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Objects that come under the protection of criminal offenses with the help of criminal procedural rules are: individual, society and state.

The objects of protection are the rights, freedoms and legal interests of participants of criminal proceedings. Under this protection should be understood as the necessary conditions for using of the rights, freedoms and legitimate interests satisfaction, their integrity and inviolability with a clear resolution of criminal procedural relations and the adoption of legal action to prevent violations of the rights of participants in criminal proceedings[1]. So incase presence disadvantages in legal regulation of criminal procedural relations it directly affects to the quality and level of protection the rights, freedoms and legitimate interests of satisfaction, as discussed above. Under such conditions, consider some problems of legal regulation in the Criminal Procedure Code of Ukraine (hereinafter - the Code of Ukraine), and offer possible ways to correct them.

Before we start it is necessary to remind some of the theoretical foundations that had studied by the students of legal institute's of higher educational institutions of our country. What does it means the legal status of a person? The theory of law gives to as such definition of that, it is the system of fixed legal acts and state-guaranteed rights, freedoms, duties, responsibilities, according to which the individual person as a subject of law coordinates his/her behavior in society[2]. According to this definition, we can determine the following elements that develop the legal status of the person: it has rights, freedoms, duties, responsibilities[3]. Legal

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[1] Кримінальний процесуальний кодекс України. Науково-практичний коментар: у 2 т.Т.1 / [О.М. Бандурка, Є.М. Блажівський, С.П. Бурдоль та ін.]; редкол.: В.Я. Тацій, О.В. Капліна, О.Г. Шило. – Х.: Право, 2013. – С. 567-571. (768с.)

[2] Скакун О. Ф. Теорія держави і права : підручник / Пер. з рос. / О. Ф. Скакун. – Харків : Консум, 2001. – 656 с.

[3] Скакун О. Ф. Теорія держави і права : підручник / Пер. з рос. / О. Ф. Скакун. – Харків : Консум, 2001. – 656 с.

literature also distinguishes the following types of legal status of a person, as general, special and individual. Finally, it should be explained why it was necessary for a brief digression on the theory of law.

The p. 6 of the art. 55 Criminal Procedure Code of Ukraine, fixed that in case of death of a person which caused by a criminal offense or if the health condition of a person makes it impossible to submit with the application form, the close relatives or family members of such person according to position of p. 1-3 have a right to do that[4]. According to the art. 55 CPC of Ukraine victims in this way could be one of the native from among close relatives or family members who applied for her/his involvement in the proceedings as the victim. The question is how the close relatives or family members can get a victim status if p. 1 of the art. 55 CPC of Ukraine fixed that victim in criminal proceedings could be a person to whom caused by a criminal offense moral, physical or property damage. In this case we believe that the victim could be only an individual person that caused by a criminal offense moral, physical or property damage, but the relatives couldn't took such legal status[5].

In this case, it is advisable to give the status of legal representatives to the close relatives of the victim and provide for them specific rights and obligations by amending the art. 59 CPC of Ukraine.

Unfortunately the Criminal Procedure Code of Ukraine requires and other changes, corrections and improvements.

So the next problem it is an implementation and use of electronic monitoring control (hereinafter – EMC) to the suspect, the defendant in according to the art.195 CPC of Ukraine. EMC enables you to track and fix location of the suspect. This device must be protected against self-removal, damage or other interference

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[4] Кримінальний процесуальний кодекс від 13.04.2012 р. № 4651-VI // Відомості Верховної Ради України. – 2013. – № 9-10, № 11-12, № 13. – Ст. 88.

[5] Малярчук Н.В. Законний представник потерпілого в кримінальному провадженні України / Н.В. Малярчук // Актуальні проблеми кримінального права, процесу та криміналістики : матеріали IV міжнародної науково-практичної конференції, присвяченої 95-річчю з дня народження професора М.В. Салтевського (м. Одеса, 2 листопада 2012 року). – Одеса : Фенікс 2012. – С. 405-407.

in its work to evade control and signalize trying of the person to commit such actions.

The legislator says the duty of investigator or law enforcement officers have to explain before use EMC to the suspect or to defendant rules of using device safety-treated and the consequences of its removal or unlawful interference with its work to evade controls (p. 5, art. 195 CPC of Ukraine)[6].

If suspect, defendant had breaching the Art.195 CPC of Ukraine it would be a cause to used the order of the Ministry of Internal Affairs of Ukraine of 9.08.2012 № 696 "On Approval of the Procedure to use of electronic monitoring control". Paragraph 3.4 of the order provides to use of the provisions of the article 179 CPC of Ukraine in this case[7]. Thus, in such circumstances the suspect or defendant could be applied more stringent preventive measure, and may be imposed monetary penalty in the amount of 0.25 minimum salary to 2 sizes minimum salary. We think that such kind of sanctions in case of breaching art. 195 CPC of Ukraine is not effective.

Such incidents, when illegally removed EMC influence on society in a bad way and make him despair of a fair trial, in the proper functioning of the law enforcement system as a whole, or in that when everyone who has committed a criminal offense was took responsibility to the extent of his guilt and that each particular of criminal proceedings were applied due process. So we can say that the p. 2 of art. 179 CPC of Ukraine is not sufficiently convincing or sufficient in order to prevent the commission of such illegal acts as to remove EMC by suspect or defendant. We think that this article in our view have to include more stringent measures than the use of a particular type of preventive measures and monetary penalties. We have to say that it is one way to prevent breach legal norms in the context of remove or unlawful interference in the work of EMC with cause to

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[6] Кримінальний процесуальний кодекс від 13.04.2012 р. № 4651-VI // Відомості Верховної Ради України. – 2013. – № 9-10, № 11-12, № 13. – Ст. 88.

[7] Про затвердження Положення про порядок застосування електронних засобів контролю: Наказ від 9.08.2012 р. № 696 // Міністерство внутрішніх справ України. – [Електронний ресурс] : Режим доступу: http://zakon4.rada.gov.ua/laws/show/z1503-12.

avoidance from the control by introducing criminal liability for such actions. It would be right to amend the art. 195 CPC of Ukraine by the text of the legal norm that informed about the inevitability of criminal responsibility for willful remove or unlawful interference in the EMC to evade of the control.

Instead, position of the p. 2 the art. 179 CPC of Ukraine would come into force in case of breach rules of use of the EMC or breach of duty provided for designated preventive measure in the form of personal obligation, personal surety, bail or home arrest.

So, if suspect or the defendant would remove the EMC he/she could take the criminal responsibility according to the art. 382 of the Criminal Code of Ukraine which fixed the intentional failure judgment, decision, order of the court, which come into force or obstruct their implementation[8].

Next that would be interesting to discuss is the problems of legal regulation of a juvenile or a minor person in criminal proceedings.

The CPC of Ukraine in article 3 gives the definition of "minor person" in this context: minor – minor person and juvenile at the age of fourteen to eighteen.

It should be noted that entry to minor person civil capacity of the full 18 years in accordance with article 34, 35 of the Civil Code of Ukraine isn't a reason to refuse the application of art. 226 CPC of Ukraine.

It should be said that under the law of interrogation juvenile or a minor person performed necessarily involving a teachers, a psychologists, and if necessary the doctor. The corresponding obligation provided for in Article 226 of the CPC of Ukraine which noted that interrogation of juvenile or the minor person is performed in the presence of a legal representative, a teacher or psychologist if necessary – a doctor. CPC of Ukraine establishes interrogation time limits of juvenile or a minor person. It can not continue without a break for more than one hour, and the average – more than two hours a day. Persons under the age of

[8] Кримінальний кодекс України від 05.04.2001 № 2341–III // Офіційний вісник України. – 2001. – № 25-26. – Ст. 131.

sixteen explained the duty of the necessity of giving truthful testimony, without notice of criminal liability for refusal to testify and for knowingly false testimony.

It should also be noted that the CPC of Ukraine provides for the obligation of participation above mentioned persons in pretrial (investigation) activities involving juvenile or minors persons. Thus, in accordance with the article 227 of the CPC of Ukraine during the pretrial (investigation) activities involving juvenile or minors persons ensured necessarily involving of the legal representative, a teacher or a psychologist and if necessary – a doctor. Investigator is also explained to them their right for permission to ask clarifying questions to juvenile or minor person.

In exceptional cases where the participation of the legal representative can undercut the interests of the juvenile or minor person witness, investigator, prosecutor at the request of the juvenile or minor person or of its own motion has the right to restrict the participation of a legal representative in the performance of certain pretrial (investigation) activities or remove him from participation in criminal proceedings and involve the replacement of another legal representative.

We think that in p. 3. art. 227 CPC of Ukraine use the phrase "exceptional cases" is not sufficiently defined and estimated a character that can complicate the acceptance of the decision which should be taken in a particular case. It also should be noted that the arguable reasons for the right of a juvenile or a minor person for petition to the investigator or prosecutor about the initiation of the issue of limiting the legal representative pretrial activities or the existence of grounds for removal legal representative and his replacement by another in criminal proceedings. We also should understand that a juvenile or the minor persons in the case of their physical development may perceive reality in bad way or mistakenly perceive it. So it seems that the last appeal with the general request is unnecessary and the right to eliminate legal representative or replacing left only in the hands of the investigator or prosecutor who independently decides is there a particular case exceptional. It is also possible to predict elicit a psychologist and / or doctor for their intellectual development opportunities in the context to understand in the

right way their surroundings by the juvenile or a minor person, which can minimize unfounded circumstances of this appeal and did not complicated the work of the investigator. Such procedure could also help establish which particular case exceptional.

We also should pay attention to the article 491 CPC of Ukraine on the participation of a legal representative, teacher, psychologist or doctor in the interrogation of a minor suspect or accused. In the first part of the art. 491 CPC of Ukraine provides that a minor who hasn't reached the age of sixteen or if the minor acknowledged mentally retarded, his interrogation by the decision of the investigator, prosecutor, investigator judge, court or at the request of the defender ensured participation of a legal representative, a teacher or a psychologist, and if necessary – doctor. The position of the legislators in our opinion is confusing and not consistent because when interrogation a juvenile or a minor person in criminal proceedings under the art. 226 CPC of Ukraine established duty to involve legal representative, teacher or psychologist and only provides the right to chose about participation of a doctor. The art. 226 CPC of Ukraine used during interrogation regardless of the procedural status of a juvenile or a minor person and their ages[9]. Under these circumstances is unclear establishing in the art. 491 CPC of Ukraine age limit for a minor to involve a teacher, psychologist or physician moreover on the initiative of the investigator, prosecutor, investigator judge, court or at the request of the defender the suspect or accused. Especially inconsistency is that the p. 2 of the article 226 CPC of Ukraine shall be carried out in any case, so why doesn't other parts of the article 226 CPC of Ukraine aren't obligatory for use. Even more that the that the name of the article 226 CPC of Ukraine contains the term "specifics" interrogation of a juvenile or a minor person, and the article 491 CPC of Ukraine refers to Chapter 38, paragraph 1, entitled "General rules for criminal proceedings against minors".

[9] Кримінальний процесуальний кодекс від 13.04.2012 р. № 4651-VI // Відомості Верховної Ради України. – 2013. – № 9-10, № 11-12, № 13. – Ст. 88.

As a conclusion, which based on the analyzed articles of CPC of Ukraine they at least had to be coordinated and foresight in p. 1 of the art. 491 age for a minor person is unreasonable because the art. 226 CPC of Ukraine didn't say about at all.

Next that would be also interesting to discuss is the problems of legal regulation of prejudicial effect of the court decision as institute.

Fist of all It should be noted that the decision of the national court or international judicial institutions, which came into force and which established a violation of human rights and fundamental freedoms guaranteed by the Constitution of Ukraine and international agreements which ratified by the Verkhovna Rada of Ukraine have the prejudicial effect for court which decides a question about the eligibility of evidence. It should be said that the institution of the collateral estoppel should be used not only for evidentiary value conditions which established in the decision taken earlier by jurisdictional authority. It also should be used in cases when existed circumstances with which the law binds the occurrence of certain substantive consequences.

Prejudicial effect of the decision which were taken earlier means that fact and conclusions which were made on their basis by the court could be used as the legal fact that didn't need to be proved in another proceedings (for example criminal, civil proceeding etc.). Everything that had been said helps to understand the nature and sense of collateral estoppel.

Prejudicial effect facts are circumstances that have been established on the basis of some evidence in preliminary proceedings. So the prejudicial effect facts are different from the evidentiary facts because: they established during the proceedings in another case; it had the procedural form as the evidence by this course; the prejudicial effect facts could be questioned about true their or not but only in the case when come into force the decision of the court.

It should be noted that in practice there are situations when the court previously established circumstances which were underlying in verdict but disagreed with the opinion of the court in another proceeding where such

established circumstances were used. Such circumstances couldn’t have power of pre-established evidence, because the practice known cases of illegal and unjustified verdicts which come into force.

So when criminal proceedings had given in the court and appeared data that indicate verdict which was took earlier illegal, it couldn’t be used as the basis for the conclusions in the new court decision (verdict). We should to say that Criminal Procedure Code of Ukraine didn’t fixe any instructions about what judges have to do in such case when was established that previous verdict are illegal and its established evidences which use in new court proceedings are illegal too. In this case there is a conflict between a legitimate power of the decision which was given earlier and inner conviction of the judges, based on the estimation of evidences in the new case.

We can’t pass over another problem of a procedural character. According to the CPC of Ukraine p. 4. art. 371 provide that the decision during the enactment should be fixed by secretary trial in register of the hearing. However, neither CPC nor instructions office in local general court didn’t specify the procedure and didn’t provide the right to issue a copy of the decision which enactment without going to the jury room. The CPC of Ukraine of 1960 was given more attention over such decisions, about how to take the extracts from court records. The CPC of Ukraine of 2012 didn’t have any ways of regulation in questions according to procedure ways to copy of judicial decisions. In practice it is quite often cause to arguments and often leads to postpone the process.

It should be noted appropriate procedure for obtaining a copy of the decision has to be displayed at least at Instructions of procedure activate in local general court. That will make certainly easier the order to fulfillment and delivery of a copy of a judicial decision, and will avoid disputes between participants that often occur in practice.

Preparatory trial in criminal proceedings is the so-called filter for further solution of criminal proceedings.

Legislators, not quite correctly defined procedure of judicial decision at this stage of a process, such as decisions about determination of jurisdiction and admissibility and relevance of the indictment (point 3, 4 part. 3, art. 314 CPC of Ukraine). The existence of this circumstance often leads to cancellation of court decisions, as not legitimate. We believe that to solve this problem, the legislator should be amended art. 314 Code of Ukraine concerning the sequence of taking the decision by the court at the stage of preparatory hearing. Therefore we think that the court in the preliminary hearing should primarily address issues of court jurisdiction because it doesn't solve the problem and it could be a reason of cancel any court decisions in the future, and should precede before deciding relevance of the indictment.