

Original article

UDC 343.83

doi 10.46741/2686-9764.2024.66.2.007



Effectiveness of the Investigation of Criminal Cases when Using the Area Functioning as a Pre-Trial Detention Center on the Territory of a Juvenile Correctional Facility

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Abstract

Introduction: the article considers the problem of using areas functioning as pre-trial detention centers located on the territory of a juvenile correctional facility in the process of conducting investigative actions to investigate criminal cases against minors. *Purpose:* to study possibilities of areas functioning as pre-trial detention centers for the full disclosure and investigation of criminal cases against minors. *Methods:* general scientific (analysis, synthesis, induction, etc.), private scientific and special methods of cognition (comparative legal, formal legal, statistical). *Results:* the process of investigating a criminal case while keeping a minor in a pre-trial detention center has a number of negative sides associated with the negative influence of a criminal subculture, as a result of which criminal infection occurs, prison world rules are acquired, which ultimately complicates the process of investigating a criminal case. *Conclusion:* the process of conducting criminal investigation, while keeping a minor in a pre-trial detention center, has a number of negative sides associated with a negative influence of the criminal subculture, leading to criminal infection and acquisition of "prison" rules, which ultimately complicates the process of investigating a criminal case.

Keywords: juvenile correctional facility, area functioning as a pre-trial detention center, investigation of a criminal case, investigative actions, interrogation, confrontation, prosecutor's supervision.

5.1.4. Criminal law sciences.

For citation: Samokhvalov I.Yu., Skakov A.B., Stepanov M.V. Effectiveness of the investigation of criminal cases when using the area functioning as a pre-trial detention center on the territory of a juvenile correctional facility. *Penitentiary Science*, 2024, vol. 18, no. 2 (66), pp. 171–178. doi 10.46741/2686-9764.2024.66.2.007.

Introduction

When investigating a criminal case and pursuing the purpose of creating conditions for timely disclosure and due to the existence of certain obstacles to this activity, the investigating authorities have to isolate a suspect from the outside world for the period of investigation, that is, to place him/her in a pre-trial detention center. Juvenile suspects do not avoid such a procedure either. This decision, made at a certain stage of investigating a criminal case, is due to a number of objective and subjective reasons and is predetermined by the following: materials on the suspect's identity; factors confirming the possibility and intention of the suspect to hide from the investigation at the stage of inquiry; the need to ensure the suspect's safety by isolating him/her before considering the criminal case in court; active counteraction to the process of investigating a crime – the suspect's personal influence on witnesses, accomplices, victims; the possibility of concealing material evidence, refusal or active opposition to investigative actions, examinations, and working out lines of inquiry. This is far from a complete list of arguments and justifications for the extreme need to place a suspect in a pre-trial detention center. As for minors, we speak about complex cases of medium and special gravity, which pose a danger to society.

Discussion

The measure, necessary for successful resolution of a criminal case, such as placement in a pre-trial detention center, has positive and negative sides.

Territorial location of the detention center at a sufficient distance from the Department of Internal Affairs can be considered a negative circumstance, since it requires transferring the suspect, implying a number of necessary and sufficient legislative procedures established by the algorithm of actions of the convoy unit of the Ministry of Internal Affairs, which makes certain adjustments to the investigation procedure.

So, after receiving a sanction for placement in a pre-trial detention center, a person under investigation is transferred to the one, located, as a rule, on the territory of another district. Transfer of a suspect in accordance with current legislation is carried out a convoy unit on a special car and in compliance with established rules based on instructions and orders of the Ministry of Internal Affairs.

The administrative and legal status of convoy units is determined by the Constitution of the Russian Federation, legislation of the Russian Federation, normative legal acts of the Ministry of Internal Affairs of Russia "Instruction on the official activities of temporary detention facilities for suspected and accused persons of internal affairs bodies, security units and escort of suspected and accused persons" fixed by the Order of the Ministry of Internal Affairs No. 140 of March 7, 2006. The convoy ensures timely delivery of persons taken into custody to their destination, compliance with the delivery regime, prevention and suppression of attempts of the escorted to escape, self-harm, and attack the convoy.

From this moment on, the investigator should take into account that carrying out certain investigative actions with the participation of a suspect will be possible only with a personal visit to the pre-trial detention center or upon delivery of the suspect to the department of internal affairs at a reasoned request. Instructions and orders of the department of internal affairs prescribe mandatory clearing of the premises of the department of internal affairs from persons under investigation for the period of holidays or long weekends. Thus, the very procedure of being in custody, traveling in a paddy wagon under guard, the atmosphere of restrictions of the pre-trial detention center negatively affect the defendant experiencing strong psychological pressure. General emotional and psychological impact of places of detention, in most cases, creates a strong psychological stress and leads to a breakdown of suspects' psyche.

In accordance with Article 33 of the Federal Law "On the detention of the suspected and accused of committing a crime", minors and adults are kept separately. In practice, pre-trial detention centers have separate blocks, floors or cells to detain minors. In conditions of insufficient funding, strict isolation requirements are formally observed. Teenagers, being in neighboring cells with adults under investigation, are more or less influenced by them. A lack of specialized personnel for working with minors, due to the orientation of the institution towards the adult contingent, negates the solution of issues of their psychological and educational support. As a result, minors learn principles and rules of the "prison" world, which in turn causes a strong criminal infection and ultimately negatively affects the process of investigating a criminal case.

The very procedure of placement and stay in a pre-trial detention center has a negative impact on most suspects and, consequently, on the process of an objective investigation of a criminal case.

According to investigators and inquirers, after a suspect is placed in a pre-trial detention center, he/she gets into the criminal environment and is forced to take a position that runs counter to the investigation. Then, during any investigative action, investigators encounter active resistance of the suspect, clearly prompted by experienced cellmates. Moreover, he/she can demand the review of previously conducted and already recorded investigative actions, which indicates that the pre-trial detention center has a sphere of communication with criminally experienced cellmates, where the process of criminal investigation of a particular case is discussed. Such a situation causes significant difficulties in conducting an investigation, requires significant efforts to convince the suspect, collect more convincing evidence, and sometimes re-conduct investigative actions. This circumstance jeopardizes results of the initial stage of the inquiry, during which the main tasks of the investigation are solved or an actual basis for their further successful resolution is created [1, p. 85].

In connection with the above-mentioned circumstances, persons at large may use criminal ties to influence suspects. This is especially common when solving group crimes, when

there is no real possibility of keeping members of the group in different pre-trial detention centers. This is evidenced by the facts of suspects' awareness of the stages of the investigation against members of the criminal group.

The criminal counteraction process is hampered by the impossibility to limit and control contacts of persons held in pre-trial detention centers due to their heavy workload and a lack of accommodation space, a small number of single cells and an insufficiently well-organized control system. Possible information leakage with the help of unscrupulous penal system employees and presence of uncontrolled forms of communication between suspects are other important negative factors. The solution to this problem is highlighted in a separate area of activity, which includes modernization of measures to prevent and suppress the occurrence of off-duty relationships between employees of the penitentiary system and convicts, criminal relationships between convicts and persons outside correctional institutions [2].

So, a suspect, who is taken out to the crime scene, examinations and investigative experiments, confrontation or identification, is given tasks to collect specific information and clarify certain circumstances of interest to the criminal structures of the detention center by criminal authorities. After investigative measures, a suspect returns to the isolation cell and has a conversation with the authority who has given the task. This is an almost uncontrolled channel of criminal communication with the outside world, which is difficult to counteract, since the information received by the suspect leaving the pre-trial detention center, as a rule, does not have material grounds (a letter called "malyava").

As a result of the influence of the criminal stratum of the pre-trial detention center on the suspect, aimed at countering an objective investigation, it is difficult for the investigator to convince the suspect of the infidelity of attitudes inspired by the atmosphere of the criminal environment, since, unfortunately, when opening a criminal case it is not possible to prove and reveal all the circumstances and subtleties of the case, much depends on the suspect himself, on his/her confessions, his/her desire to cooperate with the investigation.

Other suspects, being placed in a pre-trial detention facility, tend to confess the crime and

cooperate with the investigation, which further facilitates collection of evidence and conduct of investigative actions, strengthens suspect's loyal attitude to the staff of the investigative apparatus and to the investigation itself, and provokes the desire to wind it up as soon as possible. The reason for this is the suspect's collision with the punishment system and emergence of the desire to finish the process of collecting case materials as soon as possible, wait for the court decision and begin serving the sentence. It is believed that the sooner the suspect takes a position of cooperation with the investigation, realizes the need for a frank confession, the faster the process of opening a criminal case, collecting exhaustive evidence will go, and the investigation period will be shortened.

At the same time, it should be borne in mind that for the judicial authority making the final decision on the case, materials of the criminal case are a source of choice of arguments, according to the legal assessment of the criminal's identity. The judge, studying each investigative action, creates his opinion about the identity of the suspect, his behavior during the investigation, his personal life position in relation to the committed act, in order to further determine the measure of punishment commensurate with the crime committed, taking into account his behavior during the investigation. That is, the suspect's behavior during the investigation, his position during investigative actions, awareness of the need for cooperation with the investigation is an important step in the stage of moving towards the end of the investigation. The above-mentioned provisions can be considered a positive result of placement in a pre-trial detention facility and it is necessary to support this process with all available means.

In order to carry out necessary investigative actions according to a reasoned decision, a suspect is transferred to the territorial internal affairs department, where the officer investigating the criminal case has to carry out necessary operations in a short time. A suspect is brought to the internal affairs department, placed in a special detention center, where it is also impossible to talk about strict isolation and lack of communication with the criminal contingent due to a lack of separate detention cells.

These negative factors of the suspect's stay in a pre-trial detention center can be excluded

if a pre-trial detention center functions at the premises of a juvenile correctional facility – areas functioning as a pre-trial detention center (PFRSI).

Section V "Improvement and humanization of penal policy" of the Concept for the Development of the Penal System of the Russian Federation for the Period up to 2030 approved and adopted by the Decree of the Government of the Russian Federation No. 1,138 of April 29, 2021 provides for a special approach in the implementation of preventive measures and the execution of criminal penalties to boost effectiveness of ensuring the rights of detained persons. Thus, it is prescribed to change the approach to detention conditions of the suspected and accused in pre-trial detention facilities, taking into account the fact that their guilt in committing a crime is not yet established by the court. This provision is new, although the previous concept (up to 2020) was focused on developing and adopting legislative acts aimed at humanizing Russian legislation, solving problems of observing the rights and improving detention conditions of the suspected, accused and convicted. Applying such an approach, i.e. isolating the suspected and accused will ensure objective investigation of a criminal case, excluding any possible means of countering this process.

Organizing a PFRSI at the premises of the juvenile correctional facility, one can achieve the following positive goals of detention:

- detention in a specialized institution, that is, adapted specifically for the contingent of minors;
- exclusion of contacts with persons with criminal experience;
- isolation of a suspect during the investigation, including a possibility for the investigator to control the suspect's social circle;
- conduct of investigative actions with a positive effect without "advisory assistance of persons with criminal experience";
- conduct of law enforcement intelligence by employees of operative units of a juvenile correctional facility.

Effectiveness of criminal investigation will depend entirely on the legally competent organization of detaining minors under investigation on the territory of a juvenile correctional facility.

So, let us consider organization of a PFRSI on the territory of a juvenile correctional facility.

One of the main positive factors of a PFRSI on the territory of a juvenile correctional facility is that this institution is located within the bus route, that is, there are no difficulties in transporting a suspect. Undoubtedly, internal affairs department employees find it convenient.

Besides, a PFRSI is located in a specialized penitentiary institution intended for working with minors, built in accordance with current legal requirements, starting from the gate through which convicts are admitted and ending with a technical security system anywhere in the facility, fully controlled by its administration. The material and technical base of the facility is at a fairly high level. There are rooms adapted and meeting all the requirements and standards of International conventions, where the necessary sanitary standards are observed. So, a juvenile correctional facility has an accommodation block (dormitory), an education block (technically well-equipped school and vocational school), a canteen, a production unit (industrial zone), a leisure block (club and sports complex, punishment cell room, medical office). All these premises have an appropriate equipment that meets current standards for detaining minors. The detention regime is ensured by a well-established service system of security detachments; certified employees of the facility administration; security and technical equipment of the facility; operational staff; constant monitoring by the prosecutor's office and public organizations.

Today, the state policy of punishing minors is undergoing significant changes associated with the rethinking of the legal approach to methods of correction of convicts in places of deprivation of liberty, focusing on increasing psychological and pedagogical impact on the convict's personality and using advanced forms of educational work, educational process organization, as well as active participation in labor education [3, p. 44].

Persons held in juvenile correctional facilities are, on the one hand, convicts, on the other, – minors. The process of serving a sentence has a number of specific features based on a humane attitude of the state towards adolescents and taking into account the specifics of their personality being formed [4, p. 89].

A juvenile correctional facility is staffed with competent employees.

The available material and technical equipment and professional staffing presupposes the work on re-educating juvenile convicts serving their sentences. A juvenile correctional facility operates in accordance with the current standards of detention and accommodation of convicts, their proper nutrition, education and upbringing. Developers of the Concept for the Development of the Penal System of the Russian Federation quite rightly believe that the reduction of existing penitentiary recidivism is achieved not so much by tightening punishments and increasing their terms, but by consistently humanizing the life of convicts with their simultaneous social inclusion [5, p. 2].

A PFRSI has the following advantages: persons under investigation are kept in isolated premises and employees competent in working with minors assist investigation.

Positive factors are reception and maintenance of persons under investigation. Upon admission to the pre-trial detention center on the territory of the facility, suspects undergo mandatory medical examination and psychological testing. They are explained basic requirements of the internal regulations, responsibility for their violation, and procedures for filing complaints, applications, appeals and petitions. Personal files are formed and diaries of individual educational work are started. A medical examination of the persons under investigation and their places of detention is carried out daily and conflict situations are resolved. Along with the ongoing educational work, religious and confessional traditions are observed. The above-mentioned work pursues goals of humanizing the process of investigating a committed criminal case, which makes it possible to exclude opposition coming from both persons with criminal experience and accomplices of the crime who are at large.

Let us consider issues related to the organization and conduct of necessary investigative actions with those under investigation at the premises of a PFRSI.

As indicated above, it takes less time to transfer a suspect to the internal affairs department for investigative actions. Besides, it is advisable to carry out certain actions on the territory of a PFRSI with the facility contingent acting as

decoys. The presence of persons under investigation on the territory of a PFRSI meets one of the key requirements of the criminal process – collection of evidence using a legitimate form of fixation. Evidence in criminal proceedings is an inseparable unity of factual data, that is, information about the circumstances to be proved and the procedural form in which these factual data are clothed [6, p. 25].

Let us consider interrogation of a suspect on the territory of a RFRSI (Article 173 of the Criminal Procedural Code of the Russian Federation). Interrogation as an investigative action designed to obtain maximum information from persons involved in the process of solving a crime occupies an important place in the array of all investigative actions and helps obtain evidence. The indication that each proof must have three mandatory features (admissibility, reliability, sufficiency) (properties) should be understood as a condition under which, in the absence of any property of the proof, there is no proof itself [7, pp. 89–90]. Therefore, work with the source of information, which is a suspect, should be conducted by a competent investigator, who takes an individual approach to the personality of the suspect. Accordingly, required conditions can be created for a suspect and the investigator in the PFRSI.

Isolation conditions give operative officers of the correctional facility the opportunity to work out versions using capabilities of law enforcement intelligence operations. We will not go into details of such work (this is the subject of another direction of the article), however, joint work in this direction using capabilities of operational staff is quite possible and justified. The technical equipment of the premises intended for interrogation can be organized at the highest modern level. This is the use of an office equipped with video and audio recording equipment, the possibility of external control over the conduct of the interrogation, which will allow interested persons to participate in the investigative action without the knowledge of a suspect.

The law requires the presence of a teacher and a psychologist in interrogation of a minor; therefore, involvement of the mentioned specialists of a juvenile correctional facility is reasonable. Further, this circumstance will once again confirm reliability of the received evidence.

If there is no contact between the involved teacher and the person under investigation, it is possible to invite a teacher or psychologist familiar with the minor. This circumstance will help to achieve good psychological contact and provide a friendly atmosphere during interrogation. It is much easier to invite such a specialist to a juvenile correctional facility than to invite him/her to a pre-trial detention center.

In cases of sexual offences, it is recommended that measures be taken to ensure that a teacher is of the same sex as a suspect. The embarrassment experienced by minors during such an interrogation in the presence of persons of the other sex may negatively affect the completeness of the testimony given [8].

Let us consider the possibility of identifying a person who has committed a crime (Article 193 of the Criminal Procedural Code of the Russian Federation) on the territory of a PFRSI. There should be a separate office of a suitable area, preferably with two entrances, equipped with technical means of video, audio and external control over the conduct of an investigative action. This is required for separation of the identifying person from the identified one before the investigative action. One of the significant advantages of a PFRSI being located on the territory of the juvenile correctional facility is the opportunity to use the existing contingent as decoys. There are persons similar in appearance, height, and physique to the identified one, which greatly facilitates the work of the investigator in preparing this investigative action and selecting decoys. The person is presented to the identifying person together with other persons, the number of whom must be at least three, who must have certain similarities in appearance, height, physique, clothes, and shoes. This requirement is aimed at minimizing the occurrence of an error in identifying the wrong person. The presence of identifiable signs that sharply distinguish the identified person from the rest will play the role of a leading question or hint.

So, we cannot but mention a reliability principle in fixing evidence. The reliability of evidence depends on the establishment of its relevance and admissibility, ensuring the possibility of using information in the proof process, and, consequently, conducting its verification [9].

It is unacceptable, for example, to line up persons of different nationalities with striking facial features. An important requirement for identification is compliance with the rule of being in the same clothes in which a victim could see him. It is possible to carry out a rare, but very effective voice and speech identification by attracting decoys from among the facility.

Any official of the criminal proceedings can recognize the evidence as reliable, but only the court can recognize the evidence as such on the part of the state. A guilty verdict cannot be based on evidence whose reliability is questionable. Considering the stated topic, we cannot but dwell on activities of the prosecutor's office to monitor compliance with the rule of law in the PFRSI. Practically every aspect of key activities of the prosecutor's offices in penitentiary institutions is also feasible in the PFRSI. These include supervision of the execution of penal and other (criminal procedure) legislation in penitentiary institutions; supervision of the compliance with the requirements of the law on the admission, registration and resolution of applications and reports of crimes committed or being prepared in these institutions, timely initiation of criminal cases and taking measures in each case of violation of the rule of law; conducting a preliminary investigation in cases of crimes committed by convicts and employees of penitentiary institutions; in case of emergency, attending penitentiary institutions to verify the circumstances, clarify and eliminate the causes and conditions that have caused incidents and bring the perpetrators to justice; supervision of the legality of orders, orders, and resolutions issued by the administration of institutions and bodies executing criminal penalties.

According to the regulations of the Order of the Prosecutor General of the Russian Federation No. 27 of August 5, 2003, prosecutors are instructed to constantly monitor the legality of orders and resolutions issued by the administration of correctional institutions and pre-trial detention facilities, as well as by the management bodies of the penal system, and immediately protest in case of non-compliance with

the law. The prosecutor may use the right given to him to independently verify compliance with the law of legal acts of penitentiary institutions on his own initiative at any time convenient.

Thus, Russian legislation, represented by the prosecutor's supervision, carefully monitors strict implementation of legislation by the administration of correctional institutions. To do this, the Prosecutor's office has enough methods and levers in its arsenal that can prevent the use of illegal means against minors in custody and convicted persons.

Conclusion

Placement in a pre-trial detention center is a forced measure used by investigative authorities in order to prevent the suspect from escaping from the investigation, ensure the suspect's safety by isolating him/her before considering a criminal case in court, neutralize the suspect's active opposition to the crime investigation process and his/her personal negative influence on witnesses, accomplices, and victims, as well as prevent possible concealment of material evidence, refusal or active countering the execution of necessary investigative actions. However, in the process of being in a pre-trial detention center, a strong negative pressure is exerted on a suspected minor, since, getting into a criminal environment and communicating with people who have some experience of countering the law, he/she is forced to take a position that runs counter to the investigation. Further, encouraged by experienced cellmates, a suspect actively resists any investigative action. In a pre-trial detention center, it is not possible to exclude communication with a criminally experienced contingent due to objective and subjective factors. The cardinal solution to this problem is seen in the use of a PFRSI located on the territory of juvenile correctional facility that has a material base, an administrative apparatus of competent employees, and a clear organization of the security system and technical equipment. The evidence obtained in the process of conducting investigative actions when a suspect is kept in the PFRSI of a juvenile correctional facility will meet the requirements of objectivity and reliability.

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Received January 29, 2024