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## CONTENT AND FEATURES OF THE COERCION IN CRIMINAL PROCESS

*На підставі проведеного аналізу наукових джерел та положень Кримінального процесуального кодексу України у статті розглянуто зміст та ознаки примусу у кримінальному процесі. Запропоновано авторське визначення примусу у кримінальному процесі.*

**Ключові слова:** заходи забезпечення, запобіжний захід, кримінальне провадження, примус, кримінальний процес.

*На основании проведенного анализа научных источников и положений Уголовно-процессуального кодекса Украины в статье рассмотрено содержание и признаки принуждения в уголовном процессе. Предложено авторское определение принуждения в уголовном процессе.*

**Ключевые слова:** меры обеспечения, мера пресечения, уголовное производство, принуждение, уголовный процесс.

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According to Art. 2 of the Criminal Procedural Code of Ukraine (hereinafter – the CPC of Ukraine) objectives of criminal proceedings are to protect individuals, society and the state against the criminal offenses, protection of rights, freedoms and legitimate interests of the criminal proceedings and to ensure the fast, full and impartial investigation and trial order, that anyone who committed the criminal offense was prosecuted as much as he guilty, no innocent was not charged or convicted, no one had been subjected to unwarranted procedural coercion and that each participant of criminal proceedings was applied due process. Of course, the effectiveness of these objectives depends on

the implementation by the parties of criminal proceedings out their rights and obligations. Often, there are situations when some participants of criminal proceedings are not met entrusted procedural obligation, which in turn leads to counteract the objectives of criminal proceedings. Analysis of scientific literature allows even distinguish the most common means of such counteraction, such as: concealment of crimes; falsification or destruction of evidence; deliberately delaying prosecution; evasion trial and investigation; harboring criminal intentions; resistance pecuniary damage; concealment of property and proceeds of crime; illegal influence on the subjects of criminal proceedings, etc. [1, c. 34]. In order to prevent

relevant situations, state obliges pre-trial investigation agencies, prosecutors and judges to conduct with witnesses, suspects and accused some explanatory and educational work, and use coercion if necessary.

Issues related to compelling a person to the proper conduct standardized in national legislation. So, in art. 19 of the Constitution of Ukraine provides that legal order in Ukraine is based on the principles according to which no one can be forced to do something that is not required by law. Thus, in the Constitution of our country provided the general principles of the coercion usage. They are detailed in branch legislation. So, article 2 of the CPC of Ukraine focuses on the fact that no one can be a subject to unwarranted procedural coercion and to each party of the criminal proceedings should be applied due process.

To proper rights and freedoms are devoted such works as: L. Vojvodina, A. Horshenova, Y. Groshev, S. Ilchenko, G. Kozhevnikov, L. Krasavchykovoyi, P. Lublin, I. Michael, O. Mikhaylenko, M. Myheyenka, I. Petrukhin, M. Pogoretskyi, F. Rudynskoho, I. Farber, G. Chanhuli, M. Shumylo and other scientists. Studying through the scientific works helped in understanding the severity of the problems associated with the coercion usage. However, particular relevance to them gives the provisions of the current CPC of Ukraine, which provides a new approach to this process.

The purpose of this article is to establish coercion features, which enshrined in the CPC of Ukraine, to ensure objective disclosure of its legal nature in future.

As a legal phenomenon coercion became enshrined in current legislation. The legislator admits the possibility to influence the people behavior with the help of coercion. Such coercion must be reasonable and assigned exclusively to legal regulations (Art. 19 of the Constitution of Ukraine and art. 2 CPC of Ukraine). The validity and normative are the grounds of legitimate use of coercion in any legal plane. However, analysis of the provisions of the Constitution of Ukraine allows establishing also such features as the accountability of the coercion to the state. This is stated in

Art. 121 of the Basic Law of our country, which is observed that on the prosecution of Ukraine relies performing the functions of supervision of the observance of laws in the execution of judgments in criminal cases, as well as the application of other measures of coercion related to the restraint of personal liberty of citizens.

Historically, in criminal proceedings any actions or measures, including measures of procedural coercion, are divided into those for which the commission:

- enough the subject expression, of the person who conducting the pre-trial investigations;
- required the intervention of another subject of criminal proceedings (prosecutor or judge).

As to the latter reason, the V. Afanasiev calls this intervention – procedural control [2, p. 365–366]. In this case scientific indicates the correlation of supervision and control as partial and general.

Thus, under the supervision understand vigil, tracking to ensure order [3, p. 148]. That surveillance should be accompanied with a phenomenon that is monitored, not after it. Control (from the French word – controle) is interpreted as a performance test anything (such as laws, plans, etc.); accounting, monitoring anything (financial supervision, supervision techniques, etc.) [4, p. 446–447]. Thus control can be undertaken both during a process (in the form of supervision) and after it. In turn, this procedure is not always there.

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The coercion usage for successful perform of the tasks of detection and investiga-

tion of crime has a long history. Its highest point was the adoption in 1215 in the UK Magna Carta. In the 39th paragraph of the document stipulates: «... no free man shall be arrested or sharpened in prison or deprived of ownership, or by any other means outcast, and we will not stop and will not send it only as under the provisions of equal legal solution to it (peers)» [5, p. 131]. Thus, for the first time sets a base application of procedural compulsion – «legitimate decision». Meanwhile, there are known instances when in legal acts this reason is not mentioned. So, in Moscow acts XVI–XVII centuries been following the procedure compulsory for information on convicted spies: «Who will not tell (the reason for staying on the border of the Russian lands – Author’s note), but the signs and evidence will clear their criminal nature, – those during interrogation command severely tortured! Tortured should be those for whom these individuals indicate both involved in treason, even criminals put each other face to face, apply other measures...» [6, p. 452–453].

The grounds and nature of coercion in criminal proceedings radically changed, depending on the attitudes of the authorities. On the occasion of the early twentieth century Foynytsky I. remarked: «... when absolutism and injustice:

- The accused becomes the subject of research that has no human rights;
- The use of coercive measures is becoming increasingly popular (with it and by the Court);
- Arrest of the accused and their torture reduced in general, the usual rule» [7, p. 12–13].

Considerable importance was attached to the use of coercion in Soviet times. So, in the Yakub M. work was dedicated to democratic principles of criminal procedure contained proposition: «The purpose of criminal justice is not ascertaining guilt or innocence of any other people or any other circumstances, but in the right use of coercive measures of state criminals» [8, p. 23].

Bobrova N. convinces decisive role for law enforcement and argues that the «right

without coercion – nothing.» This academic, citing philosophical literature, writes: «... denial of sanctions leads to failure to recognize the social nature of existing legal norms in society as a mandatory feature of the latter is organized by state coercion and sanction acts outside the carrier of this feature is the materialization compulsion. Even procedural rules sanction is considered as a mandatory element» [9, p. 23].

V. Sergeeva, describing coercion as objective-subjective phenomenon shows the connection of its two components: the use of state sanctions (objective factor) and limit the freedom of the person (subjective factor) [10, pp. 37]. This subjective factor covers and passive behavior of people when she, aware of the possible consequences of her legal norms (sanctions), held from infringement procedures.

Scientists also observed that the use of state coercion is allowed only in case of wrongful conduct, or in connection with this behavior, and any other circumstances impossible to justify for its use [11, p. 29–30].

Alekseev S. believes that government coercion, by setting appropriate for offenders negative consequences, encourages compliance with procedural rules. This scientist proposes that the types of coercion, depending on the type of sanctions: moral, organizational or property [12, p. 185].

Analyzing the provisions of the current CPC of Ukraine can also be seen as different in character consequences (sanctions) for a person who has violated the law. So in ch. 1, Art. 140 (“Drive”) CPC of Ukraine establishes that the drive is forced accompany the person to whom it applies, the person who takes the decision on the implementation of the drive to place the call at a specified time in the ruling.

In ch. 3. 241 («Overlook of the person») CPC of Ukraine states: «Before overlook, person who should be overlooked presented to the prosecutor. Then the person invited to voluntarily undergo overlooking, and in case of refusal overlooking carried out forcibly.»

In ch. 3. 242 («Foundations examination») CPC of Ukraine provided compelling

a person to a medical or psychiatric examination, which is made by ruling investigating judge of the court.

In ch. 3. 245 («Obtaining samples for examination») CPC of Ukraine is observed on: «Sampling of biological samples in person performed according to the rules stipulated by Article 241 of the Code. The failure of a person voluntarily provide biological samples investigating judge, the court at the request of the parties of criminal proceedings in question in the manner prescribed in Articles 160–166 of this Code shall have the right to allow the investigator, the prosecutor (or require them if the petition was filed the defense) to weaning biological samples by force.»

However, for the criminal procedure compulsion inherent not only physical sign of compelling a person with good behavior, but also encourage them to this through moral influence. So in ch. 3. 267 «Survey publicly inaccessible places, home or other property» defines the status of the premises, which are specially designed to hold the people whose rights are restricted under law (the room with the forced detention of persons in connection sentence, arrest, detention, etc.). These facilities are publicly available status, that they have rights and freedoms are vulnerable, and therefore a threat to stay in them as well stay relevant may cause suffering.

In addition to physical and psychological factors that occur as the result of coercion, one has to consider also psychological. Its features can be seen in the application of preventive measures such as detention.

Scientists argue that the detention of seriously limiting this vital function of the body as moving activity. Consequently, a person who is a long time in the chamber, disturbed interaction with the surrounding environment, which leads to a weakening of the protection of his mind from alien influence, and, consequently, increased suggestibility (suggestibility, the ability to fall under alien influence). Mental overload related to custody and with great nervous tension during the investigation, naturally leads to the need for physical relaxation,

which in turn weakens the will of the accused and enhances the ability to fall under alien influence. «The purpose of the person affects the psyche of the accused in such a situation is not braking his rational mental activity and the positive impact that can change negative attitudes in the mind, overcome resistance and convince of the need to provide true impressions' [13, p. 53–54].

In addition to suspect, witness, victim, civil defendant, in accordance with Art. 139 («The consequences of failure to challenge») CPC of Ukraine may be imposed even coercion associated with material recovery. So in Art. 139 («The consequences of failure to challenge») CPC of Ukraine stipulates that these subjects of criminal procedure, which was due to the established procedure Code of Ukraine (in particular, clear evidence of receipt of summons or dissemination of its contents by other means), and who failed to appear without good reason or reported reasons for their non-arrival – imposed monetary penalty in the amount of 0.25 to 2 minimum wage. Whereas the use of this type of physical coercion preceding, one could argue about the existence of a hierarchy in the system of criminal procedure compulsion.

A more thorough analysis of the consequences that come to a person who violated the requirements of CPC of Ukraine, allows differently classified coercion. So, if you take the correlation between coercion and rights and freedoms of individuals, there can be seen even these types of coercion:

- which limits the legal status of persons in the political, social, economic, cultural and personal rights. These include: detention, custody, sending people to the hospital for psychiatric examination;

- which limits legal status in the social, economic and personal rights, in particular: the imposition of monetary penalties, temporary restriction in the use of a special law, removal from office, temporary confiscation of property, arrest and bail;

- limiting the legal status only in individual rights, such as: the right to inviolability of the home and other property (of them

search, view), the right to security of person (overlooking, obtaining samples for examination, personal search), freedom movement and choice of residence (call investigator, prosecutor, court challenge and drive).

In sum, we believe that under coercion in criminal proceedings should be understood state-controlled system of procedural tools, which is used in criminal proceedings by in-

vestigators, prosecutors and judges to participants in criminal proceedings on the reason and manner provided in the CPC of Ukraine, to eliminate actual and possible obstacles to the tasks of criminal proceedings. The consequences of the use of coercion in criminal proceedings are the imposition on the person-offender penalties that have physical, moral, psychological and material nature.

## REFERENCES:

1. *Shur V.B.* Tactics neutralizing counter investigate crimes committed by organized groups: monograph / Ed. V.U. Shepitko. – Kharkov: Griffin, 2005. – 176 p.
2. Fundamentals of law / Under the editors V.V. Lazarev. – Moscow: Jurist, 1998. – 448 p.
3. Brief Dictionary of Ukrainian language. – Kyiv: The Soviet school, 1978. – 296 p.
4. The dictionary of foreign words / Edited by A. S. Melnychuk. – Kyiv: Home Edition Ukrainian Soviet Encyclopedia, 1985. – 968 p.
5. Reader on general history and state law: educational allowance / Ed. Z. M. Chernilovsky. – Moscow: Gardarica, 1996. – 413 p.
6. Bit commandment. Moscow centuries. 1571–1634 // Akts the Moscow Vatican, Imperial Academy of Sciences / Ed. M.A. Popova. – T. I. – St. Petersburg: Printing house imperial Academy of Sciences, 1890. – 766 p.
7. *Foynytyski I.J.* The course of criminal proceedings: In 2 v. / I. J. Foynytyski. – St. Petersburg, 1996. – Vol. 1. – 552 p.
8. *Jakub M.L.* The democratic foundations of the soviet criminal procedure law / M.L. Jakub. – Moscow: Publishing House of the Moscow state-owned University, 1960. – 172 p.
9. *Bobrova N.A.* The implementation of the constitutional principles of the preliminary investigation / N.A. Bobrova // Implementation norms of state-owned and the administrative rights to preliminary consequence (Collection of scientific works). – Volgograd: graduate school of Investigation MIA of the USSR. – 1987. – P. 21–27.
10. *Serehyna V.V.* State compulsion by the soviet right / V.V. Serehyna. – Voronezh: Publishing house of the Voronezh State University, 1991. – 120 p.
11. *Farkushyn M.H.* Questions of the general theory of legal liability / M.H. Farkushyn // Jurisprudence. – 1969. – № 4. – P. 29–30.
12. *Alekseev S.S.* The general theory of socialist law / S.S. Alekseev. – Vol. 2. – Sverdlovsk: in the Sverdlovsk Institute of Law, 1964. – 226 p.
13. *Pyvovarov V.V.* Interaction of pre-trial investigation and inquiry in the investigation of criminal cases. Monograph / V.V. Pyvovarov, L.I. Scherbyna. – H.: Right, 2006. – 176 p.

### ***Derevyanko M. Content and features of the coercion in criminal process.***

*Based on the analysis of scientific sources and the provisions of the Criminal Procedure Code of Ukraine in the article the content and features of coercion in criminal proceedings. The author definition of coercion in criminal proceedings.*

*Under duress in criminal proceedings, according to the authors, it is understood state-controlled system of arms interim nature, which is used in criminal proceedings investigators, prosecutors and judges to participants in criminal proceedings in the presence of this reason and manner provided in the Code of Ukraine, with in order to eliminate actual and possible obstacles to the tasks of criminal proceedings. The consequences of the use of coercion in criminal proceedings is the imposition on the person-offender penalties physical, moral, psychological and material nature.*

**Keywords:** *action security precaution, criminal proceedings, coercion, criminal procedure.*

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