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HISTORY OF FORMATION OF MEASURES OF RESTRAINT FROM 1917 IN UKRAINE

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У статті розглядається правова характеристика запобіжних заходів у кримінальному процесі України з 1917 р. Проаналізовані види запобіжних заходів, способи їх використання для учасників кримінального провадження.

Ключові слова: запобіжні заходи, кримінальний процес, особисте зобов'язання, особиста порука, застава, домашній арешт, взяття під варту.

В статье рассматривается правовая характеристика мер пресечения в уголовном процессе Украины с 1917 г. Проанализированы виды мер пресечения, способы их использования для участников уголовного производства.

Ключевые слова: меры пресечения, уголовный процесс, личное обязательство, личное поручительство, залог, домашний арест, заключение под стражу.

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In article is considered the legal characteristic of measures of restraint in criminal trial of Ukraine from 1917. Types of measures of restraint, ways of their use to participants of criminal proceedings are analyzed.

Key words: measures of restraint, criminal trial, personal obligation, personal guarantee, pledge, house arrest, detention.

The Constitution of Ukraine (further – CU) proclaimed the rights and freedoms of the person the supreme value. Realizing this situation, the state carries out transformations in various branches of law, including the criminal procedural legislation in particular concerning criminal procedural coercion. Reforming of system of criminal justice is one of the most important steps on the way of Ukraine to introduction of the international standards of ensuring human rights. At the same time, one of the most painful problems still remains a question of ensuring the rights of participants of criminal trial at its various stages, after all the law provides their restrictions in certain cases. So, at application of measures inevitably there are questions of correctness of their election, expediency, compliance, etc. In these conditions the problem of definition of a circle of measures of application are actual. We consider it expedient to address to domestic experiment on this perspective, in particular history of formation of measures of restraint and practice of their application for 1917-2014.

One of the major questions in practice of pre-judicial investigation and judicial production is application of measures of restraint as type of criminal procedural coercion of the precautionary (advancing) character connected with a temporary restriction (deprivation) by the investigative judge, court, the right of the person (the

suspect accused, condemned) on freedom and security of person.

Vision of the outlined circle of questions was brought by such scientists, as Yu.P. Alenin, Yu.M. Groshevoy, V.S. Zelenetsky, A.P. Kuchinska, A.F. Kostyakovsky, L. Loboyko, P.I. Lyublinsky, A.R. Mikhaylenko, A.V. Moldavan, O.B. Muravin, V.V. Nazarov, V.V. Rozhkova, T.V. Sadvaya, I.Ya. Foynitsky, A.G. Shiloh and others.

Analyzing opinions of scientists, it is possible to claim that measures of procedural coercion is a powerful guarantee of implementation of instructions of provisions of the law all subjects of criminal trial. The analysis of the legislation and references testifies that measures of restraint are a peculiar group in system of providing criminal proceedings.

Different scientists incline to various concepts on a periodization of emergence of measures of restraint. For example P.I. Lyublinsky held the opinion that character of measures of restraint depends on a form of a state system. Therefore it applies such criteria at a periodization of history of formation of measures of restraint in Ukraine, namely: community period, princely period, imperial period, imperial period [1].

The community period is characterized by the international relations of small tribes, domination of internal patrimonial justice and the balanced provision of the internal relations, expressed in domination of a competitive form of



court and the investigator on election of measures of restraint (guarantee).

The prince period was formed when strengthening the power of princes with primary influence of a community. This period is characterized as transitional where there is freedom of the guarantee (doesn't differ from group responsibility) and a choice of a measure of restraint, is connected with imprisonment, depends on a personal interest of the prince.

The imperial period – formation of the strong power which absorbed a community. According to it measures of administrative and compulsory character start being applied.

For the imperial period full transformation of all state and centralization of the power is characteristic. It causes strengthening of the government, expressed in existence only of one administrative coercive measures of suppression, and only with gradual strengthening of this device transition to measures of restraint of psychological character is observed.

According to A.F. Kistyakovsky, measures share on four categories: 1) guarantees; 2) return for the police officer and guarantees; 3) return for the police officer; 4) prison arrest [2, p. 9].

The full is distribution which was offered by V.S. Miklyashevsky which totals five periods: 1) period of bloody revenge; 2) period of princes; 3) period of the imperial power; 4) period imperial; 5) period of charters (1864) [3, p. 10].

Every period it is characterized by domination of special suppression: 1) direct revenge; 2) guarantees; 3) returns of the police officer; 4) detention; 5) various measures which application is arranged with numerous guarantees. And all periodization has abstract character.

Considering history of formation of measures of restraint of the Soviet period, we pay attention to events when after revolution of 1917 the National Secretariat, having rejected the old legislation, entered the new – Soviet. Since January, 1918, in Ukraine decrees of the All-Russian congresses of Councils and CPC of RSFSR enter into force, there are precepts of law of revolutionary time.

On September 13, 1922 All-Ukrainian Central Executive Committee the resolution according to which since September 20, 1922 in all territory of the Ukrainian Soviet Socialist Republic the Code of criminal procedure of Ukraine became effective [4] was accepted. The twelfth section of the Code it was taken away under measures of restraint and it was supposed that each person involved as accused, writes a subscription about an appearance with a duty to report about change of a residence (Art. 146). Besides, the investigator can apply to accuse the following precautionary measures: 1) recognizance not to leave; 2) personal and property bail; 3) pledge; 4) house arrest; 5) detention [4, Art. 147].

At the 2nd session of All-Ukrainian Central Executive Committee in 1927 the new Code of

criminal procedure in Ukrainian was accepted by the Soviet Socialist Republic in which the list of measures was added such with actions as the guarantee of professional and other public organizations [5, p. 118]. The list of measures of restraint was to such (Art. 142): 1) recognizance not to leave; 2) personal and property bail; 3) guarantee of professional and other public organizations; 4) pledge; 5) house arrest; 6) detention.

Precautionary measures were chosen after involvement of the person to a consequence on which the suspicion in commission of crime fell. In relation to the accused measures of restraint based on the circumstances of a matter could be changed or cancelled. About election of a measure of restraint the investigator needed to make the motivated resolution where it would be specified circumstances of a crime of which commission the person, and the bases for election of a measure of restraint was accused.

Adoption of the Code of criminal procedure of USSR (1960) was the following stage of development and formation of measures of restraint in Ukraine. In it system of measures made: 1) recognizance not to leave; 2) personal guarantee; 3) guarantee of public organization or labor collective; 3-1) pledge; 4) imprisonment; 5) supervision of command of military unit. The detention of the suspect [6] was a temporary measure of suppression.

The new Criminal procedural code of Ukraine significantly changed system of measures of restraint and legal regulation of an order and the bases of their application during pre-judicial investigation and in judicial production. It causes relevance of research of these questions, after all measures of restraint belong to those criminal procedural institutes which are applied at implementation of the majority of criminal proceedings, and constitutional laws of the suspect and accused are in such a way limited.

If according to the Criminal Procedure Code of 1960 among the measures determined by the law the real alternative was made by recognizance not to leave and captures into custody, how new law-enforcement practice which so far is only formed shows, applications of measures of restraint in the form of detention was sharply reduced that, in our opinion, promotes as change of an order of its application (with obligatory simultaneous determination of the amount of the pledge sufficient for ensuring performance by the suspect, the accused duties provided by the Criminal Procedure Code of Ukraine except the cases established in Part 4 Art. 183 of the Criminal Procedure Code of Ukraine), and introduction of new types of the measures of restraint capable really to guarantee appropriate behavior of the suspect accused and performance of the duties assigned to it [7, p. 221].

The system of measures according to the new Criminal Procedure Code of Ukraine is made: 1)



personal obligation; 2) personal guarantee; 3) pledge; 4) house arrest; 5) detention; 6) detention, as a temporary measure of suppression [8, Art. 176].

Thus, the Criminal Procedure Code of Ukraine entered new types of measures of restraint, such as the personal obligation, house arrest which acting earlier in the order provided by the Criminal Procedure Code (1960) significantly it is changed regarding legal regulation of procedure of their election and extension of term.

Summing up the above, we will note that today in the Criminal Procedure Code of Ukraine concerning measures of providing criminal proceedings and measures of restraint there is a number of the theoretical questions and practical problems concerning as definitions of concepts, classifications, features of these actions, and especially practical questions of application of norms of a criminal procedural law according to the fundamental principles of the right, observance of the rights and freedoms of citizens, observance of the international standards and rules of rather above-mentioned questions. The general rules of application of measures have to be based on provisions of the Constitution of Ukraine and the international legal acts ratified by Ukraine. At application of measures the rights not only suspected or accused, but also the rights and freedoms of other persons, in particular members of families of the suspect (accused) shouldn't be violated. Novelty and

absence of sufficient legal base and practice of application of some measures of providing criminal proceedings in the theory of criminal trial considering, this question demands completion. Problems of application of measures of restraint is topical issues of a criminal procedural law therefore were, is and will be a subject of scientific researches.

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