HISTORICAL AND LEGAL FORMATION OF COERCIVE MEASURES IN THE CRIMINAL PROCEEDINGS IN UKRAINE

Abstract The scientific article analyzes the opinions of scientists and regulations that provided for and provide for the possibility of coercive measures in the Criminal Proceedings in Ukraine. The historical and legal analysis of such legal acts on this issue is presented. It is emphasized that the application of restrictive measures in criminal proceeding plays an important role, as it contributes to the effective and complete establishment of all circumstances of the criminal offense, gathering evidence and, as a result, the court’s fair and lawful decision. It is noted that coercive measures have been used in criminal proceeding for a long time. Such measures include any measures that restrict human rights even in the slightest way during the implementation of procedural actions in criminal proceeding. The first such coercive measure, which was applied to the participants of the process in view of the existing social order at that time, was the institution of surety. It is proved that coercive measures in criminal proceeding developed by 1927. Subsequent criminal procedure codes and amendments to them, as a rule, introduced some of the pre-existing precautionary measures and excluded some of them. It is noted that quite often scientists single out the stages of application of coercive measures in criminal proceeding. This doctrinal position deserves attention, because it allows to systematize knowledge about this concept and types of coercive measures, identify negative and positive aspects of legal regulation of the criminal procedure. The author’s periodization of the historical development of coercive measures in criminal proceeding is proposed, which is carried out depending on the formation of legislation to regulate this issue.

Key words: criminal process, restrictive measures, coercive measures, restrictions on human rights, suspect, accused, pre-trial investigation, criminal proceeding

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INTRODUCTION

Every social democratic state governed by the rule of law uses different ways of influencing people’s behavior; but in most cases it prefers the method of persuasion. Restrictive methods are provided in criminal procedural law as an exceptional way of influencing people’s behavior, which allow ensuring the participation of a suspect, accused or other participants in criminal proceedings at any stage of the criminal proceeding.

The application of restrictive measures in criminal proceeding plays an important role, as it contributes to the effective and complete establishment of all the circumstances of a criminal offense, gathering evidence and, as a result, the court’s fair and lawful decision. However, unfortunately, there are cases when such actions are accompanied by unjustified restrictions on the rights, freedoms and legitimate interests of participants in criminal proceeding. Therefore, in order to better understand the legal nature of such measures and the possibility of improving the current criminal procedure legislation and law enforcement practice, it is advisable to study the history of legislation on the application of restrictive measures in criminal proceeding.

MATERIALS AND METHODS

The empirical basis of the scientific article was the provisions of legal acts of Ukraine, certain provisions of criminal procedure law, international law, in particular on the possibility in some cases of restricting human and civil rights. Empirical databases should also include official statistics on the application of certain measures to ensure criminal proceeding against persons who evade procedural duties, including data from the Prosecutor General’s Office. The theoretical basis of this article are modern scientific developments of domestic and foreign scientists on the application of precautionary measures to participants in criminal proceeding, areas of improvement of legislation on this issue and law enforcement practice.

The research methods were determined according to the purpose, tasks, object and subject of the article. General scientific and special research methods were used in the research process. Formal-logical methods analyzed the norms of the Criminal Procedural Code of Ukraine, substantiated the conclusions and proposals for their supplementation and clarification; the systematic method allowed to determine the types of precautionary measures in criminal proceeding. The method of synthesis and generalization was used to form conclusions.

RESULTS AND DISCUSSION

To begin with, it should be noted that coercive measures have been used in criminal proceeding for a long time. Such measures include any measures that restrict human rights even in the slightest way during the conduct of procedural actions in criminal proceeding. The first such coercive measure, which was applied to the participants of the process in view of the existing social order at that time, was the institution of surety.

To better study them, some scholars divide the historical development of such activities into several stages. Thus, P. Lublinskiy held the view that the nature of measures to ensure the participation of individuals depends on the form of government, and depending on this determined the following periods: communal, princely, royal, imperial (Lublinskiy, 1906).
The communal period is characterized by international relations of small tribes, the dominance of internal tribal justice and a balanced position of internal relations, which is expressed in the dominance of the adversarial form of court and pre-trial detention (bail).

The princely period is characterized by the strengthening of the power of princes under the predominant influence of the community. This period is transitional, freedom on bail (which is not yet different from group responsibility) and the introduction of precautionary measures related to imprisonment in cases where the personal interest of the prince is present (Slobodyan, 2015).

The tsarist period was characterized by the formation of a strong government that absorbed the community. This period is characterized by restrictions on human freedom (serfdom). As a result, bail is no longer used, and administrative and coercive measures are more common.

The imperial period is characterized by a complete transformation of the entire state system and centralization. It causes the strengthening of state power, which is expressed in the existence of only some administrative and coercive measures, and only with the gradual consolidation of this system there is a transition to measures of a psychological nature (Slobodyan, 2015).

The most thorough and detailed is the periodization of V. Myklyashevskiy, which has five stages: 1) the period of bloody revenge; 2) the period of the princes; 3) the period of tsarist rule; 4) the imperial period; 5) the period of the charters of 1864. It should be noted that such periodization was carried out on the basis of the predominance of a certain coercive measure. Thus, each period is characterized by the dominance of a special coercive measure: 1) direct revenge; 2) surety; 3) return for the bailiff; 4) detention; 5) various precautionary measures, the application of which is subject to numerous guarantees.

A. Kistyakivskiy chose the same basis for his periodization, which is based on the criterion of the dominance of a certain coercive measure in a certain period. The scientist divides the whole history of the development of measures to ensure the participation of persons in the following stages: 1) the guarantee period; 2) the period of return for the bailiff and surety; 3) the period of return for the bailiff; 4) the period of imprisonment (Kistyakivskiy, 1868).

In V. Myklyashevskiy’s classification, the constant development of measures to ensure the participation of individuals is seen as an absolute process, which in a certain sequence is observed in all states, and not as an action of a relative factor that stands with many others and all periodization is abstract. O. Slobodyan believes that the combination of each measure to ensure the participation of persons with individual periods cannot be considered artificial, it would be more correct to characterize the period by the dominance of a certain group of these measures or measures of a psychological nature. As for the form of these measures, which comes to the fore in the classification of V. Myklyashevskiy, it is largely random and not related to the form of social order. The first period – the period of bloody revenge, assuming that it existed as an exceptional way of punishing offenders – can not be a period of criminal justice and for the periodization of the development of measures to ensure the participation of individuals, it does not matter (Miklyashevskiy, 1872). We agree with this view, as periodization should be linked to the development of these measures.

It is worth noting that one of the little-known periods, which dates back to antiquity and
about which there is little historical evidence, is the community period. It emerges as a period of internal balance within the community and their collision with each other.

There are many conflicting views on the interests of community reunification. Thus A. Kistyakivskiy and V. Myklyashevskiy considered the community as an association of family ties, and F. Leontovych saw in it a land community united by a unity of interests, which consisted of members of different families (Leontovych, 1902).

This period is interesting because there is a certain time between the detection of a criminal offense and the imposition of punishment. That is, finding a person who has committed a criminal offense, it is possible to take him to the pre-trial body and interrogate him about the circumstances of the criminal offense, but, as a rule, it is impossible to perform all investigative actions in one call. Therefore, in order to ensure its further appearance in the pre-trial investigation and court bodies, it was necessary to take measures to ensure the participation of individuals in the early periods of judicial development. The first embryos of such relationships begin to appear during the existence of the community (Slobodyan, 2015).

For the first time this type of ensuring the participation of persons in the process is mentioned in the Spatial edition of “Ruska Pravda”, the time of its adoption dates back to the thirteenth century. Thus, “Ruska Pravda” in the article “On forging a husband” provided that when the accused could not present the guarantor that he would not disappear, the accused was chained. If the guarantor failed to fulfill his obligations, he had to take the place of the accused and bear the punishment imposed on the latter, usually a property penalty. That is why, as a precautionary measure, a guarantee already existed in the days of “Ruska Pravda”, and in the future we can only talk about its transformation and separation from it of precautionary measures based on a guarantee (Ruska Pravda, 1935).

The period of development of princely power (X-XV centuries) has many features. This period begins in the time of Yaroslav the Wise and ends with the adoption of Sudebniki 1497 and 1550. At the beginning of it, the same community rules. The prince acts as a judge in disputes that arose between the families. However, he does not pursue his right in court, but fully adheres to the “old”. He is interested in the court only from the economic point of view, because when providing court services, he paid from the persons who sued. Ruling along with communal self-government, the prince could easily expect to be “shown the way” if he violated his rights. Only those princes who received land plots where there was no community could reliably assert their power and become autocrats. The specific period was filled with episodes of the struggle between the prince and the chamber, each had its own party, and the chamber of the chamber was much stronger (Slobodyan, 2015).

In the first part of this period, the guarantee was still of exclusive use. But bodies such as bailiffs, porters, sailors, swordsmen have already appeared to bail, to open proceedings and to present themselves in court. Bailiffs are public bodies like modern pre-trial investigation bodies. Their responsibilities included ascertaining the commission of criminal offenses, conducting searches, bail, and so on.

Rebates for bailiffs initially existed as an exception rather than as a stand-alone precautionary measure, although later, when the measure became actively used, it began to be governed by special rules. The main task of the bailiffs was to bring them to court in all cases. To prevent abuse, persons were allowed to be released on bail only in the presence of elders and
celebrities. Note that the number of bailiffs was clearly defined. Repayment for bailiffs was initially used as an exceptional measure, but later it became quite widespread. The release of offenders who were counted as bailiffs took place only with the permission of those involved in the case, or was completely prohibited (Bondarenko, 2015).

Detention was not used as a precautionary measure during this period. Sometimes the so-called “prison” was used, which at that time meant a closed space in the ground, but, as a rule, these were isolated cases and concerned actions of a political nature and against persons who were particularly dangerous to the prince. In fact, it was a violent act of the prince, not a legal precautionary measure.

Thus, bail was very often used during this period, together with the right to be prosecuted and the immediate post-trial execution carried out by the victim. In some cases, when it was impossible to get guarantors, the bailiffs kept the offenders. “Prison” was used as a violent measure in crimes of a political nature in the personal revenge of the prince, but not as a measure to ensure the participation of persons in justice.

The analysis of the first monuments of the law of Kyiv Rus shows that they enshrined norms aimed at protecting the judiciary. This applied to both those who directly administered justice and those who facilitated its administration (Ruska Pravda, 1935).

Interesting is the legislation on the use of coercive measures of the Lithuanian-Polish era (XIV-XVII centuries), under which society was divided into feudal lords (princes, boyars, magnates, gentry, lords), dependent peasants and burghers. The share of Cossacks also actively increased. Judicial system in Ukraine XIV-XVII centuries was also associated with the class and caste system. Its features were: the dependence of the court on the administration, merging with it, the principle of construction of judicial institutions and more.

It should be noted that the Russian empire had a significant influence on the judicial system in Ukraine, which included in the first half of the XIX century entered most of Ukraine. During this period, the institutes of labial elders emerged, which replaced the sending of the court directly to the people. The labial elders were public authorities whose responsibilities included not only the trial but also the investigation and punishment of those who committed criminal offenses. The positions of labial elders were elected, and their activities were regulated by charters issued from Moscow orders (Slobodyan, 2015).

Coercive measures used during this period in the Criminal Proceedings in Ukraine were: 1) return for bailiff; 2) guarantees; 3) imprisonment; 4) detention of a criminal; 5) pretext.

Precautionary measures were given special importance during this period. As for such a precautionary measure as bail, this term is used in the “Rights of the Little Russian People” of 1743 (hereinafter “Rights ...”). Although “Rights...”, like “Ruska Pravda”, did not contain the term “precautionary measure”, this legislative act provided a measure to prevent the accused from evading the pre-trial investigation in the form of bail, which corresponds to the modern concept of coercion. According to Chapter 7 of Article 23, paragraph 2 of the Rights, “wells (persons in custody) who have not been sentenced to death by a court verdict, if they leave a reliable guarantee, may be released” (Prymich, 2004). This incentive rule essentially released on bail a person taken into custody in criminal proceedings pending receipt of a resolution from the High Court in the event of that person appealing the sentence.

It should be noted that with the development of legislation, in particular, the emergence of
criminal procedural norms, the concept, list and procedure for applying measures to ensure criminal proceeding has become significantly more detailed and extensive.

The adoption of Lithuanian statutes was of great importance in this process. Thus, the Lithuanian Statute of 1529 was the first in Europe at that time systematized code of various branches of law. He legally established the foundations of social and state order, the legal status of various social groups, the order of formation, composition and powers of some public administration bodies and the court (Prymich, 2004).

Measures to ensure the participation of persons in criminal proceedings included summoning persons to judicial bodies with so-called written “subpoenas”. The trial was initiated by the plaintiff or his close relatives, who filed a complaint with the court and took “subpoenas” to summon the defendant to court (Statuty Velykoho Kniazivstva Lytovskoho, 2002). We can conclude that the obligation to ensure the participation of the defendant was legally imposed on the prosecution.

A progressive step in the regulation of coercive measures in the case is the legislative consolidation of valid reasons for non-appearance of persons for consideration of the case. Such reasons were: employment in the zemstvo court of another county in a more important case (Article 17), illness, epidemic, zemstvo service, participation in the work of the General Sejm (Article 13). The only serious reason for the procurator’s absence was a serious illness (Article 36) (Statuty Velykoho Kniazivstva Lytovskoho, 2002).

If we compare the I and II Statutes, in the latter we can trace a better systematization of legal material. Chapters one, two and three regulate the rules of state law, section four deals with the judiciary, chapters five to ten – private law, and finally, sections eleven to fourteen regulate criminal and procedural law.

It should be noted that the Lithuanian Statute of 1566 regulates in detail the procedural order of registration and delivery of “summons” to the defendant (“summons” were served in a crowded place or in the yard of the defendant). The driver has the right to perform such a function, for which he was charged a court fee. Interestingly, the fuss largely took over the functions of judicial officials of the pre-reform era. This Lithuanian Statute provides for liability for: failure to perform the duties of a driver, failure to appear before the defendant, failure to perform his duties as a prosecutor (lawyer), use of bail (loan agreement), which we can attribute to measures to ensure the participation of the above persons.

A progressive step in the regulation of coercive measures in criminal proceedings is the legislative consolidation of valid reasons for non-appearance of persons for consideration of the case. Such reasons were: employment in the court of another county in a more important case (Article 17), illness, epidemic, service, participation in the work of the General Sejm (Article 13). The only serious reason for the procurator’s absence was a serious illness (Article 36) (Statuty Velykoho Kniazivstva Lytovskoho, 2002).

The Third Lithuanian Statute enshrined similar norms, expanding their content. Thus, sanctions for failure to appear in court on time, for unauthorized early departure before a court decision were established by the Lithuanian Statute of 1566. Such actions of the violator began to be qualified as an insult to the court and not an insult to the opposing party. A new corpus delicti is approved – crimes against the court (Statuty Velykoho Kniazivstva Lytovskoho, 2002).
The Statute of Criminal Procedure of 1864, among measures to prevent the accused from evading the investigation, provided for bail. In Art. 416, 417, 422 of the Statute stated that “any wealthy person, community or administration may take the accused on bail and assume financial responsibility in case he evades the pre-trial investigation. The transfer of the accused on bail is allowed only with financial security, the amount of which must be specified in the minutes of the investigator. This financial security may not be collected in favor of the victim in order to compensate for the damage caused by the criminal offense, except in the case of escape of the accused or evasion of the investigation. In this case, the amount collected from the guarantor, deducting from it the amount of money that can be determined as compensation to the victim of a criminal offense, is used to build places of imprisonment. If the accused has consistently performed his duty to appear in court, the guarantor may not be held liable, and when the property of the accused was insufficient to compensate for the damage caused by the criminal offense to the victim, and the guarantor’s liability ends at the time of sentencing in fact (Belikov, 1895). It can be concluded that the progress of criminal procedural rules to ensure the participation of persons in criminal proceeding, because the guarantor in case of default by the defendant, had to compensate for the damage.

Subsequently, the application of coercive measures was regulated by the Code of Laws of 1832. During this period, there was a significant increase in the number of detainees suspected of committing a criminal offense. The guarantee still existed, but it acquired a completely different character, as there was no property liability of the guarantor. This is due to the failure to ensure the appearance of the accused, so it was used very rarely and was only formal. Reimbursement for the bailiff also fell into disuse and was replaced by detention. All this led to a large number of arrests. Therefore, the Code of Laws of 1832 provided for the following measures to prevent evasion of the accused from the investigation: 1) detention in prison and with the police; 2) house arrest; 3) police supervision; 4) return on bail (Tomsinov, 2011).

According to this regulation, house arrest and police supervision provided for the detention of defendants in the commission of minor criminal offenses, for which they would be subject only to temporary imprisonment. Also in the Code of Laws, some exceptions were made for certain categories of persons, for example, pregnant women were forbidden to be taken into custody, and it was necessary to bail and under police supervision (Tomsinov, 2011).

House arrest was more often applied to privileged persons, for example, to various kinds of officials, and consisted in the fact that a policeman was in the house of the accused. Police surveillance, which was introduced to replace detention on bail, was not regulated by law, and therefore it was rarely used in practice (Slobodyan, 2015).

It is worth noting that during this period the institution of suretyship was used the most, because it has shown its effectiveness over the years.

The court statutes of 1864 established a system of precautionary measures characteristic of bourgeois law of the nineteenth century (Zakonodavstvo, 1991). The use of precautionary measures was the prerogative of judicial investigators. The police and the prosecutor’s office did not receive these rights. The scope of personal detention was significantly narrowed.

Article 416 of the Statute of Criminal Procedure established a list of precautionary
measures according to the degree of restriction of the rights of the accused. These included: 1) deprivation of a residence permit or a subscription not to leave the place of residence; 2) special police supervision; 3) surety; 4) pledge; 5) house arrest and 6) detention.

The law established certain conditions for the application of precautionary measures. All defendants and suspects, regardless of the precautionary measure chosen, were prohibited from leaving the city or territory of the investigation area for the duration of the investigation.

The choice and application of the measure of restraint was the responsibility of the judicial investigator. Some scholars have argued that the obligation to apply these measures “seems unjustified and often completely pointless, it restricts the identity of the accused” (Sluchevskiy, 1913). Only one measure of restraint was applied to the accused, which could be replaced during the pre-trial investigation. Only in 1894 did the Commission for the Review of the Provisions of the Judicial Statutes recognize the possibility in some cases not to apply precautionary measures to the accused (Petrukhin, 1988).

The simplest precautionary measure was to obtain a residence permit. The significance of this measure stemmed from the essence of the passport system, according to which a person was not entitled to leave a permanent place of residence without a residence permit or passport. Thus, the person deprived of a passport lost the legal opportunity to leave the place of residence, which, according to the drafters of the Statute, provided guarantees against the evasion of the accused from the pre-trial investigation. Instead of a passport, the accused was issued a temporary reverse – a certificate of confiscation of the passport. The confiscated passport was attached to the materials of the proceedings, which left traces of punctures. Subsequently, in the case of the end of criminal proceedings or acquittal of the accused, the “punctured” passport compromised its owner when hiring or finding a place to live (Petrukhin, 1988). According to the decree of the Senate of 1884 № 145 confiscated passports were to be kept unbound in the proceeding “in order not to bear the external signs of a person’s involvement in a criminal case” (Sluchevskiy, 1913).

The written undertaking not to leave was considered to be evidence that the investigator had been ordered to leave the place of residence for the period of the investigation, which had been brought to the notice of the accused. Violation of the subscription did not lead to legal liability of the person, but was considered a sufficient basis for the application of a more severe precautionary measure (Burdin, 2011). Therefore, this subscription has not so much legal as moral significance.

It should be noted that special police supervision as a precautionary measure was the most vague in the legislation. The practical significance of this measure was fictitious, as, firstly, there was no legal regulation of public police supervision, and secondly, the police had very little resources for its practical implementation.

Bail and bail were not administrative measures, but property coercion. Any wealthy person, company or administration could take the accused on bail. At the same time, the guarantor undertook to pay a certain amount of money in case of evasion of the accused from the pre-trial investigation. The guarantor had to ensure the appearance of the accused at the first request of the investigator.

The person acting as a guarantor was obliged to provide the forensic investigator with recommendations from the local police, which guaranteed his credibility.
The bail consisted of depositing a certain amount of money or movable property with the accused or third parties in order to ensure the appearance of the accused before the pre-trial investigation body. Escape or evasion of the investigation was the basis for the conversion of the bail in favor of the victim and to the funds of detention facilities.

House arrest differed from detention only in that the place of detention was the direct residence of the accused. This precautionary measure was used very rarely – for seriously ill patients, nursing mothers and high-ranking officials. For example, in 1899, house arrest was never used (Lublinskiy, 1906).

Detention of the accused (or pre-trial detention) had a dual purpose: first, to prevent the escape of the accused; secondly, limiting the influence of the accused in criminal proceeding in concealing the traces and evidence of a committed criminal offense and committing new offenses. It should be noted that the legislator established detention as the most severe form of precautionary measures that could be applied to persons suspected of committing serious criminal offenses, or to persons without a fixed place of residence and occupation, or whose identity has not been established (Article 417-420 Statute of Criminal Procedure). The law did not provide for cases in which detention was chosen as a precautionary measure, leaving it to the investigator’s discretion. When choosing a measure of restraint, the investigator, in addition to the nature of the criminal offense, had to take into account the available evidence, the possibility of concealing traces of the criminal offense, health, age and social status of the accused (Article 421 SCS) (Burdin, 2011).

A feature of criminal procedural law of the early twentieth century there were two types of surety: personal and property.

It should be noted that on September 13, 1922 the Code of Criminal Procedure was adopted, the twelfth section of the Code was devoted to precautionary measures and provided that from each person involved as a defendant, the investigator selects a subscription to appear with a duty to notify residence. In addition, the investigator may apply other precautionary measures to the accused. The following types of precautions were provided:

1) subscription not to leave;
2) personal and property guarantee;
3) the pledge;
4) house arrest;
5) detention (Criminal Procedural Code, 1922).

According to Art. 153 of the Criminal Procedural Code of 1922, personal bail was to withdraw from persons who deserved trust, a written commitment that they vouch for the appearance of the accused and undertake to take him to the investigator or the court at the first request. The number of guarantors was determined by the investigator and could not be less than two (Criminal Procedure Code, 1922). Property surety, according to Art. 155 of this legislative act, was to obtain from a sufficiently well-off person or organization a subscription that they undertook to pay a certain amount in case of non-appearance of the accused to the investigator or the court. According to Art. 157 of this Code “the amount of bail was determined by the investigator according to the gravity of the accusation, the strength of the evidence established in the case against the accused, the property status of the guarantor and other circumstances of the criminal offense” (Criminal Procedural Code, 1922).
In 1927 a new Criminal Procedural Code was adopted. In fact, the system and procedure for applying precautionary measures have not changed, only such measures as guarantees of professional and other public organizations have been supplemented.

The list of precautionary measures is as follows:
1) subscription not to leave;
2) personal and property guarantee;
3) guarantee of professional and other public organizations;
4) pledge;
5) house arrest;
6) detention.

It should be noted that the precautionary measures were chosen after the start of the pre-trial investigation of the person suspected of committing a criminal offense and could be changed or revoked according to the circumstances of the criminal offense. The investigator had to draw up a reasoned decision on the choice of a measure of restraint, which would indicate the circumstances of the criminal offense in which the person was suspected and the grounds for choosing a measure of restraint (Criminal Procedural Code, 1960).

The written undertaking not to leave was to withdraw from the accused the obligation not to leave the place of residence of the chosen judicial-investigative body without the permission of the latter.

If the accused violated his written undertaking not to leave, it could be replaced by a stricter measure of restraint; this must be announced to the accused when the restraining order is withdrawn from him (Criminal Procedural Code, 1960).

The guarantee was to withdraw from the trustworthy persons a subscription stating that they would vouch for the appearance of the accused and undertake to take him to the investigating authorities if necessary.

The guarantee of professional and other public organizations was to present to the judicial-investigative body the relevant resolution on the guarantee, in which they undertake to deliver it to the judicial-investigative bodies if necessary.

The essence of the use of bail as a precautionary measure was to deposit money or other property on the court by the accused and other persons, organizations to ensure the appearance of the accused to the investigative bodies or the court (Criminal Procedural Code of Ukraine, 2012).

The house arrest consisted of depriving the accused of his liberty in the form of isolating him at his place of residence with or without security.

Detention could be chosen as a precautionary measure only in criminal offenses punishable by imprisonment or a more severe social protection measure, and if there were sufficient grounds to believe that the accused would evade the investigation, or that the accused’s release would impede the investigation, or if his release will be considered socially dangerous.

It should be noted that such a list of precautionary measures was valid until 1960, ie before the adoption of the Criminal Procedural Code of Ukraine. House arrest was excluded from the list of precautionary measures of the new code, as it was hardly used.

Thus, we can say that measures to ensure the participation of persons in the pre-trial investigation were developed before 1927. In subsequent codes of criminal procedure and
amendments to them, as a rule, some of the pre-existing precautionary measures were introduced and some were excluded.

We have already paid attention to the history of measures to ensure the participation of persons in criminal proceeding, so we consider it appropriate to consider the application of these measures in independent Ukraine.

Since the beginning of the existence of independent Ukraine, the criminal procedure legislation has not undergone significant changes. The Criminal Procedural Code of 1960, which was in force until 2012, provided for the application of "measures of procedural coercion", which included: precautionary measures, removal of the accused from office, investigative actions of a coercive nature, seizure of property the accused; removal from the courtroom of a person who violates the order; bringing to administrative responsibility for violating the order of the court hearing, etc. We note that there was no legal definition of measures of criminal procedural coercion, so practitioners turned to the criminal procedural theory, in which measures of criminal procedural coercion meant statutory measures of coercive nature, applied by competent persons and authorities on grounds and in the manner provided by law, in order to overcome the negative circumstances that impede the implementation of the tasks of criminal justice, and ensure the implementation of decisions of pre-trial investigation and court (Hroshevyi, 2010).

Looking back at the history of criminal justice reform, it should be noted that the amendments to the Criminal Procedural Code of Ukraine on June 21, 2001, introduced a new procedure for the election of a suspect, accused, as a pre-trial detention measure. Prior to that, the right to choose such a measure of restraint belonged to the prosecutor’s office, and after the changes – this is the exclusive competence of the courts (On Amendments to the Criminal Procedural Code of Ukraine, 2001). In view of this, it can be stated that the issue of effective enforcement of the right of everyone to liberty and security of person in criminal proceedings began to be implemented in 2001. After all, according to Art. 29 of the Constitution of Ukraine, no one may be arrested or detained except by a reasoned court decision and only on the grounds and in the manner prescribed by law (Konstytutsiia, 1996).

Yes, according to Art. 9 of the Basic Law, current international treaties, the binding nature of which has been approved by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine. Universal Declaration of Human and Civil Rights (Zahalna deklaratsiia prav liudyny, 1995), European Convention for the Protection of Human Rights and Fundamental Freedoms, International Covenant on Civil and Political Rights, UN Standard Minimum Rules for the Treatment of Prisoners, Code of Conduct for Law Enforcement Officials – these are international documents that establish standards for ensuring the right to liberty and security of person in the field of criminal justice (Konstytutsiia, 1996).

On May 13, 2012, the new Criminal Procedural Code of Ukraine was adopted, which completely changed the system of measures to ensure the participation of persons in the pre-trial investigation. According to the current legislation, these include: summons to the investigator, prosecutor, summons and pretext; imposition of a monetary penalty; temporary restriction on the use of the special right; removal from office; temporary access to things and documents; temporary seizure of property; seizure of property; detention of a person; precautions; measures applicable to minors (transfer under the supervision of a
minor and placement in a reception center) and measures applicable to persons with limited
sanity and insanity (transfer to the care of guardians, close relatives or family members
with compulsory medical supervision and placement to psychiatric institution) and other
measures to ensure the participation of persons (Criminal Procedure Code, 2012).

CONCLUSIONS

Thus, we can conclude that coercive measures have been used in criminal proceedings
for a long time. Their list has expanded and detailed over time. Most often, in practice, a
guarantee was used, which has shown its effectiveness over the centuries.

Quite often, scientists identify the stages of coercive measures in criminal proceedings.
This doctrinal position deserves attention, because it allows you to systematize knowledge
about the concept and types of coercive measures, allows you to identify the negative and
positive aspects of the legislative regulation of this institution of criminal procedure.

In this regard, it should be noted that the development of coercive measures in different
historical periods was heterogeneous, and, above all, depended on the state of society. In our
opinion, the periodization of the historical development of coercive measures in criminal
proceedings should be carried out depending on the formation of legislation to regulate
this issue: 1) IX-XVIII centuries – the first legal norms governing certain coercive measures
(including bail); 2) the imperial period (mid-XVIII – early twentieth century) – provides for
detailed regulation of procedural order and types of coercive measures; separate specialized
bodies are created, which are authorized to use them; 4) the Soviet period (1917 – 1991) – is
characterized by extensive use of coercive measures, sometimes not entirely justified; 5) the
period of formation and development of the Ukrainian state (from 1991 to the present) – the
formation of a holistic system of coercive measures, which is provided for in the Criminal

RECOMMENDATIONS

The results of scientific analysis can be used to amend criminal procedural law, in particular,
to familiarize with historical legal acts that regulated in detail the application of coercive
measures (in particular, the Criminal Procedural Code of Ukraine in 1960) and
to form an effective model of restrictive measures in criminal proceeding of Ukraine. In
addition, this research can serve as a basis for future research in this area.

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