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НОВИЙ ПОГЛЯД НА ПИТАННЯ ОБГРУНТУВАННЯ ДОВЕДЕНОСТІ НАЯВНОСТІ РИЗИКІВ У КРИМІНАЛЬНОМУ ПРОВАДЖЕННІ В УКРАЇНІ

У цій ст тті и лізуються окремі спірні пят няя щодо доведевості и явності ризиків у кримін льному пров джежні під ч с вибору з побіжних з ходів. Н основі в лізу чинного кримін льного процесу льного з конод вств , в ціон львої судової пр ктики т рішень Європейського суду з пр в людини з'ясов но, що є чим ло проблем у досліджув ній площині. Н прикл д. у судових рішеннях відсуткі посил ини и обст виня пров дження, продовжения строків трим ния під в ртою м ло вигляд « втом тичного», вен лежне мотивув ния т інші недодіян. У зв'язку з тим, що скл двість док зув ния необхідності з стосув ния з побіжного з коду зумовлен. Вого прогностичним х р ктером, втори дійшли висновку, що чинний Кримін льний процесу льний кодекс Укр Іви (д. лі – КПК) повивен містити критерії, що обгрунтовув тимуть ймовірвість в явності ризиків, передб чених у ч. 1 ст. 177 пього Коденсу. У ст. тті в ведено орієнтовний передік по дежних з них, с. ме щодо: ризику переховув ния від орг нів досудового розслідув ният / бо суду; ризику вез конвого впливу и потерпілого, свідк , івшого підозраєв ного, обвинув ченого, експерт , спеці ліст у цьому ж крямін льному пров дженні; ризику в'иннення іншого крямін льного пр вопорушення чи продовження кримін льного пр вопорушення, у якому підозрається, обвинув чусться особ. Тому головним ф ктором обгрунтув вия ймовірності и явності резиків м є бути и діз поведінки особи, проведений и освові об'єктивних д них. Н думку вторів, т кі ф кти повинні вст новлюв ти ре льянй и мір т ре льну можливість підоорює вого вчиняти дії, що відповід ють ози к м и ведених у КПК Укр Іви резиків. Т кож з проповов но використовув ти підхід, відповідно до якого лише у виключинх вип дк х може бути досить доведения и явності коч бодного ризику, з з г льним пр вилом - потребується їх сукупність. Ключові слова: а побіжні а ходи, ризики у кримін льному пров дженні.

Panova A. V., Shidan N. V. NEW PERSPECTIVE ON PROVING THE EXISTENCE OF RISKS IN CRIMINAL PROCEEDINGS IN UKRAINE

This article analyses some of the contentious issues concerning the proof of risks in criminal proceedings at the time of the adoption of preventive measures. On the basis of an analysis of the current criminal procedure legislation, national jurisprudence and the decisions of the European Court of Human Rights, it is clear that there are many problems in this regard. For example, in court decisions, the absence of references to the circumstances of criminal proceedings, the continuation of detention periods had the form of "automatic", improper motives and other defects. In view of the fact that the difficulty of proving the necessity of a preventive measure is due to its predictive nature. the authors have concluded that the current Criminal Procedure Code of Ukraine should contain criteria, which will justify the probability of the existence of the risks provided for in s. 177(1) of the Code. The article contains an indicative list of some of them, namely: the risk of concealment from the pre-trial investigation authorities and/or the court; the risk of unlawful influence on the victim, witness, other suspect, accused person, expert, a specialist in the same criminal proceeding; a person is charged with the risk of committing another criminal offence or the continuation of a criminal offence of which a person is suspected. Therefore, an analysis of the individual's behavior based on objective data should be the main factor justifying the likelihood of the risks. In the authors' view, such facts should establish the real intention and real possibility of the suspect to take actions that correspond to the risk indicators set out in the Ukrainian Criminal Procedure Code. It is also proposed to adopt an approach whereby only in exceptional cases can proof of at least one risk be sufficient and, as a general rule, a cumulative one is required.

Key words: advanced measures, risks in criminal proceedings.

Вступ. Пят ния вибору з побіжних з ходів під ч є кримін льного пров дження є одним з ключових, оскільки одноч сно стосусться обмеження низки конституційних пр в і свобод особи,

особливо г р втов вого ст. 12 КПК пр в в свободу т особисту недоторк вість [1]. Актульність проблеми, що розгляд сться, підтверджується т кож і и лізом судової пр ктики з 2019 рік, відповідно до якого слідчими суддями під ч с досудового розслідув ння (без ур кув ння повершутих) було розглянуто 929 тис. клопот нь слідчих, прокурорів щодо з стосув ния з ходів з безпечення кримін льного пров джевня, із яких з доволево 765 тис. клопот нь. що ст во-

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