

THE RATIO OF COERCION AND RESPONSIBILITY IN THE CRIMINAL PROCESS

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Annotation. For a long time, there has been a scientific debate among legal scholars regarding the place of criminal procedural coercion in the area of procedural responsibility. The reason, in my opinion, is the etymology of this question through the prism of the socio-political development of the country and the heritage that Ukraine received along with independence.

The identification of these concepts became possible only in the retrospective study, at the same time, procedural challenges of the criminal type give a new impetus to this discussion and expand the scope of the study of the specified problem. The criminal-procedural protection of the participants in criminal proceedings dictates requirements for strengthening criminal-procedural coercion on the part of state-authorized bodies and the court. The close interaction of the concepts of “procedural responsibility”, “procedural sanctions” and “procedural coercion”, according to some scientists (for example, Z. Zinatullin), give reasons to consider them to be combined into a single category. At the same time, some scientists (V. Rozhnova, Z. Kovryga) are convinced that the forms, limits, order of application and direction of actions are the circumstances that distinguish them from one another and provide an opportunity for independent study. However, there is a group of scientists who believe that criminal-procedural coercion is a type of criminal-procedural responsibility, and directly sanction is considered as a structure of criminal procedural norm (A. Blagodyr).

That is why, in the article, the author tries to investigate the problems of the relationship between criminal procedural responsibility, measures of criminal procedural coercion and sanctions. I draw your attention to the fact that in the theory of the criminal process, both the sanctions of criminal procedural norms and the measures of criminal procedural coercion are diverse.

Establishing such a model of behavior, the state provided not only the fact of punishment itself (punitive or penal sanctions), but also the possibility of compensation for the actions of its authorized bodies (compensatory sanctions) or even bringing back to the original state or restoring the procedural status (restorative) of the persons involved in the process or who were affected by issues related to the process.

Another feature of these legal relations is that each criminal offense is associated with the use of criminal procedural coercion. At the same time, criminal procedural coercion goes beyond the scope of the committed criminal offense and can be applied outside its jurisdiction. For example, the plea of a witness as a procedural figure and the plea of an eyewitness who has not yet received procedural status are closely related to the concept of coercion, although they differ in the nature of their application.

That is why a number of scientists consider it necessary to narrow the range of coercive measures, linking them with a procedural form and criminal procedural responsibility (I. Petrukhin).

The author calls for a scientific discussion in order to narrow the circle of opinions and theories on this issue.

Key words: criminal-procedural responsibility, criminal-procedural coercion, the structure of criminal-procedural norms, distinguish punitive (penal) sanctions, compensatory sanctions, restorative sanctions.

1. Introduction.

The study of the problem of criminal procedural responsibility remains relevant, which requires the need to determine the relationship between the concepts of “criminal procedural responsibility” and “criminal procedural coercion”. The solution to this issue lies in the plane of understanding the definition of the concept of “criminal procedural coercion” as a component of procedural responsibility or being outside its limits.

2. Analysis of scientific publications.

The problems of criminal procedural responsibility have been taken care of by domestic scientists for a long time, generating scientific discussions and forming scientific opinion that affects the rule-making in the state.

Scientists L. Udalova, H. Vetrova, V. Rozhnova, Z. Zinatullin, I. Petrukhin and others paid special attention. The cornerstone was precisely the ratio of the categories “criminal-procedural responsibility” and “criminal-procedural coercion”, since the vast majority of scientists takes a firm position on their distinction. Scientific discussions on this matter have been going on for quite a long time and, despite the adoption of the new Criminal Procedure Code in 2012, will continue in the future, since the codified national legislation has not solved this problem.

3. The aim of the work.

In this article, the author tries to find a way to solve the problem of the place of criminal procedural liability in the system of procedural law and to determine the legal nature of this phenomenon.

4. Review and discussion.

Until now, this question is debatable, despite the fact that for a long time processualist scientists have already paid enough attention to the study of such a relationship (in particular, G.N. Vetrova, A.Ya. Dubynskyi, Z.F. Kovryga, V.M. Kornukov, V.V. Rozhnova, etc.).

Some scientists equate the concepts of criminal procedural responsibility and criminal procedural coercion. For example, Z. Z. Zinatullin believes that in a broad sense responsibility is at the same time coercion, and the amount of specific weight (manifestation) of retrospective responsibility in certain types and measures of criminal procedural coercion is different [1, p. 10–15].

However, the vast majority of scientists rightly distinguish between these measures, while their views on their relationship remain different.

Such a position of scientists can be conditionally divided into groups. One group of proceduralists believes that procedural responsibility, procedural sanctions and measures of procedural coercion are independent varieties of measures of criminal procedural coercion. V.V. Rozhnova, having investigated the legal nature of the specified procedural measures, came to the conclusion that they have significant differences due to their relative independence [2]. According to Z.F. Kovryga, the specified disagreements differ in their purposefulness, grounds, conditions, forms, limits and order of application [3, p. 39-40].

Another group of scientists, in particular A.A. Blahodyr, I.L. Petrukhin and others. defines criminal procedural responsibility as a type of criminal procedural coercion, and sanction as a structure of criminal procedural norms. According to them, types of coercive measures in the criminal process are measures to protect law and order, preventive measures and procedural responsibility.

Some scientists generally propose to divide coercive measures in the criminal process into two general groups: sanctioning procedural measures and criminal procedural coercion [4, p. 41]. In particular, in F.M. Kudin's opinion, sanctions measures should include rights-restoring measures – protection measures - in the form of cancellation of illegal acts and punitive measures – measures of criminal procedural liability. And the measures of procedural coercion, in turn, the scientist proposes to divide according to the method of protection into the following three types: preventive, preventive and protective [4, p. 41–49].

The above shows that different scientists consider the ratio of criminal procedural responsibility, measures of criminal procedural coercion and sanctions in different ways. I am convinced that it is quite difficult to draw a clear line of demarcation between these terms, because in many cases they are interdependent and mutually determining.

In general, the relationship between the specified legal institutions is manifested in the fact that the degree of criminal procedural responsibility is determined by the sanction of the criminal procedural norm, and the implementation of criminal procedural responsibility is carried out by applying measures of criminal procedural coercion.

However, in the theory of the criminal process, both the sanctions of criminal procedural norms and the measures of criminal procedural coercion are diverse. As a rule, punitive (penal), compensatory and restorative sanctions are allocated. At the same time, attention is drawn to the fact that not every sanction of a procedural norm determines the onset of criminal procedural responsibility. In particular, there are discussions about whether the cancellation of an illegal procedural decision regulated by a restorative sanction is a criminal procedural liability, or whether such actions should be considered a measure of procedural coercion (a measure to restore law and order) or a sanction measure.

Also, not all measures of criminal procedural coercion are conditioned by the commission of a criminal procedural offense. After all, in many cases, the criminal procedural legislation provides for the possibility of applying coercive measures regardless of the commission of illegal acts by the participant in the criminal proceedings. In particular, coercion can be used both during a summons, imposition of a monetary fine, and during individual investigative (search) actions, detention, detention or placement in an appropriate medical institution.

5. Conclusions.

Thus, there are discussions among procedural scientists regarding the definition of the scope (scope) of measures of a coercive nature, which are measures of criminal procedural responsibility, and which do not belong to them.

Some scientists (Petrukhin I.L.) suggest narrowing the scope of coercive measures that are related to criminal procedural responsibility and claim that the fulfillment of a procedural obligation under coercion without the application of punitive measures is not a responsibility, but an independent measure to protect law and order. Other scientists have the opposite opinion (I.S. Samoshchenko, M.Kh. Farukshin) and believe that the very fact of performing a duty under coercion against the will is a deprivation for the violator (an unfavorable consequence for him of his illegal behavior), and therefore is legal responsibility.

The above testifies to the diversity of opinions of scientists regarding which coercive measures are criminal procedural liability and which are not. And this, in turn, indicates the need for further research into these legal phenomena.

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