

**Application of the measures of procedural coercion
in criminal pre-trial production**

Abstract: Measures of criminal procedural coercion are expressed in forfeit or restriction of personal freedom, temporal deprivation of the post, restriction of the property rights, threat of property losses and other restrictions of the rights.

Principle of legality upon application of the measures of criminal procedural coercion is provided with requirements of article 10.5 of the CPC of Azerbaijan Republic.

Measures of criminal procedural coercion are applied like for purposes of providing the functions of criminal prosecution and resolution of a case on merits so in purposes of evidences' collection and providing a civil suit on criminal case.

Keywords: criminal procedural coercion; pre-trial production; forfeit or restriction of the rights; suspected; procedural actions; CPC of Azerbaijan Republic.

Measures of criminal procedural coercion are named regulated with criminal procedural law optional, authoritative, coercive actions of the bodies, which carry out criminal process, applied to physical persons in criminal proceedings against their will and desires. They are expressed in forfeit or restriction of personal freedom, temporal deprivation of the post, restriction of property right, threat of property losses and other limitation of the rights. Consequently, constituent parts of notion “measures of criminal procedural coercion” are: regulation with criminal procedural law; optional nature; authoritativeness and coercive nature; availability of special subjects of application; directness of application; availability of application's goals [9, p. 151-152].

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It seems to be wrong that the CPC of Azerbaijan, Estonia, Russian, Kyrgyz Republic, Kazakhstan, Tajikistan, Ukraine, Belarus and Moldova do not contain the notion of criminal procedural coercion, i.e. it directly associated with problem of restriction of person's rights.

With regard to principle of lawfulness of application of the measures of criminal procedural of coercion, it is provided with requirements of article 10.5 of CPC of Azerbaijan Republic, according to which procedural actions and decisions conducting and adopted with violation of provisions of article 10 of CPC, have no legal force.

There would be right to indicate in article 10.5 of CPC about loss or absence of legal force of procedural actions and decisions produced and made with violation of CPC. Article 10.5 of CPC still says only about those, which accepted with violation of article 10 of CPC, but whole Code. Content of article 10 of CPC shows that it does not cover all cases of acceptance of decisions and production of actions concerning to the right of person [18, p. 138]. So, article 10.2 of CPC says about arrest, bringing as accused, detention, search and others, but there are no mentioned such procedural actions like e.g. interrogation, confrontation, examination, search, dismissal, suspension of proceedings on case etc.

In addition, it is required a matter about loss of legal force any investigative action due to violation of an order its production. If to admit all without exception violations as the grounds for non-recognition of results of investigative actions then is actually disorganized investigative action for a long time, makes it insignificant. For example, article 227.5 of CPC Azerbaijan Republic says that interrogation is begun from suggestion to a witness to tell all circumstances, which are known on a case, after that he/she will be asked questions. Consequently, if an interrogation of witness begins with question it might be considered as violation of an order its production and results of the interrogation would be recognized not having a legal force, despite a content of witness' testimonies. There is possible classification of violations in significant and insignificant ones, but in core, this will be contradicted to lawfulness' principle [9, p. 153].

There is no unity of views in procedural literature and practice relating to whom might be applied measures of criminal procedural coercion [12, p. 61-66; 14, p. 67-68; 2, p. 9-10; 3, p. 61-64; 4, p. 41-42; 7, p. 11; 13, p. 71-73; 15, p. 91-93].

According to logics of criminal process, measures of criminal procedural coercion must only be applied to participants of criminal proceedings, but CPC of Azerbaijan Republic contains the cases of detention of physical persons, who have not taken a status of criminal process' participants. It seems that, as it is above noted, to eliminate similar collisions, CPC should be supplemented with provisions about status of a person involving in criminal process, not being even its participant.

On common rule, measures of criminal procedural coercion are applied to those bodies or officials, in production of which criminal case is at the moment – to an inquiry officer, investigator, prosecutor or court. This means that these measures are applied during of all criminal proceedings. Exception is only detention before institution of criminal case, when, according to R.S. Yagoda, an arsenal of investigative actions has not yet included and also a stage of execution of a verdict, when this arsenal has ever removed from sphere of application [19, p. 92]. Application of coercion's measures on instruction does not contradict to mentioned, since in these cases one speaks about execution of decision accepted.

According to common opinion of scientists, content of measures of criminal procedural coercion are: forfeit of personal freedom, which is a core of detention on suspicion in crime and measures of coercion in form of taking into custody; restriction of personal freedom, which is happened under application of coercion's measure in form of written pledge not to leave town and home arrest; restriction of property's right, which is happened under arresting of property; threat of considerable property loss, which creates a core of measure of coercion in form of mortgage; temporal deprivation of position, which is happened under application of temporal deprivation of it; other deprivations and legal restrictions (e.g. delivery a person to police against his/her will, which is a content of bringing, money penalty, which means causing of losses, especial regime of military service, which is applied under choice of coercion's measure in form of observation of command of military unit etc.

[1, p. 410-419; 10, p. 77-79; 11, p. 29-30; 16, p. 114-121; 5, p. 44-46; 8, p. 49-50; 17, p. 100-101].

Measures of criminal procedural coercion are applied to provide the functions of criminal prosecution and resolution of a case on merits, and also to collect evidences and to provide civil suit on criminal case. So, detention of suspected and application of measure of coercion have to provide the functions of criminal prosecution and resolution of a case; bringing of witness or victim – collection of evidences in form of testimonies of the participants of criminal proceedings, and arrest of property – civil plea, brought on criminal a case [9, p. 158-159].

According to CPC of Azerbaijan Republic, a system of measures of criminal procedural coercion is a detention (articles 147-153 of CPC), measures of coercion (articles 154-175 of CPC), investigative actions conducted forcibly (articles 176-177 of CPC) and bringing (article 178 of CPC).

Let's consider, how this system is correlated with the systems of main notions, principles, participation, evidences and proving, providing of the rights of person and others in the stages of pre-trial production.

According to article 7.0.39 of CPC of Azerbaijan Republic, detention like a measure of procedural coercion is a temporary custody of a person with short-term restriction of his/her freedom.

Time of detention should be considered an official statement of authorized official to a citizen about that he/she is detained on concrete ground. Just from this time a legal relationship appears between an employer of law enforcement body and physical person, meaning of which is concluded in that free citizen loses his/her freedom and escape is precluded with force up to application of a weapon. Citizen has to obey to detention; non-subordination and opposition is also precluded with force with observation of the rules of criminal legal institutions of necessary defence, extreme necessity and lawfulness of damage caused under detention.

In practice, a determination of detention's time is met with certain difficulties. Official statement to a person about his/her detention might be not done or might be done later, but actually he/she will be deprived freedom with all inherent signs, which

determine this notion. In addition, the law insufficiently clearly differentiates lines between deprivation of freedom under detention and forcible production of investigative actions, bringing [9, p. 160].

Articles 148, 150, 151 and 152 show that detention might be carried out by an inquest officer, investigator or prosecutor. However, administrative detention of person, who is suspected in commission of crime or in occasions stipulated with articles 147.1.2 and 147.1.3 of CPC, is illegal because it is caused with violation of principle of inadmissibility of repeated punishment for the same deed.

Azerbaijani lawmaker subdivides the terms of detention due to appeared suspicion in crime's commission into the two groups: a) under direct appeared suspicion (articles 148.2.1, 148.2.2, and 148.2.3); b) under availability of other data (articles 148.3.1, 148.3.2, and 148.3.3).

The terms, which are stipulated with article 148.3 of CPC of Azerbaijan Republic and without availability of other data, are not grounds for detention. Attempt of a person to escape from occurrence place presupposes active intentional actions, which directed to hide traces of his/her locating there. In order to assess correctly the actions of person there should be taken into account that in number occasions an escape from occurrence place caused with fear, non-desire to figure in materials of criminal case etc. Evasion to be appeared in body carrying out criminal process should be confirmed with appropriate documents (records, subpoena, telephone messages etc.), which testify awareness of person's summons. Presence of residence registration in certain address is not a presence of permanent residing place, same as absence of registration is not absence of permanent place of residence. Under absence of permanent residence should be understood a combination of circumstances, under which a person, who not having registration or registered in other land, alternately lives in different places. Under other land should be understood another administrative territorial unit, which is considerably far from occurrence place or located in other state. Farness from place of investigation of crime is not ground for his/her detention [6, p. 51-54].

Under presence of the grounds stipulated in articles 148.1 and 148.2 of CPC a lawmaker provides an opportunity of detention of person during 24 hours before institution of criminal case. This provision is in collision with other provisions of CPC since under its application a procedural figure of suspected is appeared before institution of criminal case and absence of criminal case's materials associated with criminal prosecution. This excludes presence of criminal process, its participants, parties etc. So, absence of combination of conducted procedural actions and accepting procedural decisions on criminal prosecution determines an absence of criminal process since it is to be a definition stipulated in article 7.0.3 of CPC. Absence of criminal process excludes presence its participants and parties, and absence of criminal case excludes absence of evidences collected through conducting of procedural actions during preliminary investigation and trial proceedings. Absence of evidences collected in established by law order excludes proving etc. and also protection from suspicions, opportunity to fulfill the rights of suspected person including to submit evidences. There no status of suspected means that it should not be suspected [9, p. 171].

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