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Research Article

CLASSIFICATION OF MEASURES WITHIN THE FRAMEWORK OF THE MECHANISM FOR RESTRICTION OF INDIVIDUAL RIGHTS IN PRE-TRIAL PROCEEDINGS

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ABSTRACT

The article classifies in detail the measures of procedural coercion and investigative actions related to the restriction of the constitutional rights of persons in the criminal procedural law in terms of the subjects of their application, the purposes of their application, their forms, and the network of rights restricted as a result of their application. At the same time, specific proposals were put forward to eliminate the gaps in the criminal procedural legislation regarding measures of procedural coercion and investigative actions related to the restriction of individual rights.

KEYWORDS

Restriction of individual rights, measures of procedural coercion, investigative actions, inquiry officer, investigator, prosecutor, court.

INTRODUCTION

Criminal-procedural activity includes measures of procedural coercion (detention, arrest (imprisonment), search, etc.), as well as the imposition of criminal punishment, which has the largest impact

on a person's fundamental rights and freedoms. This makes it possible to promptly and completely solve crimes and guarantee that those responsible for them are brought to justice. Therefore, this activity is strictly

and thoroughly regulated by legal norms that create guarantees of justice and guarantees of rights and freedoms of the individual. Owing to the significance of these standards, only the legislative body has the authority to set them¹.

Measures of procedural coercion in criminal proceedings is defined as a set of measures of the state in the form of legal restrictions of a personal, property-related and organizational nature, applied by authorized bodies to the participants of the criminal proceedings in the presence of grounds established by law and in the prescribed manner, in order to ensure the effective implementation of criminal proceedings and to prevent illegal acts that threaten the administration of justice².

According to K. Kalinovsky, “Measures of procedural coercion in criminal proceedings are the actions and decisions of the bodies conducting the process, provided for in the criminal-procedural legal documents, which restrict the rights of other participants in the process against their will”³. We cannot fully agree with K. Kalinovsky's opinion at this point. Because, in his opinion, there is a somewhat biased approach, such as evaluating measures of procedural coercion as actions and decisions that restrict the rights of other participants against their will. In our opinion, it is appropriate to assess measures of procedural coercion not only in terms of restricting the rights of individuals, but also in terms of restoring the legal interests of the second injured party and ensuring the rule of law.

In our opinion, the measures within the scope of the mechanism of restricting individual rights are not

sufficiently and clearly characterized in today's criminal-procedural legislation of our country and in the practice of law enforcement. In this regard, within the framework of the research and based on practical experience we consider it appropriate to classify these measures as follows.

In particular, we discovered that it is necessary to categorize them by authorized bodies, by types, by what rights of the person restricted as a result of the application of the measure, from the point of view of evidence, by organizational goals, by the need for taking, as well as by the use of technical means.

First of all, let's discuss the authorized bodies to apply the measures of procedural coercion. These measures are applied by the court: measures of procedural coercion such as suspension of a passport (travel document), dismissal of the accused from office, commitment of a person to a medical institution; investigative actions such as arrest, preventive measure in the form of house arrest, exhumation of the corpse, seizure of mail and telegraph correspondence.

The measures applied on the basis of the prosecutor's authorization are defined in Article 382 of the Criminal Procedure Code. Prosecutor can issue warrants for search, imposition of arrest on mail and telegraph correspondence and seizure thereof, issue orders on restricting the right to privacy, correspondence, telephone conversations and other conversations, mail, courier and telegraphic messages transmitted through communication networks and allows conducting quick-search activities aimed at obtaining

¹ Authors team, Mirensky B.A., Rajabova M.A. Mirazov D.M., Textbook of criminal procedural law. Page 11, MIA Academy, Tashkent-2019.

² The same source is page 257.

³ “Criminal procedure” Kalinovsky K. http://kalinovsky-k.narod.ru/p/krat_kurs/7-1.htm

information about connections between subscribers or subscriber devices⁴.

Measures used by the investigator (inquiry officer) are as follows: detention, compelled attendance, inspection of a citizen's house or place of work, examination of a citizen's house or place of work and evidence at the scene of the incident. Although these measures affect the right to inviolability of a person and the inviolability of property, the uniform procedure for their application is not defined in the Criminal Procedure Code. Constraint measures such as the signed statement to behave, personal guarantee or guarantee of a civic organization or collectives, bail, placing of a juvenile under supervision, supervision of a military commanders over a military trooper are selected based on the decision of the investigator. Compelled attendance is carried out on the basis of the investigator's decision issued in accordance with Article 263 of the Criminal Procedure Code. Detention prior to the initiation of a criminal case is carried out on the basis of an act in accordance with Article 224 of the Criminal Procedure Code. Detention after the initiation of a criminal case is carried out on the basis of a decision on detention under the procedure of Article 227 of the Criminal Procedure Code.

Another remaining legal gap in the current Criminal Procedure Code is the lack of investigative action related to obtaining information about connections between subscribers or subscriber devices, which effectively serves to collect objective evidence on the case. And the collection of this type of evidence is considered to be obtained through an official of the

body carrying out operational search activities, which is not considered a direct subject of proof.

Restrictive measures of individual rights according to the content and purpose of application are divided into two types, i.e. measures of procedural coercion and investigative actions.

Measures of procedural coercion are carried out in accordance with the procedure specified in Section 4 of the Criminal Procedure Code by the inquiry officer, investigator, prosecutor and/or the court if the participant in the criminal proceedings does not fulfill the obligations assigned to him, which hinders the implementation of investigation or judicial actions, as well as if it is necessary to prevent the future criminal activity of the suspect, the accused and to ensure the execution of the sentence⁵.

There are the following types of measures of procedural coercion under the current Criminal Procedure Code, i.e. Chapter 26. Measures of procedural coercion (213-219), Chapter 27. Detention (220-235), Chapter 28. Measures of constraint (236-254), Chapter 281. Suspension of a passport (travel document) (2541-2546), Chapter 29. Dismissal of the accused from office (255-260), Chapter 30. Compelled attendance (261-266), Chapter 31. Commitment of a person to a medical institution⁶.

According to A.R. Belkin, "Investigative actions are a set of fully determined and affirmative operations to prove important circumstances for a criminal case."⁷

At this point, from the point of view of the current legislation, we can list the following investigative

⁴ Criminal Procedure Code of the Republic of Uzbekistan. Tashkent-1994

⁵ The same source.

⁶ The same source.

⁷ Criminalistic tactics: Textbook / under general editorship of A.F. Aubakirov, A.R. Belkin, A.Ya. Ginzburg. Almaty, 1998. C. 40.

actions related to the restriction of the constitutional rights and freedoms of a person. These include seizure, search, wire-tapping of telephones and and other telecommunications devices, obtaining information transmitted through them, arrest of mail and telegraph correspondence, inspecting a citizen's home or place of work. However, the fact that these investigative actions are classified as investigative actions related to the restriction of the constitutional rights of a person should not be viewed only from a negative point of view. Because investigative actions may restrict specific constitutional rights and freedoms, but at the same time, the same actions do not have any negative goals, but only to achieve the goals of the criminal procedural law, that is, to protect the rights and legal interests of individuals and organizations who have suffered from crimes and to protect the individual aimed at protecting them from illegal and groundless accusations, convictions, and restrictions on their rights and freedoms⁸.

Regarding the restriction of the rights and freedoms of an individual as a result of the application of the measure, it is expedient to implement it based on the classification is provided in Chapter 7 - "Personal rights and freedoms" (Articles 25-31) and Chapter IX - "Economic and social rights" (Article 36)⁹ of the Constitution of the Republic of Uzbekistan. For instance,

- measures restricting the right to freedom and privacy, detention, imprisonment, house arrest;
- measures restricting the right to be protected against interference in personal life, wire-tapping of telephones and and other telecommunications

devices, arrest of mail and telegraph correspondence;

- measures restricting the right to inviolability of the home, inspection of home, search, experiment conducted at home, verification of testimony at the scene of the incident;
- measures limiting the rights not to conduct medical or scientific experiments on a person, exhumation of corpse, committing a person in a medical institution;
- measures restricting the right to free travel, statement to behave, personal guarantee or guarantee of a civic organization or collectives, bail, placing of a juvenile under supervision, supervision of a military commanders over a military trooper, suspension of a passport (travel document), compelled attendance;
- measures restricting the right to property, seizure, confiscation of property;
- a measure restricting the right to work, dismissal of the accused from office.

From the point of view of evidence, the measures restricting the rights of the individual can be divided into measures aimed at collecting evidence and measures aimed at preserving evidence.

Measures aimed at collecting evidence are committing a person in a medical institution, exhumation of corpse, search and seizure, wire-tapping of telephones and and other telecommunications devices, obtaining information transmitted through them, arrest of mail and telegraph correspondence, inspection of home and premises.

⁸ Кошечкина Я.А., С.С.Шагинянц “Следственные действия, связанные с ограничением конституционных прав граждан, проводимые по решению суда”. <https://cyberleninka.ru/article/n/sledstvennye-deystviya->

svyazannye-s-ogranicheniem-konstitutsionnyh-prav-grazhdan-provodimye-po-resheniyu-suda/viewer.

⁹ Ўзбекистон Республикаси Конституцияси. Тошкент-1992.

Measures aimed at preserving evidence are detention, measures of constraint, dismissal from office, arrest of property.

For organizational purposes, measures are divided into measures ensuring a person's attendance in the investigation and measures ensuring the execution of a sentence.

Measures ensuring a person's attendance in the investigation are compelled attendance, suspension of a passport (travel document), measures of procedural coercion.

Measures ensuring the execution of a sentence are arrest of property, measures of constraint.

Measures are, according to the need for taking, are divided into primary measures and secondary measures.

Primary measures to be taken, exhumation of corpse, search, seizure, inspection of home and premises, detention, compelled attendance, committing a person in a medical institution.

Secondary measures to be taken, examination, verification of testimony at the scene of the incident, wire-tapping of telephones and other telecommunications devices, obtaining information transmitted through them, arrest of mail and telegraph correspondence, measures of constraint, dismissal of the accused from office.

In respect of using technical means, it is possible to divide measures into measures carried out (conducted) by technical personnel, measures carried out (conducted) by subjects of proof and measures carried out (conducted) by other persons.

Measures (actions) carried out by technical staff include телефонлар ва бошқа телекоммуникация қурилмалари орқали олиб бориладиган сўзлашувларни эшитиб туриш, почта-телеграф жўнатмаларини хатлаб қўйиш.

Measures (actions) carried out by subjects of proof, мурдани эксгумация қилиш, тинтув, олиб қўйиш, турар жой ва биоларни кўздан кечириш, эксперимент, кўрсатувларни ҳодиса содир бўлган жойда текшириш, ушлаб туриш, шахсни тиббий муассасага жойлаштириш, эҳтиёт чоралари.

Measures (actions) carried out by other persons, паспортнинг (ҳаракатланиш ҳужжатининг) амал қилишини тўхтатиб туриш, айбланувчини лавозимидан четлаштириш, мажбурий келтириш ва абонентлар ёки абонент қурилмалари ўртасидаги боғланишлар, шунингдек абонентни жойлашган жойи тўғрисидаги ахборотларни олиш тезкор-қидирув тадбири.

According to the stages of the criminal process (the existence of a criminal case), it is divided into measures that are carried out before the initiation of a criminal case and after the initiation of a criminal case.

Detention, personal search and seizure may be carried out prior to the initiation of criminal proceedings.

All other coercive measures and investigative actions are carried out within the framework of the initiated criminal cases.

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