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Postponement of Trial in Connection with the Application of Criminal Procedural Measures

1. Introduction

Today in Ukraine, both in the theory and practice of the criminal process, sufficient attention is paid to the need for participants in court proceedings to meet reasonable deadlines for criminal cases. At the same time, there are many cases of repeated adjournments due to the non-appearance of summoned persons, as well as adjournments due to unfounded requests to ensure the exercise of their rights or, ostensibly, to ensure the evidentiary process.

Violation of the procedural guarantee of reasonableness of the terms of criminal cases (paragraph 21, part 1 of Article 7, Article 28 of the Criminal Procedure Code of Ukraine (hereinafter – the CPC of Ukraine)) is associated primarily with the court's failure to apply coercive measures in court proceedings. appropriate cases.

The procedural significance of the problem of postponing the trial in connection with the application of measures of procedural coercion to the participants in the proceedings is quite important, as it is directly related to the procedural rights and obligations of these participants, as well as the administration of justice in accordance with international standards.

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2. Analysis of recent researches and publications

The stated problem is not sufficiently examined in the modern doctrine of criminal process of Ukraine. Research of some aspects of stated problem can be found in the works of such scientists as O. Tatarov, M. Lymanska (the issue of imposing fines in criminal proceedings), A. Murzanoska, I. Rohatyuk (the issue of application of such measures as warning and removal from the courtroom), R. Bilokin (warning and removal from the courtroom as measures of criminal procedural compulsion), O. Andrushko, N. Bobechko, M. Nikonenko, H. Kozhevnikov (issues related to the concepts of “compulsion”, “measures of procedural compulsion”, “support measures of criminal proceedings”).

The purpose of this article there is a study of the postponement of the trial in criminal proceedings in connection with the application of measures of criminal coercion to the participants in criminal proceedings.

3. Presentation of the main research material

The current CPC of Ukraine does not use the term “measures of procedural compulsion”. However, in contrast, Civil Procedure Code of Ukraine, 2004 (hereinafter – CvPC of Ukraine; in Chapter 9 “Measures of procedural compulsion”)², Commercial Procedural Code of Ukraine, 1991, (hereinafter – EPC of Ukraine; in Chapter 9 “Measures of procedural compulsion”)³ and the Code of Administrative Procedure of Ukraine, 2005 (hereinafter – CAP of Ukraine; in Chapter 9 “Measures of procedural compulsion”)³ define this term, provide for types of measures of procedural compulsion and regulate the procedure for their application. Moreover, these three procedural codes provide an identical

² Civil Procedure Code of Ukraine of March 18, 2004 № 1618-IV (as amended on February 13, 2020)]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/1618-15> [in Ukrainian].

³ Commercial Procedural Code of Ukraine of November 6, 1991 № 1798-XII (as amended on February 13, 2020)] Retrieved from: <https://zakon.rada.gov.ua/laws/show/1798-12> [in Ukrainian].

definition of this term, which mean the procedural actions of the court, which can be applied in cases provided by procedural codes (CvPC of Ukraine, EPC of Ukraine, CAP of Ukraine) to encourage relevant persons to comply with court rules, conscientious performance of procedural duties, termination of abuse of rights and prevention of illegal obstacles in the implementation of justice (Part 1 of Article 143 of CvPC of Ukraine⁴; Part 1 of Article 131 of EPC of Ukraine⁵; Part 1 of Article 144 of CAP of Ukraine⁶). At the same time, CvPC of Ukraine and CAP of Ukraine distinguish five types of measures of procedural compulsion: 1) warning; 2) removal from the courtroom; 3) temporary seizure of evidence for examination by a court; 4) compulsory delivery of a person to the courtroom; 5) fine (Part 1 of Article 144 of CvPC of Ukraine; Part 1 of Article 145 of CAP of Ukraine). While EPC of Ukraine – contain only four: the same as CvPC of Ukraine and CAP of Ukraine, except for the compulsory delivery of a person to the courtroom (Part 1 of Article 132 of the EPC of Ukraine).

In the current CPC of Ukraine, the concept of “compulsion” is widely used in various senses: “unreasonable procedural compulsion” (Article 2), “compulsion measures of an educational nature” (paragraph 2 of Chapter 38), “compulsion measures of a medical nature” (Chapter 39), “compulsory accompaniment of a person” (Part 1 of Article 140), “examination is carried out compulsorily” (Part 3 of Article 241), “compulsory involvement of a person for medical or psychiatric examination” (Part 3 of Article 242), “compulsory removal of biological samples” (Part 2 of Article 245), “premises for the forced detention of persons” (Part 3 of Article 267) and others. However, most of them are not related to the institution of compulsion measures in the sense in which they are used in the three forms of justice above mentioned by us: civil, economic and

⁴ Civil Procedure Code of Ukraine of March 18, 2004 № 1618-IV (as amended on February 13, 2020)]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/1618-15> [in Ukrainian].

⁵ Commercial Procedural Code of Ukraine of November 6, 1991 № 1798-XII (as amended on February 13, 2020)] Retrieved from: <https://zakon.rada.gov.ua/laws/show/1798-12> [in Ukrainian].

⁶ Code of Administrative Procedure of Ukraine of July 6, 2005 № 2747-IV (as amended on March 20, 2020)] Retrieved from: <https://zakon.rada.gov.ua/laws/show/2747-15> [in Ukrainian].

administrative. We believe that in the criminal procedure the institute of measures of procedural compulsion can be partially considered as an analogue of the institute of support measures of criminal proceedings (Section 2 of the CPC of Ukraine) ⁷.

As O. Andrushko rightly notes, with the introduction in 2012 of a new criminal procedure institute called “support measures of criminal proceedings” in Ukraine, the “doctrine of application of support measures of criminal proceedings and restriction of constitutional and convention rights of citizens only in situations where other means is impossible to achieve the goals of the process as a whole or the goals of individual procedural actions and decisions”. According to the new formulated purpose of these measures: “support measures of criminal proceedings are applied in order to ensure the effectiveness of these proceedings” (Part 1 of Article 131 of the CPC of Ukraine), which is certainly possible with the proper performance of all subjects of criminal proceedings, on the one hand, and on the other – the practical implementation of these measures. At the same time, a new list of these measures was established, additional regulations of the previous ones were provided, as well as those that did not correspond to the modern paradigm of the criminal process were excluded (Section 2 of the CPC of Ukraine) ⁸.

At the same time, the introduction of the above-mentioned institute in Ukraine has given rise to discussions on the correct identification of measures of criminal procedural compulsion (the application of which was provided by CPC of the USSR, 1960) and support measures of criminal proceedings (defined in section 2 of the CPC of Ukraine, 2012): between those who consider them identical (S.M. Smakovyi), and those who deny their identity (O.M. Humin, H.K. Kozhevnikov, L.M. Loboyko, O.A. Banchuk) ⁹.

⁷ Criminal Procedure Code of Ukraine of April 13, 2012 № 4651-VI (as amended on March 27, 2018)] Retrieved from: <https://zakon.rada.gov.ua/laws/show/4651-17> [in Ukrainian].

⁸ Andrushko, O. (2018) Prymus u kryminal'nomu procesi: pytannja denotacii' i konotacii'. *Pidprijemnyctvo, gospodarstvo i pravo*. [Coercion in criminal proceedings: issues of denotation and connotation. *Entrepreneurship, economy and law*]. № 4. [in Ukrainian]. p. 216.

⁹ Ibidem.

For example, O. Andrushko on this problem gives views of L.M. Lo-boyko and O.A. Banchuk, who on the basis of the legislative experience of European countries completely deny the identity of measures of criminal procedural compulsion and support measures of criminal proceedings. Because they are convinced that compulsion take place only there, where the usage of physical force takes place, which mean that “it is expedient to recognize as compulsion measures only such measures as compulsory delivery of a person to the courtroom, detention of a person, seizure of property or documents during which physical force is used”. We consider the following opinion of the researchers to be noteworthy: “support measures of criminal proceedings are measures provided by law to restrict the rights and freedoms of participants in criminal proceedings, which have independent significance and do not have the nature of legal sanctions”.

O. Andrushko notes that the current CPC of Ukraine uses compulsion in criminal proceedings as a general generic concept, a legal category for other concepts related to this legal institution: support measures of criminal proceedings, precautionary measures, criminal procedural compulsion, «non-procedural» compulsion etc., therefore compulsion in criminal proceedings acts is an integrated (intersectoral) legal category. And, therefore, the concept of criminal procedural compulsion is a general concept, a legal category for other concepts, including the concept of “support measures of criminal proceedings”, which is narrower than compulsion in criminal proceedings¹⁰.

The scientist believes that “support measures of criminal proceedings are always associated with the use of compulsion in criminal proceedings. Compulsion is the key to the fact that the application of support measures of criminal proceedings will achieve the goal – the effectiveness (efficiency) of proceedings ... But to identify the concept of “support measures of criminal proceedings” and “measures of criminal procedural compulsion” ... according to the literal interpretation of the law quite correct, because the latter is certainly a broader concept”¹¹.

¹⁰ Ibidem, p. 218.

¹¹ Ibidem, p. 217.

N. Bobechko is convinced that “the efficiency of criminal proceedings and its proper course, among other things, is provided statutory compulsory measures”¹².

Different views of domestic scientists on the essence of the concepts of “support measures of criminal proceedings” and their interrelation are due primarily to the absence in the current CPC of Ukraine definition of the concept of “support measures of criminal proceedings”. After all, in the provisions of Art. 131 of the CPC of Ukraine indicates only the purpose of their application (“achieving the effectiveness of the proceedings”) and their types¹³.

Therefore, we turn to the definition used by the High Specialized Court of Ukraine for Civil and Criminal Cases in the Generalization of judicial practice regarding the consideration by the investigating petitions by a judge for the application of measures to ensure criminal proceedings: support measures of criminal proceedings means the measures of a compulsory nature provided by the CPC of Ukraine, which are applied in the presence of grounds and in the manner prescribed by law, in order to prevent and overcome negative circumstances that prevent or may hinder in resolution of criminal proceedings¹⁴.

The concept of “support measures of criminal proceedings” in its content and scope does not cover the category of precautionary measures and other compulsory measures. In our opinion, the notion of “measures of criminal procedural compulsion” and “support measures of criminal proceedings” are not identical: according to the current CPC of Ukraine, measures of criminal procedural compulsion are a component of measures of support measures of criminal proceedings and, therefore, is a lesser

¹² Bobechko, Nr. (2017) Zahody zabezpechennja kryminal'nogo provadzhennja: procesual'na pryroda, zmist ta obsjag. Pravo Ukraïny. [Measures to ensure criminal proceedings: procedural nature, content and scope. Law of Ukraine] № 12. [in Ukrainian]. p. 31.

¹³ Criminal Procedure Code of Ukraine of April 13, 2012 № 4651-VI (as amended on March 27, 2018)] Retrieved from: <https://zakon.rada.gov.ua/laws/show/4651-17> [in Ukrainian].

¹⁴ Generalization of judicial practice regarding the consideration by the investigating petitions by a judge for the application of measures to ensure criminal proceedings of the Supreme Specialized Court of Ukraine for Civil and Criminal Cases of February 7, 2014] Retrieved from: <https://zakon.rada.gov.ua/laws/show/n0001740-14> [in Ukrainian].

extent. They relate to each other as a whole and part. And among the above in Part 2 of Art. 131 of the CPC of Ukraine, the list of types of support measures of criminal proceedings should, first of all, highlight the compulsory delivery of a person to the courtroom and imposition of a fine as measures of procedural coercion. They apply to most participants in court proceedings and are accompanied by adjournment of the trial. The legislator placed the next two measures of procedural compulsion in Art. 330 of the CPC of Ukraine – warning and removal from the courtroom. We come to these conclusions based on the purposes of compulsion measures specified in the sectoral procedural codes: 1) to encourage the persons concerned to comply with the rules established by the court, 2) to perform procedural duties in good faith, 3) to stop abusing rights, 4) to prevent the creation of illegal obstacles to the implementation of justice, as well as on the purpose of compulsion measures defined by law¹⁵ and judicial practice of the criminal process of Ukraine¹⁶.

In connection with the abovementioned, we will dwell in more detail on the study of the most common measures of criminal procedural compulsion that the court can apply to participants in court proceedings – warning, removal from the courtroom, compulsory delivery of a person to the courtroom, imposition of fines – and the application of which may result in postponing the trial.

However, before proceeding to the analysis of each of the measures of compulsion we have identified, let us pay attention to the important procedural provisions that the judge must remember when applying this or that measure.

First of all, it should be remembered that the use of compulsion by the court in criminal proceedings is permissible in the presence of the grounds provided by the CPC of Ukraine, among which, first of all, non-performance of procedural obligations by participants in court proceedings (or perform in bad faith).

¹⁵ Criminal Procedure Code of Ukraine of April 13, 2012 № 4651-VI (as amended on March 27, 2018)] Retrieved from: <https://zakon.rada.gov.ua/laws/show/4651-17> [in Ukrainian].

¹⁶ Law of Ukraine «On the Prosecutor's Office» of October 14, 2014 № 1697-VII (as amended on March 20, 2020)] Retrieved from: <https://zakon.rada.gov.ua/laws/show/1697-18> [in Ukrainian].

It is important for the court to keep in mind the general conditions for the application of compulsory measures. These include: 1) the presence of criminal proceedings, 2) the need for judicial action with the participation of a participant in the proceedings, 3) the presence of the appropriate entity (court) authorized to apply these measures, 4) the presence of a person has the appropriate procedural status and has no immunity, which excludes the possibility of her participation in criminal proceedings. In addition, an additional condition for the application of measures of procedural compulsion to the participants in the proceedings is the lack of grounds for the application of a measure of administrative or criminal liability for the violation committed by the participant.

In each case, the court, applying the measure of procedural compulsion, is obliged to make a decision on such applying.

When ruling on the application of measures of procedural compulsion, the court must comply with the "limits of compulsion". What is especially emphasized by the Ukrainian scientist N. Bobechko¹⁷. Thus, in deciding on the expediency of the application of a measure of procedural compulsion and the choice of its type, the court must understand that "the use of compulsion in criminal proceedings is allowed only within certain limits: in circumstances that really necessitate it; in proportion to the procedural offense or procedural obligations that may potentially be unfulfilled; in a way that minimizes the negative impact on a person's health, property and lifestyle; on the grounds, under the conditions and in the manner prescribed by the rules of criminal procedure"¹⁸.

In judicial practice, the most frequent application of measures of procedural compulsion to participants in court proceedings is carried out due to their non-arrival in court, which (non-arrival) occurs without reasonable reason and has the effect of postponing the trial.

Since the main purpose of the preparatory part of the trial is to clarify the possibility of considering the criminal case on the merits in this composition of the court, with a certain list of participants in criminal

¹⁷ Bobechko, Nr. (2017) Zahody zabezpechennja kryminal'nogo provadzhennja: procesual'na pryroda, zmist ta obsjag. Pravo Ukrai'ny. [Measures to ensure criminal proceedings: procedural nature, content and scope. Law of Ukraine] № 12. [in Ukrainian]. p. 31.

¹⁸ Ibidem.

proceedings and with this amount of evidence, therefore it is important to establish at the beginning of the preparatory hearing “which of the participants in the proceedings, summoned and notified persons, arrived at the hearing”. Accordingly, first of all, the court finds out the presence of all participants in the criminal proceedings and determines the possibility of considering the case in the absence of the participant who did not appear. Court is assisted in this by court clerk.

The prosecutor, the accused, the defense counsel, the victim, his representative and legal representative, the civil plaintiff, his representative and legal representative, the civil defendant and his representative, the representative of the legal entity subject to the proceedings are the participants who are obliged to participate in the preparatory trial (Part 2 of Article 314 of the CPC of Ukraine)¹⁹.

Therefore, the court clerk reports to the court which of the above persons “arrived at the court hearing, establishes their identity, checks the credentials of defenders and representatives, finds out whether summonses and notices have been served on those who did not arrive, and informs the reasons for their non-arrival, if such are known” (Part 2 of Article 342 of the CPC of Ukraine).

In resolving the issue of postponing of the trial and the expediency of the application of the measure of procedural compulsion, it is important to find out whether the absence of a participant in the process is not related to failure to notify or untimely notification of the person about the place and time of the court session, whereas: firstly, in the presence of such information, the consideration of the case may in fact lead to a violation of the rights of the participant who did not appear; secondly, the postponing of the trial must take place without the application of compulsion measures against the absent party. Therefore, the preparatory part of the court session provides for the implementation of actions related to the participation of the parties in the court session. And these actions must be carried out constantly, each time at the beginning of each court hearing.

¹⁹ Criminal Procedure Code of Ukraine of April 13, 2012 № 4651-VI (as amended on March 27, 2018)] Retrieved from: <https://zakon.rada.gov.ua/laws/show/4651-17> [in Ukrainian].

In resolving the issue of conducting a trial without the presence of a person, the court proceeds from the procedural status of each of the participants in the proceedings, as well as from the extent to which their absence in court may affect the issuance of a lawful and reasonable decision. This criterion is guided by the court when deciding on the appropriateness of the application of measures of procedural coercion and its type. After all, the choice of the measure of procedural compulsion depends on it: to apply a compulsory delivery of a person to the courtroom (Articles 140–143 of the CPC of Ukraine) or to impose a fine (Articles 148–153 of the CPC of Ukraine)²⁰.

The reason for postponing the trial is considered to be the absence of an interpreter, prosecutor, victim (depending on whether it is possible in his absence to clarify all the circumstances during the trial – (Article 325 of the CPC of Ukraine), the accused (Article 323 of the CPC of Ukraine), defense counsel (Article 324 of the CPC of Ukraine). The absence of a victim of a private prosecution without a valid reason has the consequence of closing the criminal proceedings (Part 6 of Article 340 of the CPC of Ukraine). The absence of a civil plaintiff, his representative is not an obstacle to the trial (Article 326 of the CPC of Ukraine). The absence of a civil defendant (who is not the accused) or his representative is a ground for postponing the trial, which is carried out only after the court takes into account the opinion of the participants in the proceedings (Article 326 of the CPC of Ukraine).

In making a decision on the consequences of non-arrival (non-delivery) of the accused to the court, the court must take into account the violation of the rights of the accused – to defense, personal participation in the trial and the trial within a reasonable time. To the accused who has not complied with the obligation to appear in court may be applied more compulsion measures than to other participants in the criminal proceedings. Thus, the court may issue a decision on the application of compulsion measures or (and) a decision to impose a fine in the amount from 0.5 to 2 living wage for able-bodied persons to the accused, who did not appear at the court hearing (Part 1 of Article 139, Part 1 of Article 323 of the CPC of Ukraine). The law also provides for the possibility for a court to apply

²⁰ Ibidem.

a more severe measure of restraint to an accused than he or she already has. If the court has ruled on the application of compulsion measures, its implementation is entrusted to the relevant units of the National Police of Ukraine, security agencies, bodies monitoring compliance with tax legislation, the National Anti-Corruption Bureau of Ukraine or the State Bureau of Investigation (Part 1 of Article 143 of the CPC of Ukraine)²¹.

The court may impose a fine in the amount from 0.5 to 2 living wage the subsistence level for able-bodied persons, if the accused, who is summoned to court in accordance with the CPC of Ukraine, did not appear without reasonable reason or did not report the reasons for his absence (Part 1 of Article 139 of the CPC of Ukraine).

The absence of a prosecutor in a court hearing (regardless of the seriousness of the reasons) always belongs to the grounds for mandatory adjournment of the trial (Part 3 of Article 36, Part 1 of Article 324 of the CPC of Ukraine). If he fails to appear in court without good reason, the court has no right to apply a compulsory delivery of a person to the courtroom or a fine. However, the court may raise the issue of its responsibility before the bodies authorized to bring prosecutors to disciplinary responsibility, ie to the qualification and disciplinary commission of prosecutors (Part 4 of Article 324 of the CPC of Ukraine, Part 1 of Article 43, Article 44 of the Law of Ukraine "On Prosecutorial activity"). In our opinion, it would be fair if the legislator obliged the court to issue a decision to impose a fine on a prosecutor who did not appear in the court hearing without reasonable reason, due to which the court hearing was postponed.

We believe that the application of a fine to a prosecutor as a measure of procedural compulsion would correspond, first of all, to the essence of the principle of justice and equality of participants in criminal proceedings before the court. Secondly, in our opinion, the payment of the fine in this case should be made directly by the prosecutor (individually), who did not appear without good reason at the court hearing, and not by the prosecutor's office as a legal entity in which he works. Third, the court's imposition of a fine on the prosecutor will relieve the activities of bodies that conduct disciplinary proceedings against prosecutors, be-

²¹ Ibidem.

cause it is faster in implementation (than the disciplinary proceedings), and will help replenish the state budget (including in the judiciary) etc.

The court's conclusion that it is impossible to hold a trial due to the failure of the defense counsel to appear depends first of all on the opinion of the accused, and only then on the reasons for his defense counsel's failure to appear in court. If the court finds that the reasons for the defense counsel's absence are irrelevant, it may raise the issue of the defense counsel's liability before the bodies authorized to bring lawyers to disciplinary responsibility, ie before the qualification and disciplinary commission of the Advocacy (Article 33 of the Law of Ukraine "On Advocacy and Advocate Activity")²².

As for the possibility of applying a monetary penalty to a defense counsel as a measure of procedural compulsion (instead of appealing to the qualification and disciplinary commission of the attorneys), we are not such unanimous in resolving this issue as regarding the prosecutor. Since the possibility of applying to the defense counsel a monetary penalty for «absenteeism» of the court hearing, rather than disciplinary liability, may be tempted defense counsel to use «delay» tactic in the criminal proceedings. In cases when the «delay» tactic is more valuable to the defence counsel than the amount of the fine.

The court imposes a fine (in the amount from 0.5 to 2 living wage for able-bodied persons) as a measure of procedural compulsion on the victim, witness, civil defendant, representative of the legal entity in respect of which the proceedings are conducted (Part 1 of Article 139 of the CPC of Ukraine)²³, when it is found out that they did not appear in court for disrespectful reasons, or did not report the reasons for their absence. As for the witness, the court may rule on his compulsory delivery to the courtroom. However, the court may postpone the trial due to a violation of this procedural duty by a witness only after questioning other witnesses who have appeared.

²² Law of Ukraine «On Advocacy and Advocate Activity» of July 5, 2012 № 5076-VI (as amended on March 20, 2020) Retrieved from: <https://zakon.rada.gov.ua/laws/show/5076-17> [in Ukrainian].

²³ Criminal Procedure Code of Ukraine of April 13, 2012 № 4651-VI (as amended on March 27, 2018) Retrieved from: <https://zakon.rada.gov.ua/laws/show/4651-17> [in Ukrainian].

We consider unfounded the absence in the CPC of Ukraine of a rule that would provide for the possibility of the court to impose fines, as well as to bring a specialist, expert, translator in case they fail to appear at the court hearing. After all, this obligation is determined by their legal status as participants in court proceedings (paragraph 1, part 3 of Article 68, paragraph 2, part 5, Article 69, paragraph 1, part 5, Article 71 of the CPC of Ukraine)²⁴, therefore, in our opinion, the legislator is obliged to provide liability for this (in the form of compulsion or imposition of a fine).

Observance of order in the courtroom is another duty that must be observed by the participants in the proceedings, and for non-compliance with which the court must apply measures of procedural compulsion: first of all warning, then for accused – removal from the courtroom; for prosecutor, defense counsel and others who are present at the hearing – applying liability for contempt of court (Article 330 of the CPC of Ukraine)²⁵.

Analysis of Art. 330 of the CPC of Ukraine provides an opportunity to make following conclusions:

- firstly, this article does not provide the application of fines to violators of the court procedure as a measure of procedural compulsion. Although we believe that this measure, as an alternative to measures of procedural compulsion, which are already provided in Art. 330 of the CPC of Ukraine, shall be prescribed;
- secondly, this article provides for the application to the participants of the proceedings and the measure of procedural compulsion (warning, removal from the courtroom), and their prosecution (disciplinary, administrative): in case of repeated violation by the prosecutor or defense counsel of the order in the courtroom they may be prosecuted for contempt of court (Part 2 of Article 330 of the CPC of Ukraine); in case of repeated violation by other persons present in the courtroom, of the order in the courtroom may be removed from the courtroom by a court decision and prosecuted by law (for contempt of court) (Part 3 of Article 330 CPC of Ukraine);

²⁴ Ibidem.

²⁵ Ibidem.

- thirdly, the legislator stipulates that the presiding judge may not simultaneously apply several measures of procedural compulsion to the violators of the court procedure (warning and removal from the courtroom), ie removal from the courtroom is possible only after the presiding judge has already issued a warning, but this has not achieved its goal. It should be understood that the presiding judge is not prohibited from bringing a violator to disciplinary or administrative responsibility along with the application of a measure of procedural compulsion, if his actions contained signs of misconduct (for example, simultaneous removal from the courtroom and prosecution of statutory “other persons present in court hearing”) (Part 3 of Article 330 of the CPC of Ukraine)²⁶;
- fourth, violation of the order in the courtroom may lead to both the postponement of the trial in criminal proceedings (Part 1 of Article 330 of the CPC of Ukraine) and the announcement of a break in it (Part 4 of Article 330 of the CPC of Ukraine). If the accused violated the order in the courtroom or did not obey the order of the presiding judge at the court hearing, the latter must warn the accused that if he repeats these actions, he will be removed from the courtroom. In case of repeated violation of the court procedure, it will be removed from the courtroom by a court decision temporarily or for the entire duration of the trial. If such an accused is not represented by a defense counsel, the court is obliged to engage a defense counsel to carry out the defense on purpose and to postpone the trial for the period necessary to prepare him for defense. The break is announced by the court in case of resolving the issue of bringing a person to justice for contempt of court (immediately after the violation).

The court may apply compulsory measures to the participants in the court proceedings in order to encourage them to perform conscientious performance and other procedural duties. And not just the above. After all, as stated in Art. 144 of the CPC of Ukraine, “a fine may be imposed on participants in criminal proceedings... for failure to perform procedural duties”. This provision does not specify which procedural responsi-

²⁶ Ibidem.

bilities are in question, and, therefore, we conclude that any and all. Also from the provisions of Art. 144 of the CPC of Ukraine it follows that the legislator authorized the court to apply the imposition of a fine on any participant in criminal proceedings²⁷. However, we believe that this rule does not contain an imperative nature. Thus, minors under the age of 16, insane, as well as individuals to whom other measures are applied, are not subject to imposition of a fine.

4. Conclusions

Taking everything into consideration, compulsion measures and support measures of criminal proceedings are not identical concepts. Therefore, we propose to clearly separate the procedure for postponing the trial in criminal proceedings in connection with the application of measures of procedural compulsion to the participants in the proceedings from the procedure for postponing the trial in connection with the application of support measures of criminal proceedings.

The current CPC of Ukraine should introduce a provision that would clearly provide for the possibility of simultaneous application by a court to a participant in court proceedings only one of the types of compulsion measures, as provided in the CAP of Ukraine (Part 2 of Article 145 of the CAP of Ukraine), in the EPC Ukraine (Part 2 of Article 132 of the EPC of Ukraine). The application of several measures of procedural compulsion will be excessively severe and repressive, unreasonably restricting the rights of participants in court proceedings. Thus, in the case of evasion from appearing in court, the use of a compulsory delivery of a person to the courtroom will be the most effective, as it will guarantee the conduct of legal proceedings with the participation of the victim or the witness. However, the use of a compulsory delivery of a person to the courtroom in this case will exclude the possibility of imposing a fine. However, this does not preclude the possibility of simultaneous application of a measure of compulsion and bringing a party to liability (administrative, disciplinary), if his actions are seen, in addition to unfair performance or failure to perform a procedural duty, also signs of a certain offense.

²⁷ Ibidem.

When ruling on the application of a measure of procedural compulsion and postponing the trial, the court must proceed from the status of a party to the proceedings, the effectiveness of achieving the purpose for which this compulsion measure will be applied and the trial postponed. It is necessary to clearly distinguish the conditions under which the court, deciding on the appropriateness of the application of measures of influence to the parties, must postpone the hearing, and under which – to announce a break in the hearing.

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Uzagal'nennja sudovoi' praktyky shhodo rozgljadu slidchym suddeju klopotan' pro zastosuvannja zahodiv zabezpechennja kryminal'nogo provadzhennja Vyshhogo specializovanogo sudu Ukrai'ny z rozgljadu cyvil'nyh i kryminal'nyh sprav vid 07 ljutogo 2014 r. [Generalization of judicial practice regarding the consideration by the investigating petitions by a judge for the application of measures to ensure criminal proceedings of the Supreme Specialized Court of Ukraine for Civil and Criminal Cases of February 7, 2014] Retrieved from: <https://zakon.rada.gov.ua/laws/show/n0001740-14> [in Ukrainian].

Cyvil'nyj procesual'nyj kodeks Ukrai'ny vid 18 bereznja 2004 r. № 1618-IV (redakcija vid 13 ljutogo 2020 r.) [Civil Procedure Code of Ukraine of March 18, 2004 № 1618-IV (as amended on February 13, 2020)]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/1618-15> [in Ukrainian].

Summary

The article analyzes the concepts of «coercion», «measures of criminal procedural coercion», «measures to ensure criminal proceedings» and their relationship. The measures of procedural coercion, which the court can most often apply to the participants in court proceedings in a criminal case, as well as the procedure for postponing the trial in connection with their (measures of procedural coercion) are studied. Proposals for improving the criminal procedure legislation of Ukraine in this direction have been formulated. Measures of criminal-procedural coercion are procedural means of state-legal coercion defined by the criminal-procedural law, applied by the authorized bodies conducting criminal proceedings, in the order clearly defined by the law concerning persons, for the purpose of achievement of efficiency of criminal proceedings. The concept of «measures to ensure criminal proceedings» in its own right the content and scope do not cover the category of precautionary measures and other mea-

asures procedural coercion. In our opinion, the concept of «criminal measures procedural coercion “and” measures to ensure criminal proceedings «are not identical: under the current CPC of Ukraine measures procedural coercion is a component of criminal security measures proceedings, and, consequently, to some extent, a narrower concept. They are correlated between themselves as a whole and part. However, before proceeding to the analysis of each of the measures of coercion we have identified, let us pay attention to the important procedural provisions that the judge is obliged to remember when applying this or that measure. The court may impose measures of procedural coercion on the person, which in turn will postpone the trial.

Keywords: coercion, measures of criminal procedural coercion, measures to ensure criminal proceedings, participants in court proceedings, adjournment of court proceedings in criminal proceedings, adjournment of court proceedings