility of continuing to engage in criminal activity, threatening a witness and other participants in the proceedings, disturbing public order and otherwise impeding the criminal proceedings.

The way to certify the achievement of these goals are specific restrictions provided for in Art. 105.1 of the Code of Criminal Procedure of the Russian Federation, the main one of which is *the obligation to appear* when summoned by the investigator, interrogating officer and the court. The fulfilment of this obligation may be supported by one or more prohibitions. Each of them is aimed at limiting a certain right of the accused and at protecting the public interest, the object of legal protection. The obligation to appear is an *active* type of restriction, that is, it presupposes the possibility of carrying out a specific action. Prohibitions, on the contrary, are *passive* restrictions and imply an act of omission of certain actions.

4.1) Prohibition of leaving the premises during a certain period of time

The prohibition on leaving the premises is aimed at isolating the accused from society in order to prevent negative impact on him/her.

Determining the period of time during which the accused is allowed to leave the premises depends on the characteristics of his/her personality and the investigative situation. If a prohibition on certain actions is chosen as the most permissible alternative to complete isolation from society, for example, if the accused has a serious

illness or young children, then it is possible to determine the period of time necessary to take walks, visit a medical facility, or purchase household goods.

A similar approach should be taken to selecting a period of time (establishing the most extended period of “forbidden” time), if there are signs that determine a high probability of violating the prohibitions - close contact with accomplices in the crime, the possibility or desire of the accused to meet with them, etc.

To achieve the goal of preventing the continuation of criminal behaviour, it is advisable to prohibit leaving the living quarters in the evening and at night. Conditions for such a decision may include voluntary surrender and confession, admission of guilt by the accused during the investigation, and active cooperation in the investigation. To achieve this goal, it is also possible to impose a prohibition on leaving the living quarters during the working period of the victim and witnesses to prevent prohibited contacts.

4.2) Prohibition to be in certain places, closer than the established distance to certain objects, to attend certain events and to participate in them.

Prohibitions to be in certain places and to attend certain events are aimed at limiting the possibility of access to those locations or environments that may provoke the accused to violate public order or continue to engage in criminal activity.

Places prohibited from visiting may be: crime scenes; the known place of residence of witnesses, victims and their relatives; a place whose setting is likely to provoke the accused's mental processes to commit an offence. For example, an environment in which valuable things are present unattended can provoke a person with an unstable mental structure and a low level of moral consciousness to steal; places accompanied by drinking alcoholic beverages can provoke a disorderly person to aggressive behaviour, etc.

In this regard, the prohibition on visiting entertainment establishments and places of sale of alcoholic beverages must be justified and confirmed by information about the identity of the accused, his/her characteristics or other circumstances. For

example, the presence of alcohol or other drug addiction, prosecution for committing offenses in these places etc.

Thus, as a “certain place” we should understand that area in space that has clear identifying features that do not allow it to be confused with others. Such signs may be its functional purpose - an educational institution, a construction site or social significance - a protected object, an object of cultural significance, etc.

Unlike a *place*, **an object prohibited from visiting** should have more pronounced characteristics. In accordance with Part 7 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation, such objects include a region, a populated area, and the distance required to maintain.

The law does not establish a minimum or maximum distance for selection. The results of the study of practice show that the shortest distance chosen by the courts was 2 m, and the maximum was 1 km.

Accordingly, the choice of distance to a certain object should be based on certain criteria. The imposed prohibition and the established distance to a certain object are chosen in order to exclude the impact of the accused on protected social relations which are concentrated in a certain object. Otherwise, the distance can be represented not only in the form of a segment from a person to a certain object, but also in the form of a radius that allocates a certain circumferential exclusion territory for the accused. The centre of such an “exclusion boundary” will be the protected object.

The influence of the accused on the protected object within this territory must be excluded. The negative impact of the accused can be expressed in various ways: physically, for example, through an attempt to commit violence against the victim, and psychologically, for example, through a demonstration of threat. Based on this, the protected perimeter around the object should exclude both physical and psychological access to the protected object.

To ensure such a perimeter, in our opinion, it is sufficient to define a distance of 100–200 m to the protected object. Increasing the length of this distance proportionally expands the radius of exclusion in which the accused is prohibited from being. This

radius may also include other objects that the accused needs access to. At the same time, the restriction on visiting any objects that are not related to the investigation of a criminal case is inappropriate, exceeds the need to impose a preventive measure and unfairly limits the rights of a person.

The criminal procedure law does not disclose the concepts and characteristics of **activities that may be subject to restrictions, leaving this issue to the discretion of the law enforcement officer.**

An event is an organised action or set of actions aimed at achieving a goal. One of the key features of an event is its organisation, preparation and presence of an organiser. Accordingly, the stages of the event are its preparation (organisation) and holding. Events cannot be carried out inactively or indifferently, which means they must involve at least one participant. As a result of the event, the goals of its implementation may or may not be achieved.

The criminal procedure law implies the limitation of “certain”, that is, clear and clearly established activities. The accused must be aware of the specific set of actions he is prohibited from participating in. The purpose of restricting attendance and participation in certain events can also be considered to prevent the commission of new offenses.

The most common type of events subject to restrictions in practice is the category of “mass events”. Restrictions on participation in “mass events” may be appropriate for those who are prone to unlawful behaviour. The presence of a mass gathering of people can act as a provocation to commit crimes against property for a certain circle of people with a criminal personality. On the other hand, a person against whom a preliminary investigation is being conducted may be provoked from the outside on the basis of personal or other selfish interest.

By analogy with any other restriction, a prohibition on attending certain events must be justified. In addition to the psychological characteristics of the personality, other circumstances can be identified to justify this prohibition. For example, a political motive for committing a crime will create conditions for a prohibition on attending and

participating in political rallies. Attendance at public sporting events may be prohibited if such an environment provokes a person to become violent, as demonstrated by a record of prior criminal behaviour.

4.3) Prohibition on communication with certain persons

The prohibition on communication with certain persons is aimed at limiting unacceptable communication and preventing negative impact on participants in criminal proceedings.

The key issue is the proper registration of “certain persons” in a legal act directly through the indication of information about the individual or their procedural status.

In accordance with Part 7 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation, these persons must be identified. Consequently, a resolution establishing a prohibition on communication must contain those personal data that allow them to be identified, primarily information about the last name, first name and patronymic of such persons.

In some cases, when the number of persons with whom the accused is prohibited from communicating is excessively wide, and also taking into account the possibility of supplementing this list of persons, it is advisable, instead of information about the person’s identity, to use an indication of their procedural status, for example, witnesses, experts etc. The key condition compliance with the prohibition will include the understanding by the accused of its content and the ability to identify those persons with whom communication is prohibited.

4.4) Prohibitions on receiving postal and telegraphic items and using communications and the Internet

Prohibitions on receiving postal and telegraphic items and the use of communications and the Internet are also aimed at preventing the possibility of a negative impact on participants in criminal proceedings. The study showed that these prohibitions most often act as an addition to other restrictions ensuring the isolation of a person in the context of transmitting and receiving information.

However, it is also possible to independently apply these restrictions. For example, if the procedural situation changes, the grounds for imposing more stringent restrictions are lost, the prohibition on leaving the premises at a certain time expires repeatedly in a situation where the necessary evidence has been collected, key witnesses in the case have been interrogated, the accused has admitted his/her guilt, and has not resisted the investigation.

When selecting these prohibitions, special attention should be paid to the personal circumstances of the accused which may create conditions for the need to use digital communications. For example, completing training in an educational organisation, carrying out work, organising an enterprise, etc. In judicial practice, there have been decisions to lift restrictions on the use of the Internet imposed without taking these conditions into account.

4.5) Prohibition to drive a car or other vehicle

The prohibition on driving a car or other vehicle contains direct conditions for its selection and application in the criminal procedural law which minimises the variability of its implementation.

The key condition is the charge of a crime related to violation of traffic rules and operation of vehicles, that is, from the criminal offenses provided for in Chapter 27 of the Criminal Code of the Russian Federation.

Based on the provisions of Part 11 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation, control over compliance with this prohibition is not carried out by federal executive authorities, including through the functions of control and supervision. The prohibition is implemented by confiscating the driver's license and attaching it to the materials of the criminal case. Consequently, the selection of an exclusive prohibition on driving a vehicle does not imply additional indication in the legal act of the relevant executive authorities.

6. Algorithm for selecting preventive measures alternative to detention.

1) Establish the impossibility of imposing more stringent measures of restraint - house arrest and detention.

House arrest and detention will be a priority when there is a high public danger of the crime and the severity of the consequences. Consequently, crimes against state power, military service, peace and security of mankind do not create favourable preconditions for imposing to prohibit certain actions. The use of more lenient preventive measures against suspects and accused under these offenses is not excluded and must be justified by favourable circumstances of the accused person's personality and minimal potential for influencing the object of legal protection.

2) If a crime is committed in the field of road safety and operation of vehicles, the priority is to impose a prohibition on driving a vehicle.

3) Establish the need to prohibit leaving the premises at a certain time.

The need to impose the most severe restrictions associated with restriction of freedom and isolation in a residential area may be based on the following grounds.

a) The high degree of public danger of the crime and the severity of the consequences. Consequently, the choice of this prohibition will be most typical for crimes against the individual, state power, military service, peace and security of mankind.

b) An alleged active role in the commission of the crime, the presence of a wide range of unexamined witnesses associated with the accused, the ability to influence the situation at the crime scene, etc.

c) Taking into account the person's age of majority, unstable mental state, negative characteristics, involvement in various types of legal liability in the past.

The choice of a prohibition on leaving the living quarters for a certain period of time may be associated with the impossibility of completely isolating the accused from society due to the presence of serious illnesses, the need to care for close relatives, and independently provide for life and daily life. These factors should be taken into account when imposing a prohibition, taking into account the above-mentioned circumstances of the crime committed.

3.1) Establish the consent of relatives for the suspect or accused to stay in the same room with them during the period of the prohibition.

3.2) Establish a period of time during which the accused is prohibited from leaving the premises.

The following must be taken into account:

a) The person's employment and the degree of his/her involvement in ensuring the well-being of family members and society. The period of prohibition from leaving the premises should, as a rule, not affect officially established working hours.

b) The presence of all socially useful connections of the accused, including the need for walks with young children, accompanying children to educational institutions, caring for close relatives, etc.

c) Medical, household and social needs of the accused, including the need to visit pharmacies, scheduled medical examinations, grocery and hardware stores, and religious institutions.

Taking into account the above conditions, when imposing for the first time a prohibition on leaving residential premises at a certain time, it is possible to establish a prohibition on leaving residential premises in the evening and at night from 21:00 to 06:00. Such a period will contribute to the psychological impact on the accused, limit his/her stay in a crime-prone environment and allow him/her to fulfil everyday and social needs.

4) Establish the need to impose prohibitions on being in certain places, closer than the established distance to certain objects, visiting certain events, and participating in them.

4.1) As certain places prohibited for the accused from visiting, the following places should be particularly highlighted:

a) the place of committing a crime;

b) the workplace of the accused if it is connected with the place where the crime was committed;

c) crowded places, entertainment venues if their environment may provoke the accused to commit new offenses.

4.2) *The following should be separately identified as certain objects to which the accused is prohibited from approaching within a certain distance:*

- a) the place of residence of participants in criminal proceedings that has become known;
- b) place of work or study of participants in criminal proceedings or their relatives.

4.3) *The following events should be separately highlighted as prohibited events:*

- a) activities directly related to the commission of a crime due to the generality of the situation or the persons participating in it;
- b) events participation in which can provoke the accused to commit new offenses.

5) *Establish the need to apply a prohibition on communicating with certain persons.* The following categories of persons should be specified:

- a) accomplices of the crime known to the accused;
- b) victims and their relatives;
- c) witnesses;
- d) other participants in criminal proceedings.

6) *Establish the need for prohibitions on receiving, sending postal and telegraph correspondence, and using communications and the Internet.*

7) *Consider the advisability of applying a preventive measure to the accused in the form of bail.*

The decision on the issue of imposing the bail is justified by the fact that the use of this preventive measure may be associated with the use of all the restrictions of Part 6 of Article 105.1 Code of Criminal Procedure of the Russian Federation. Therefore, the key in this regard is to decide whether it is necessary to impose an additional property restriction on the accused.

A restrictive measure expressed in the transfer of property assets as collateral can be effective against those accused who, due to their personal make-up, give priority to the accumulation of material wealth, ensuring comfortable conditions for their

existence, and depend on the use of material and monetary resources in production activities. The high risk of losing these resources through the foreclosure of the lien in favour of the state will serve as an incentive to comply with the restrictions of the restrictive measure.

8) Check the draft resolution for compliance with the rules for imposing a preventive measure.

The selection of a preventive measure with a prohibition on certain actions is governed by the procedural **rules** as follows:

a) an indication of the specific conditions for compliance with established prohibitions;

b) establishing the period for application of the prohibition provided for in Paragraph 1 of Part 6 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation;

c) the resolution must contain the obligation of the suspect or the accused to appear when summoned by the inquiry officer, investigator or court;

d) the resolution must contain an indication of the right and opportunity of the suspect or the accused to use telephone communications to call emergency medical services, law enforcement officers, emergency services in the event of an emergency, as well as to communicate with the investigator, interrogating officer and supervisory authority;

e) the resolution must contain an indication of the federal executive body exercising control over compliance with the imposed restrictions.

9) Check the resolution for procedural and content errors.

Content errors manifest themselves in practice as follows:

a) An indication in the resolution of prohibitions and restrictions not provided for by law, including a prohibition to leave the territory of a populated area, change place of residence, leave a residential premises without the permission of the investigator, a prohibition to drink alcoholic beverages, engage in business activities, etc. Provisions of Article 105.1 of the Code of Criminal Procedure of the Russian

Federation contain an exhaustive list of restrictions that are not subject to broad interpretation.

b) Use of the incorrect name of a preventive measure in the operative part of the resolution on the selection of a prohibition on certain actions, including as “restrictions on certain actions”, “selection of restrictive measures”, “preventive measures in the form of driving a car”.

c) The obligation of the suspect or the accused to appear when called by the inquirer, investigator and the court in the operative part of the resolution should not be formalised as one of the prohibitions.

d) The presence of vague prohibitions (“communicating with strangers”, “being in crowded places” etc.).

Procedural errors manifest themselves in practice as follows:

a) Lack of indication of the duration of the prohibition provided for in Paragraph 1 of Part 6 of Article 105.1 of the Code of Criminal Procedure of the Russian Federation.

b) Assignment of validity periods for the prohibitions provided for in Points 2-5 Part 6 Article 105.1 of the Code of Criminal Procedure of the Russian Federation.

c) Incorrect indication of the period of time of the prohibition on leaving the residential premises (“prohibition to leave after 22 o’clock”, “prohibition to leave the residential premises from 00:00 to 00:00” etc.).

d) Combination of restrictions not provided for by law, Part 6 of Art 105.1 of the Code of Criminal Procedure of the Russian Federation with separate preventive measures, for example, with a written undertaking not to leave;

e) Lack of indication of the possibility of using telephone communications to call emergency services, law enforcement agencies, or to communicate with a defence lawyer.

f) Lack of proper motivation when justifying prohibitions with reference to available evidence.