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The classification of measures of criminal procedure compulsion

In this article the author describes the classification of measures of criminal procedure compulsion. There are given a number of classifications of the coercive procedural measures, the measures of criminal procedure compulsion: depending on a subject, which rights can be affected as a result of application of these measures, and depending on the degree of limitation of rights and individual freedoms, and depending on the aim of application.

Key words: criminal procedure, the classification, measures of criminal procedure, detention, measures of suppression, judicial compulsion.

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Қылмыстық іс жүргізулік мәжбүрлеу шараларының классификациясы

Бұл мақалада қылмыстық іс жүргізулік мәжбүрлеу шараларының классификациясы берілген. Мақалада қылмыстық-процестік мәжбүрлеу шараларының бірнеше түрлері берілген: қылмыстық процеске қатысушы тұлғаға қатысты; адамның құқығы мен бостандығының шектелуіне байланысты; қолдану мақсатына байланысты.

Түйін сөздер: қылмыстық процесс, қылмыстық іс жүргізулік мәжбүрлеу шаралары, мәжбүрлеу шарасы, бұлтартпау шарасы, қамауға алу.

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Классификация мер уголовно- процессуального принуждения

В этой статье авторы выделяют классификацию мер уголовно-процессуального принуждения в зависимости от субъекта, чьи права могут быть затронуты в результате применения этих мер; в зависимости от степени ограничения прав и свобод личности; в зависимости от цели применения.

Ключевые слова: уголовный процесс, меры уголовно-процессуального принуждения, меры пресечения, задержание.

THE CLASSIFICATION OF MEASURES OF CRIMINAL PROCEDURE COMPULSION

The main idea of measures of criminal judicial and compulsion serves is to complete understanding of question and correct determination of their system by classification on different criteria.

V.A. Dubrivnyi distinguishes two groups of measures of judicial and compulsion:

a) **measures of suppression** – measures that can prevent deviation accused or suspected from appearance to investigation and court and to provide execution of sentence;

b) another measures of judicial compulsion are facilities, wrap-around other judicial actions at investigation and consideration businesses, that can be used not only to the defendant and suspected but also to other persons

In basis of this classification, as we see, there are two criteria. The first is related to that, what participants of criminal procedure a compulsion (in one case are measures compulsions that are used only to the defendant and suspected to other participants) is used in regard to, and second one – with the purpose of application of measures of compulsion. Thus an author too limit presents to the aim of application of measures of suppression. In our view, this classification does not give a complete idea about the measures of criminal and judicial compulsion.

A.Y. Trusov wrote, that in a current legislation and criminal and judicial doctrine, it is not given to clear classifications of the examined measures, taking into account their practical meaningfulness offers next classification of measures of criminal and judicial compulsion:

- 1) detention;
- 2) measures of suppression;

3) another measures of judicial compulsion – an author wrote about to attributes next measures, : obligation to be on calls and report the places of inhabitation about a change; drive; dismissal; imposition of arrest on property

The lack of this classification consists in eyeshot which is a row of important measures of judicial compulsion. In particular, to another measures of judicial compulsion an author took such measures by means of that a legal order is provided during a production in business only, and also terms are created for due execution of sentence in regard to a civil action, property penalties and confiscation

of property. As for inquisitional actions a force realization of that provides collecting and research of proofs, as measures of criminal and judicial compulsion.

As be indicated higher, Z.F.Kovriga considers that all measures of criminal and judicial compulsion can be subdivided into two basic groups: on facilities of suppression and on backer-ups. The means of suppression serve to the removal of wrong acts, presenting a threat to interests of justice, and it is related to behavior of subject of criminal and judicial activity. His setting consists in recover normal legal bonds and relations by urging of subject to before laid, but to the not executed duty. To the group of facilities of suppression among other an author treat detention.

Setting of judicial backer-ups an author sees in creation a force order of terms for successful realization of tasks of justice. Force of these facilities is related to the necessity of offensive of certain terms, providing possibility of establishment of truth in business and depending sometimes on behavior of subject counteractive to the offensive of these terms. To the group of backer-ups of Z.F.Koovriga takes such inquisitional actions as a search and coulisse.

As a lack of this classification, similarly as well as classification, offer A.I.Trusov, it is possible to specify that the backer-ups enumerated by an author unthoroughly limit and in their number such inquisitional actions are not indicated as: a force examination; exhumation; imposition of arrest on the Post and telephone sending, their examination and coulisse; intercept of report; listening and record of negotiations; force receipt of standards for expert research.

A.A.Akhpanov research classification of measures of judicial compulsion on a few criteria. Worthy of the special note there is classification that is built taking into account correlation of facilities of criminal and judicial compulsion with rights and individual freedoms. So, an author distinguishes the next measures of judicial compulsion :

1.Measures of criminal and judicial compulsion, setting a limit legal status of personality in area of the socio-economic, political, cultural and personal rights. To them behave: keeping in custody as a measure of suppression, detention on suspicion of commission of crime, apartment in medical establishment for realization of stationary inspection.

2.Measures of criminal and judicial compulsion, setting a limit legal status of personality in area of the socio-economic and personal rights. This is a dismissal of defendant.

3.Measures of criminal and judicial compulsion, regulating a limit legal status in area of the personal rights:

a) **rights on inviolability of dwelling and property** (search, coulisse, imposition of arrest on property, arrest of post and telephone correspondence);

b) **rights on corporal inviolability** (examination, receipt of standards for comparative research, personal search of citizens);

c) **right for freedom of movement and choice of place of inhabitation** (another measures of suppression, choosing of obligation about appearance on the call of low organs, drive).

For us this classification of measures of criminal and judicial compulsion appears interesting not only in connection with that a criterion that is used by an author is consonant with the theme of our research, but also in connection with that in the measures of criminal and judicial compulsion we must see not only and not how many possibility of application of compulsion, main is correlation of measures of criminal and judicial compulsion with rights and freedoms personalities that is limited at their application.

Not applying on blamelessness, we offer classification of measures of criminal and judicial compulsion to conduct on next grounds:

A. Depending on a subject, which rights can be affected as a result of application of these measures:

1) measure of criminal and judicial compulsion, that can be applied only to suspected (detention);

2) measures criminal and judicial compulsion, that can be applied to the defendants and, in exceptional cases, to suspected (measures of suppression);

3) measures of criminal and judicial compulsion, that can be applied only to the defendant (dismissal, imposition of arrest on property);

4) measures of criminal and judicial compulsion, that can be applied both in regard to suspected, defendants and in regard to other participants of process and third persons (obligation about appearance, investigator, in a court; drive; force apartment in medical establishment for the production of medico-legal or low-psychiatric examination; inquisitional actions that behave to the measures of judicial compulsion).

B. Depending on the degree of limitation of rights and individual freedoms:

1) measure of suppression;

2) a force apartment in medical establishment for the production of medico-legal or low-psychiatric examination;

3)detention;

4) another measures of criminal and judicial compulsion;

5) inquisitional actions of production to come to the true force.

C. Depending on the aim of application:

1) measure suppressions, the aim of that is warning of concealment of person from investigation and court, either preventing to objective investigation and trial of business in a court or continuation to carry on criminal activity, and also providing of execution of sentence;

2) detention the aim of that is finding out of involvement detained to the crime and permission of question about application to him measures of suppression as an arrest;

3) inquisitional actions sent to collecting and research of proofs;

4) another measures of judicial compulsion, that are used for providing of order of investigation and judicial trial on criminal cases, proper execution of sentence.

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