

**INTERNATIONAL HUMAN RIGHTS STANDARDS AND THE  
PRACTICE OF USING HOUSE ARREST AS A PREVENTIVE  
MEASURE IN CRIMINAL PROCEEDINGS RUSSIA AND SOME  
FOREIGN COUNTRIES**

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*The use of measures of state coercion, including house arrest, is always associated with restrictions on the rights, freedoms and legitimate interests of the individual, and therefore occupies one of the Central places in the field of legal regulation. However, the practice of using house arrest in some countries, including taking into account the decisions of the European court of human rights, shows that not all issues of legal regulation of this coercive measure have been resolved to a degree that satisfies science and practice, and there are violations of human rights enshrined in international legal standards, so scientific interest in problematic issues of house arrest is increasing.*

*Despite the great contribution of the research conducted to the development of the Institute of house arrest, many issues related to the implementation of international human rights standards in the application of this measure of state coercion in criminal proceedings in Russia and some foreign countries have not been fully covered and require a comprehensive study.*

*The purpose of the research is to analyze international standards in the field of human rights, as well as the experience of Russia and some foreign countries in the use of house arrest as a preventive measure in criminal proceedings, identify problematic legal issues in this part and formulate scientifically based recommendations for their solution (minimization).*

*Keywords: international legal acts, international human rights standards, coercive measures, preventive measures, house arrest.*

## **Introduction**

In any state governed by the rule of law, the highest value is the rights and freedoms of man and citizen. Their recognition, observance and protection are the responsibility of the state and its law enforcement agencies. However, in cases provided for by national legislation, the rights guaranteed and protected by the state may be restricted. One of these limitations is the use of the house arrest to defendants and suspects, which in Russia, as in many other countries, takes the second place in the system of measures of criminal procedural compulsion in severity of restriction of rights and freedoms of this category of individuals. The detention takes the first place. So we have got close attention of the world science and practice to issues of its application.

Various aspects of home arrest in criminal procedure of Russia was considered in the works of A. E. Grigorieva [3], D. Dolgushin [4], V. Klimov [6], S. V. Koloskova [8], E. V. Saltykov [11], V. Svetochhev [12], the L. K. Trunov [13], etc.; Kazakhstan – in the works baltabayeva K. T. [1], etc.; of Belarus in the works of O. A. Valencik [2], T. A. Savchuk [10], etc.; Uzbekistan – in the writings of A. A. Muhammadiyev [9] etc.

The main approach to research is the dialectical method of scientific knowledge of objective reality, from the position of which the object and subject of research are considered in a complex way, in the development and interrelation, interdependence, and interpenetration of social phenomena.

The methodological basis of the research is also based on formal-logical and comparative-legal methods, taking into account the processes of development of the regulatory framework.

Universally recognized human rights and freedoms are protected by international legal acts. The vast majority of legal norms contained in international instruments are aimed to protect and ensure the rights, freedoms and legitimate interests of individuals, especially when applying measures of state coercion, including house arrest.

The system of international human rights standards related to the implementation of state enforcement measures not connected with the isolation of the accused from society is quite extensive. They can be classified into provisions of a General (universal) nature that relate to human rights in General and contain only certain parts of provisions concerning the use of state coercion measures, and special international standards for non-custodial measures of state coercion.

International human rights standards for the application of universal house arrest include the following.

The principle of respect for human rights and freedoms, which has found its consolidation in article 1 of the UN Charter of June 26, 1945, which shows that the UN has aims: "to realize international cooperation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms for all, without distinction to race, sex, language or religion".

The principle of respect for the honor and dignity of the individual, enshrined in article 7 of the International Covenant on civil and political rights of 16 December 1966, according to which no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

The principle of protection of human and civil rights and freedoms, which consists of two main provisions: the duty of officials to explain all rights to persons subjected to state enforcement measures so that they can successfully use them, and to ensure their safety.

According to article 6 (a) Of the Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms of 9 December, 1998, everyone has the right to know, seek, obtain, receive and have at their disposal information about all human rights and fundamental freedoms, including access to information how these rights and freedoms are ensured in domestic legislation, in the judicial or administrative systems. This right corresponds the duty of the state, manifested in the responsibility for the adoption of legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.

The standard of the right to respect for private and family life, inviolability of the home and secrecy of correspondence is enshrined in article 8 of the European Convention for the protection of human rights and fundamental freedoms of 4 November 1950, article 12 of the universal Declaration of human rights of 10 December 1948 and article 17 of the International Covenant on civil and political rights of 16 December 1966.

According to article 8 of the European Convention for the protection of human rights and fundamental freedoms, everyone has the right to respect for his private and family life, the inviolability of his home and the secrecy of

correspondence. State bodies may not interfere in the exercise of this right, except in cases where this is provided for by law and is necessary in a democratic society in the interests of national security, public order or the economic welfare of the country, to maintain order and prevent crime, to protect health or morals, or to protect the rights and freedoms of others.

In accordance with article 12 of the universal Declaration of human rights and article 17 of the International Covenant on civil and political rights, no one may be subjected to arbitrary interference with his personal and family life, arbitrary attacks on the inviolability of his home, the secrecy of his correspondence, or on his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

The establishment of the human right to appeal proceedings and decisions is reflected in article 8 of the universal Declaration of human rights, according to which everyone has the right to an effective remedy by the competent national courts in cases of violation of their fundamental rights granted to them by the Constitution or law.

The standard of the right to liberty and security of person was described in articles 3 and 9 of the universal Declaration of human rights, article 9 of the International Covenant on civil and political rights, and article 5 of the European Convention for the protection of human rights and fundamental freedoms.

The universal Declaration only asserts the right in question (article 3) "everyone has the right to life, liberty and security of person" and declares that "no one may be subjected to arbitrary arrest, detention or exile" (article 9). In exercising their rights and freedoms, everyone should be subject only to such restrictions as are established by law solely for the purpose of ensuring due recognition and respect for the rights and freedoms of others and meeting the just requirements of morality, public order and the General welfare in a democratic society (article 29).

Article 5 of the European Convention for the protection of human rights and fundamental freedoms and article 9 of the International Covenant state that everyone has the right to liberty and security of person, and no one may be deprived of liberty except in the cases specified in these documents and in accordance with the procedure established by law.

In accordance with article 5, paragraph 3, of the European Convention on human rights and fundamental freedoms, every person arrested or detained has the right to a trial within a reasonable time or to be released pending trial. Release may be conditional on the provision of a guarantee of appearance in court.

Article 9 of the international Covenant States that the very important guarantee of the human right to liberty and security of person, which is not included in article 5 of the European Convention on human rights and fundamental

freedoms, is that the Detention of persons awaiting trial should not be a General rule.

Special international standards for non-custodial measures of state coercion are set out primarily in the United Nations standard Minimum rules for non-custodial measures (the Tokyo rules), as well as in the European rules on the application of public (alternative) sanctions and penalties, which were adopted as a recommendation by the Committee of Ministers of the Council of Europe on 19 October, 1992.

The Tokyo rules (Rule) they contain a set of basic principles for promoting the use of non-custodial measures, as well as minimum guarantees for persons who are subject to non-custodial measures, and apply to all persons at the pre-trial, trial and sentencing stages, as well as the post-sentencing stage.

Based on Chapter I, paragraph 2.3, of the rules, in order to provide greater flexibility in accordance with the nature and severity of the offence, the identity and background of the offender, as well as the interests of protecting society, and to avoid the unjustified use of incarceration, the criminal justice system should provide a wide range of non-incarceration measures, from pre-trial to post-trial measures.

Paragraph 3 of Chapter I of the Rules establishes the following legal guarantees.

1. The introduction, definition and application of measures not connected with imprisonment are prescribed by law.
2. The choice of a non-custodial measure is based on an assessment of the established criteria for both the nature and severity of the offence, as well as the identity, background of the offender, the purpose of the sentence and the rights of victims.
3. A judicial or other competent independent body shall exercise its discretion at all stages of the proceedings by ensuring full accountability and exclusively in accordance with the law.
4. Non-custodial measures that impose an obligation on the offender and are applied before or in lieu of formal proceedings or trials require the consent of the offender.
5. Decisions on non-custodial measures are reviewed by a judicial or other competent independent body after the application of the offender.
6. The offender has the right to submit a request or complaint to a judicial or other competent independent body on matters affecting his or her personal rights in the application of non-custodial measures.
7. An Appropriate mechanism is provided for the protection and, if possible, resolution of any complaint of non-compliance with internationally recognized human rights.
8. Non-custodial measures exclude the conduct of medical or psychological experiments on the offender or the unjustified risk of causing him physical or mental injury.

9. At all stages, the human dignity of the offender, who is subject to non-custodial measures, is respected.

10. In the application of non-custodial measures, the rights of the offender are not restricted to a greater extent than authorized by the competent authority that issued the original decision.

11. When applying non-custodial measures, the offender's right to privacy is respected, as well as the right to privacy of the offender's family.

12. Personal records on the offender kept strictly confidential and closed to third parties. Access to the dossier is restricted to persons directly involved in the investigation of the offender's case, or other duly authorized persons.

In accordance with Chapter II, paragraph 6.1 of the Rules, pre-trial detention is used as a last resort in criminal proceedings, provided that the interests of investigating the alleged offence and protecting the public and the victim are duly taken into account.

According to Chapter V, paragraph 10 of the rules, if a non-custodial measure provides for supervision, it is carried out by the competent authority in accordance with the specific conditions established by the law. The purpose of surveillance is to reduce reoffending and promote the inclusion of the offender in society in a way that would minimize the probability of reoffending.

In accordance with paragraph 14 of Chapter V of the Rules, if the conditions to be met by the offender are violated, the non-custodial measure may be changed or revoked.

The European rules on the application of public (alternative) sanctions and penalties are also aimed at reducing the actual deprivation of liberty as much as possible. At the same time, no alternative sanctions can be applied if they contradict generally recognized international human rights norms. The content of such measures should exclude an excessive risk of causing physical or mental harm to the offender.

Reference to the norms of international law shows that national legislation should provide for the right to choose a preventive measure that is not related to detention for each accused or suspect. These norms direct the legislator to expand the list of coercive measures that are not related to deprivation of liberty, and the law enforcement officer to choose from the measures of state coercion established by national law, namely those that are alternative to detention.

Such an alternative measure in Russia and in many foreign countries has become a preventive measure in the form of house arrest. House arrest is an intermediate measure between detention and other non-custodial coercive measures.

The need for the existence of house arrest in the system of preventive measures is also due to the need to reduce financial losses associated with the satisfaction of citizens' complaints by the European Court of human rights, as well as in

connection with the implementation of generally recognized international norms of law aimed at the active use of preventive measures alternative to detention.

However, despite the fact that house arrest is an alternative to detention, this measure significantly restricts a person's rights and freedoms. Thus, a person is restricted in physical freedom and personal integrity, because he is completely or partially isolated from society; a person may be deprived of the opportunity to exercise the right to: work, business, free movement and choice of place of residence, travel outside the state, education, communication with certain persons, sending and receiving mail and Telegraph messages, use of means of communication and the information and telecommunications network "Internet", etc. This is why it is so important to have a clear legal regulation of house arrest and to monitor the rights and freedoms of the persons it applies to.

In Russia, taking into account recent changes in the legal regulation of house arrest (in 2011 and 2018), the situation with its use as an alternative to pre-trial detention has improved somewhat, but detention still largely prevails. For example, in 2008, detention was used 2054 times more than house arrest, in 2014 – 40 times more, and in 2019 – 16 times more.

In order to improve the application of house arrest, compliance with the implementation of the measures of state coercion of human rights, improvement of its legal regulation should refer to the experience of Russia and some foreign countries (Republic of Kazakhstan, the Republic of Belarus and the Republic of Uzbekistan), which is characterized by the features given the level of development of the considered Institute.

For example, in the Republic of Belarus in 1999, a new Criminal procedure code (CPC RB) was adopted, one of the novelties of which was the consolidation of house arrest as a preventive measure. Articles 125-127 of the criminal procedure code of the Republic of Belarus are devoted to the regulation of house arrest.

The Code of criminal procedure of the Republic of Kazakhstan No. 206-I of December 13, 1997 also establishes house arrest as a preventive measure. However, this code became invalid on January 1, 2015 in accordance with the Criminal procedure code of the Republic of Kazakhstan dated July 4, 2014 No. 231-V (CPC of the Republic of Kazakhstan), where article 146 is devoted to house arrest.

In the criminal procedure code of the Republic of Uzbekistan (CPC ru), house arrest was included in the system of Preventive measures relatively recently in accordance with the law of September 4, 2014.

**The analysis of the experience of the foreign countries where house arrest, similar to Russia, is used as a preventive measure in criminal proceedings, revealed positive features that could be perceived by lawmakers.**

1. In accordance with the legislation of the Republic of Kazakhstan, supervision of a person under house arrest is carried out by the body conducting criminal proceedings.

Thus, based on part 5 of article 146 of the criminal procedure code of the Republic of Kazakhstan, the procedure for executing a preventive measure in the form of house arrest is determined by a joint order of state bodies authorized to conduct pre-trial investigation. By this joint order of 22.09.2014 No. 9741 approved the rules for the execution of a preventive measure in the form of house arrest (Rules), according to which supervision of the execution of house arrest is assigned to the bodies of the Ministry of Internal Affairs, the Prosecutor's office, the national security Committee, the Ministry of Finance and the Agency for Civil Service Affairs and anti-corruption in accordance with the rules of investigation of criminal cases.

In the CCP as a body entrusted with the execution of the decision (definition) about application of measures of restraint in the form of house arrest, secured the body of inquiry (part 6, article 119). In fact, the execution of house arrest in the Republic of Belarus is entrusted to such a body of inquiry as the internal Affairs bodies.

According to some authors, the absence of the CCP clearly indicates a specific body of inquiry, the duty which is charged with the execution of the decision (definition) about application of measures of restraint in the form of house arrest, and the lack of regulation of the mechanism controlling persons under house arrest, negative impact on the practice of application of this measure and overall in the Republic of Belarus has formed a trend, which is characterized by a reduction in the use of house arrest as this is expensive and difficult to implement, since it requires a large number of personnel support, which the bodies of inquiry are not always able to provide [2; 5; 14].

In Russia, after the introduction of amendments to the criminal procedure code (CPC) in 2011 to article 107, which regulates the election and application of house arrest as a preventive measure in criminal proceedings, numerous disputes were resolved about who should monitor the presence of a suspect or accused in the place of execution of a preventive measure in the form of house arrest and their compliance with the prohibitions and (or) restrictions imposed by the court.

This control is carried out on the basis of the Federal Executive authority that performs law enforcement functions, functions of control and supervision in the field of execution of criminal penalties in relation to convicted persons, that is, criminal Executive inspections (UII) of the Federal penitentiary service. This control, in accordance with the interdepartmental order of February 11, 2016, must be carried out by the UII in cooperation with the preliminary investigation bodies. However, practice shows that such interaction is not effective, and, first of all, due to the lack of interest of the preliminary investigation bodies to assist

the employees of the criminal investigation Department in performing their duties in the field of applying house arrest.

Therefore, the experience of the Republic of Kazakhstan is interesting in this issue, where the supervision of a person under house arrest is carried out by the body conducting the criminal process, that is, the entity that is most interested in the effectiveness of the application of a preventive measure.

2. under the legislation of the Republic of Kazakhstan, the place of detention under house arrest is determined by the body conducting criminal proceedings, which supervises the person under house arrest (article 146 of the CPC of the Republic of Kazakhstan, paragraph 4 of the rules).

It is allowed to provide a suspect or accused with housing by relatives and other persons for the duration of criminal proceedings, but their written consent is required, as well as adults living together with them.

If a tenancy agreement is concluded while the suspect or accused is under house arrest, the landlord must be notified by the tenant of the main purpose of the tenancy, and sublease is excluded.

When supervising the compliance of a person under house arrest with the established restrictions, the Supervisory authority has the right to check him at the place of residence at any time of the day, while in the daytime no more than twice, and at night, no more than once. The presence of an official in the home of an arrested person is allowed with the consent of this person and persons living together with him, and should not exceed thirty minutes.

Scientists noted that the absence of legal regulation mechanism for the execution of house arrest in the Republic of Belarus leads to the fact that in some cases such control measures as the establishment of surveillance of a suspect or accused or his housing and security of his home or assigned to him in the dwelling space, understood and enforced literally, i.e., the guard is not exhibited near the dwellings, but directly to the defendant's house, which is house arrest [2; 5; 14]. Thus, the accused and the persons living with him suffer certain inconveniences due to the presence of strangers in his home, and their rights and freedoms are restricted. Opinion residing with the accused persons in remand in the form of house arrest in Belarus, similar to Russia, does not take into account that rather negative point is the legal reality of the two States.

It seems that the above-mentioned rules of the Republic of Kazakhstan concerning the use of house arrest can be accepted by the Russian and Belarusian legislators in order to increase its effectiveness and respect the rights and freedoms of persons who provide housing to a suspect or accused, as well as those who live together with them.

3. the Grounds (goals) for choosing a preventive measure under the criminal procedure code of Russia (article 97), Kazakhstan (article 136), Uzbekistan (article 236) and Belarus (article 117) are similar in their internal content. However, their formulation in the code of criminal procedure, the criminal procedure code of the Republic of Kazakhstan and the criminal procedure code

of the Republic of Uzbekistan is the predictive (probabilistic) character: "reasonable grounds to believe" that the accused "may" abscond, continue criminal activities, to prevent the proceedings. According to the criminal procedure code of Belarus, the grounds for applying house arrest are "collected evidence on the basis of which it can be assumed" that the above-mentioned "undesirable" behavior of the accused is possible.

"No matter how high the probability of a fact is, it cannot be absolutized. Even the highest degree of probability cannot exclude the possibility of errors. By the time a decision is made to choose a preventive measure, a set of circumstances must be established that indicate improper behavior during the investigation. If the decision to choose a preventive measure is based on reliable factual data about improper behavior of the accused, and not a subjective opinion about his likely behavior, then the decision itself will be reliable" [7; P.11].

The opinion of the person or authority taking the decision on application of measures of restraint should be based not on intuition or assumptions, and on the basis of concrete evidence confirming the existence of grounds for preventive measure, obtained in the manner prescribed by the criminal procedure legislation, with observance of the procedural forms of their production, implementation, evaluation and application, so it appears that the criminal procedure code of Belarus in the wording of the grounds for the preventive measure is more progressive than the criminal procedure code of Russia, Kazakhstan and Uzbekistan.

4. the norms of the code of criminal procedure of Kazakhstan (articles 146, 147) and Uzbekistan (articles 242,242-1) on house arrest contain instructions on the type and amount of criminal punishment for the crime of which a person is accused or suspected, as a condition for applying the specified measure of restraint to him. For example, under the criminal procedure code of Kazakhstan, this is an accusation or suspicion of committing a crime, for which the Criminal code provides for a penalty of imprisonment for a period of at least 5 years; according to the criminal procedure code of Uzbekistan, this is an accusation or suspicion of an intentional crime for which the Criminal code provides for a penalty of imprisonment for a period of more than 3 years, or a negligent crime for which the Criminal code provides for a penalty of imprisonment for a period of more than 5 years.

The norms of the code of criminal procedure of the Russian Federation and the code of criminal procedure of the Republic of Belarus on house arrest do not specify the type and amount of criminal punishment for the crime of which a person is accused or suspected, as a condition for applying the specified measure of restraint to him, although such a condition is provided for

Taking into account that house arrest is the second most severe measure of restraint after detention, the above-mentioned conditions of its application serve as an additional guarantee of protection of human rights and freedoms from arbitrary application of the measure of restraint.

5. Essential difference between the criminal procedure code of Belarus (article 119, 125, 126), on the one hand, and the Russian code of criminal procedure (articles 107, 108), Kazakhstan (articles 147, 148) and Uzbekistan (article 242-1, 243), on the other hand, is the entity that receives the decision on the election (the authorizing election) of a measure of restraint in the form of house arrest and determining pravoohraniteli. In Russia, the Republic of Uzbekistan, and the Republic of Kazakhstan, house arrest is chosen only by a court decision, and only a judicial body can impose prohibitions and (or) restrictions on a suspect or accused against whom the specified measure of restraint has been chosen.

In our opinion, the position of the legislator of the Republic of Belarus regarding the subject that elects, authorizes a measure of restraint in the form of house arrest and determines legal restrictions (Prosecutor, Chairman of the Investigative Committee, Chairman of the state security Committee) cannot be attributed to a positive phenomenon of legal reality. House arrest, despite its comparative "leniency" in comparison with detention, still significantly restricts the rights of the person against whom it is chosen. In this regard, such restriction must be made only by a court decision.

6. in contrast to the code of criminal procedure of the Russian Federation (part 7 of article 107), the code of criminal procedure of Belarus (part 2 of article 125) and Kazakhstan (part 2 of article 146) does not contain an exhaustive list of prohibitions and (or) restrictions imposed on a person under house arrest. Such an initiative of the legislator, in our opinion, is quite controversial, since house arrest is associated with a significant restriction of human rights, so the list of restrictions applied to a person, it seems, should be strictly defined not only for the purpose of uniformity of law enforcement, but also to increase control over the observance of the rights of the suspect and the accused in the implementation of this measure of restraint.

7. Under part 3 of article 126 of the criminal code when deciding on the authorization or making decisions on house arrest, the Prosecutor or his Deputy, the Chairman of the Investigative Committee of Belarus, Chairman of the state security Committee of the Republic of Belarus or the persons performing their duties, are obliged to examine the materials containing the grounds for the use of house arrest, and, where necessary, personally question the suspect or accused, and a minor suspect or accused in all cases.

This is not the case in Russia, the Republic of Kazakhstan, and the Republic of Uzbekistan. The decision to initiate petition on election as a preventive measure of house arrest is considered by a single judge (of the code of criminal procedure – the investigative judge) with the obligatory participation of the suspect or accused, the Prosecutor, defense counsel if the latter participates in the criminal case within 8 hours (UPK RU – 12 hours) from receipt of materials to the court. At the hearing is entitled to participate the legal representative of a minor suspect or accused, and also in the code of criminal procedure and the criminal procedure code RU –the head of the investigative body, the

investigator, the investigator. Absence without a valid reason the parties were timely notified about the time of the hearing, does not preclude consideration of the petition, except in cases of absence of the accused (part 4 of article 108 of CPC of RF, part 2 of article 148 of the criminal procedure code, article 243 of the criminal procedure code PY). At the beginning of the session, the judge announces which application is subject to consideration, explains to the persons who appeared at the court session their rights and obligations. Then the Prosecutor, or on his behalf, the person who initiated the petition (under the CPC of the Republic of Kazakhstan – only the Prosecutor), justifies it, after which other persons who appeared at the court session are heard.

Thus, in Belarus, in contrast to Russia, Kazakhstan and Uzbekistan, where the accused and the suspect participate in the court session when deciding whether to choose house arrest and extend its term, the opinion of these participants is not taken into account, which seems to create an obstacle to the exercise of their rights and legitimate interests.

### **Results**

The analysis of the legal regulation of house arrest in Russia and some foreign countries in the context of compliance with international human rights standards led to the following results.

In some countries, control (supervision) over the execution of house arrest is carried out by authorized bodies, but without involving in such activities the bodies conducting preliminary investigation in a criminal case, which should first of all be interested in compliance with this measure of coercion by a person under house arrest.

The legislation of some countries does not provide for the need for mandatory research of housing conditions when choosing house arrest as a preventive measure, which creates certain problems in law enforcement practice. For example, in Russia, there are difficulties with the use of an electronic monitoring system for controlled persons, when a person lives in a private household or apartment of a large area, and the area of operation of a stationary monitoring device is much smaller.

The absence in the legislation of the requirement to obtain consent to the election of persons living together with the accused or suspected person under house arrest and (or) the owner of the dwelling creates certain problems in law enforcement practice, which sometimes involve restrictions on fundamental human rights and freedoms, for example, when officials who control a person under house arrest stay in the dwelling for a long time, imposing a ban on using the information and telecommunications network "Internet" or installing audio-visual controls in a residential area.

The wording of the grounds (goals) for choosing a preventive measure in the legislation of some countries is predictive (probabilistic). The decision to apply a preventive measure should not be based on assumptions, but on the basis of concrete evidence confirming the existence of grounds for choosing a

preventive measure, obtained in accordance with the procedure established by criminal procedure legislation.

The provisions of the criminal procedure legislation of some countries dealing with house arrest do not specify the type and amount of criminal punishment for the crime of which a person is accused or suspected, as a condition for applying the specified measure of restraint to him, although such a condition is provided for making a decision on detention. Taking into account that house arrest is the second most severe measure of restraint after detention, the above-mentioned conditions of its application serve as an additional guarantee of protection of human rights and freedoms from arbitrary application of the measure of restraint.

In some countries, house arrest is not chosen by a court decision, and the list of prohibitions and / or restrictions imposed on a person under house arrest is not exhaustive, and it is allowed to impose "other measures" to ensure a preventive measure. House arrest is associated with a significant restriction of human rights, so judicial control over its election and application should be established, and the list of prohibitions and (or) restrictions should be clearly defined in the legislation.

The mandatory participation of the accused and the suspect in deciding whether to choose house arrest and extend its term is not provided for in the legislation of some countries, but the opinion of these participants must be taken into account so that they can exercise their rights and legitimate interests.

## **Conclusion**

Thus, the study of the features of electing and applying house arrest in the legal systems of Russia and some foreign countries allows us to conclude that the measure under study is not an innovation and has a positive experience of practical application. However, despite the fact that in many countries the process of improving issues related to the use of house arrest continues and there are significant achievements in the legal regulation of this measure of coercion, some positive experience of foreign countries seems to be appropriate to use in national legislation in order to improve the institution of house arrest, which is an attractive and promising measure that solves a number of serious problems, among them, we can highlight not only the overcrowding of pre-trial detention centers and the high financial costs of keeping accused (suspects) in custody, but also the problem of humane treatment of people in General, which corresponds to the needs of modern times in civilized countries.

In view of the above, it seems appropriate to consider the possibility of making changes to the national legislation of some countries concerning the following aspects of the use of house arrest in order to respect human rights and freedoms. To fix the provision that control over the presence of suspects or accused persons in the place of execution of a preventive measure in the form of house arrest and their compliance with the imposed prohibitions and (or) restrictions is

carried out by the Supervisory authority in cooperation with the preliminary investigation bodies and (or) bodies of inquiry in accordance with the rules of investigation of criminal cases.

Provide for the need to conduct a mandatory study of housing conditions before choosing house arrest in order to determine their suitability for the use of the specified coercive measure, as well as to obtain the written consent of the owner of the dwelling and (or) the persons living in it.

The wording of the grounds (goals) for choosing a preventive measure should contain an indication not of assumptions about possible undesirable behavior of the suspect or accused in the future, but of specific evidence confirming the existence of grounds for choosing a preventive measure obtained in accordance with the procedure established by criminal procedure legislation.

The norms of criminal procedure legislation regulating house arrest should define the type and amount of criminal punishment for the crime of which a person is accused or suspected, as a condition for applying the specified measure of restraint to him. For example, to provide that house arrest may be imposed on a suspect or accused of committing crimes for which the criminal law provides for a penalty of deprivation of liberty.

Establish at the legislative level the requirement for mandatory judicial control over the election and application of house arrest and an exhaustive list of prohibitions and (or) restrictions that may be imposed on the person to whom the specified measure of coercion is applied.

Provide in the norms of criminal procedure legislation for the mandatory participation of the accused and the suspect in the decision on the choice of house arrest and the extension of its term, in order to ensure the possibility of exercising their rights and legitimate interests.

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