COMPARATIVE ANALYSIS OF SOME MEASURES OF PROCEDURAL COERCION IN THE FIELD OF CIVIL PROCEDURAL LAW

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Abstract: *this article analyzes national and foreign legislation in the field of civil procedural law: measures of procedural coercion. The main purpose of the article is to study the difference between the Civil Procedure Code of the Russian Federation and the Republic of Uzbekistan.*

Key words: *procedural liability, coercive measures, liability measures, civil procedural law.*

It is no secret to anyone that the legislative norms adopted by a certain state, after they enter into force, acquire a legal character, obliging both individuals and legal entities of a particular state to fully comply with these norms on its territory. However, in practice, one can often encounter cases when these norms are violated despite all restrictions and inadmissibility[12]. It is precisely such actions of individuals and legal entities that entail the application by the courts of measures of procedural coercion [13].

[12] Воробьёва О. А. Государственное принуждение в гражданском процессе //Вектор науки Тольяттинского государственного университета. Серия: Юридические науки. – 2016. – №. 1. – С. 35-37.
[13] Олина Н. А. ЗЛОУПОТРЕБЛЕНИЕ ПРОЦЕССУАЛЬНЫМИ ПРАВАМИ УЧАСТНИКАМИ ГРАЖДАНСКОГО ПРОЦЕССА //СОВРЕМЕННЫЕ ПРОБЛЕМЫ ЛИНГВИСТИКИ И МЕТОДИКИ ПРЕПОДАВАНИЯ РУССКОГО ЯЗЫКА В ВУЗЕ И ШКОЛЕ Учредители: Общество с ограниченной ответственностью" Научно-информационный центр" Интернум". – №. 39. – С. 659-665.

Civil procedural law provides for the possibility of applying state coercion to persons who do not comply with the requirements of the law or to prevent such non-performance. It can take many forms and be of different nature[14].

In this article, we will conduct a comparative analysis of the measures of procedural coercion in the field of civil procedural law in a number of developed as well as developing countries of the world[15]. That is, in this case, we will carefully consider the characteristic features of a particular measure of procedural coercion; similarities as well as differences between the above measures in individual countries.

In the legislation of the Republic of Uzbekistan, measures of procedural coercion are reflected in Chapter 14 of the Civil Procedure Code of the Republic of Uzbekistan and, as a rule, they include such measures as:

1) drive;
2) warning;
3) removal from the courtroom;
4) judicial fine.

Moreover, this norm also establishes that the application of measures of procedural coercion to a person does not release him from the performance of the relevant obligations established by the Civil Procedure Code or the court[16].

First of all, we will consider issues regarding the drive in civil procedural law in the Republic of Uzbekistan, as well as in the Russian Federation.

So, questions regarding the actual process of the drive, then the drives are made only by order of the interrogating officer, investigator, prosecutor, as well as by the decision of the court in criminal, administrative or civil cases[17]. According to Article 144 of the Code of Civil Procedure of the Republic of Uzbekistan, the concept of a drive is characterized as follows. If a duly notified person who is obliged to be present at the trial or his appearance is recognized by the court as mandatory in cases provided for by the Civil Procedure Code of the Republic of Uzbekistan (for example, in cases of recovery of alimony), did not appear in court without any valid

[14] Лихацких В. В., Герасимова Н. Н. Гражданско-процессуальная ответственность и проблемы ее применения //Личность, общество, государство и право. проблемы соотношения и взаимодействия. – 2015. – С. 232-235.

[15] ГРАЖДАНСКОЕ П. П., ЗЛОУПОТРЕБЛЕНИЕ Г. П. П. ПРОБЛЕМЫ ГРАЖДАНСКОГО ПРАВА И ПРОЦЕССА //ПРОБЛЕМЫ ГРАЖДАНСКОГО ПРАВА И ПРОЦЕССА Учредители: Ярославский государственный университет им. ПГ Демидова. – №. 11. – С. 54-67.

[16] Габараева Н. В. Судебный контроль при реализации мер административного принуждения //Право и практика. – 2011. – №. 1. – С. 65-75.

[17] Ibratova F. Problems of a settlement in bankruptcy cases in economic courts //Norwegian Journal of Development of the International Science. – 2019. – №. 28-3. – С. 23-25.

reasons or did not reported the reasons for his failure to appear, then in this case, the court may issue a ruling on the application of measures of procedural coercion, namely: drive. In this case, the body that is entrusted with this order will be the territorial body of internal affairs, that is, the employee of the internal affairs body is obliged to take measures to deliver the person subject to forced bringing to the time and place specified in the ruling on forced bringing, as well as forced bringing person is carried out from 06:00 to 22:00 hours. Moreover, all issues related to the recovery of expenses for the drive will also be made on the basis of the relevant application of the territorial internal affairs body[18]. In particular, the costs associated with coercion are collected from the person subjected to coercion in a judicial proceeding in favor of the state.

However, this article also establishes cases in which the use of this measure of procedural coercion cannot be applied[19]. These include:

– minors;

– pregnant women;

– persons who, due to illness, age or other valid reasons, are unable to appear at the court session.

As for the content of the court ruling on the application of the drive, in addition to the general information provided for in Article 272 of the Code of Civil Procedure of the Republic of Uzbekistan, it indicates the date, time and place where the person must be forcibly delivered by the territorial internal affairs body, as well as which territorial internal affairs body is entrusted with the implementation of this drive. It is also necessary to emphasize that the court ruling on the drive must be immediately executed and transferred for execution to the territorial body of internal affairs:

– at the place of production of the case or at the place of residence;

– place of stay (location);

– the place of work, service or study of the person who is to be brought.

Execution is not subject to suspension when appealing (protesting) against the court ruling on the arrest [20].

Now let's move on to considering the measure of civil procedural coercion, drive in the legislation of the Russian Federation. First, it is necessary to mention that the measures of procedural coercion in the field

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[18] Медведев И. Р. Гражданская процессуальная ответственность: некоторые проблемы //Журнал российского права. – 2006. – №. 7 (115). – С. 135-142.

[19] Ibratova F. Legal Problems of the Concepts Legality, Justification and Justice by Judicial Acts //Middle European Scientific Bulletin. – 2021. – Т. 16.

[20] Нохрин Д. Г. Формы государственного принуждения в гражданском судопроизводстве //Вестник Московского университета. Сер. 11, Право. – 2005. – №. 4. – С. 65-77.

of civil procedural law are different: the Code of Civil Procedure of the Russian Federation provides for such coercive measures as a fine, forced bringing to court, imposition of losses, and others. Drive first.

In the legislation of the Russian Federation, the drive is provided for in Article 168 of the Code of Civil Procedure of the Russian Federation, which is characterized by the use of this measure of procedural coercion when witnesses, experts, specialists, translators fail to appear at the court session. This norm establishes cases of both continuation and adjournment of a court session if the above-mentioned persons fail to appear, however, the decision on the application of these decisions depends on the hearing of the opinion of the persons by the court.

If the court reveals a case of disrespectful failure to appear, duly summoned witnesses, experts, specialists, as well as an interpreter, then these persons are fined in the manner and in the amount established by Chapter 8 of this Code of Civil Procedure of the Russian Federation. Of all the persons listed above, a witness who fails to appear at the court session without good reason upon repeated summons may be subjected to forcible bringing[21].

If we conduct a comparative analysis with the legislation of the Republic of Uzbekistan, then in this case, the function of bringing persons to the Russian Federation is assigned for execution to the division of the bailiff service [22]. That is, a characteristic feature of the legislative system of the Russian Federation in the field of execution of bailiffs, there is a separate body that conducts its activities in this area (FSSP of Russia), while this function is assigned to the territorial police departments specified in the legislation of the Republic of Uzbekistan.

Next, we consider the content of the court ruling regarding the issues of bringing to the Russian Federation. In this case, it is quite similar in both states, that is, the court ruling in the Russian Federation should indicate the name of the case, the grounds for forced bringing, the date, time and place of the court session to which the person should be delivered[23]. Also, the determination must contain the necessary information about the person subjected to forced transfer, that is, his last name, first name, patronymic,

[21] Курманова А. К., Исмагулов К. Е. Институт принуждения в современном международном праве: теоретические проблемы //Вестник Института законодательства и правовой информации Республики Казахстан. – 2019. – №. 2 (56). – С. 114-121.

[22] Ibratova F. Foreign Practice of Use of Mediation on Collective Labor Disputes //American Journal of Social and Humanitarian Research. – 2022. – Т. 3. – №. 10. – С. 57-62.

[23] Селиванов А. С. Меры процессуального принуждения и ответственность в производстве по делам, возникающим из публичных правоотношений //Вестник Барнаульского юридического института МВД России. – 2012. – №. 2. – С. 42-44.

date and place of birth and location. The Code of Civil Procedure of the Russian Federation, as well as the Code of Civil Procedure of the Republic of Uzbekistan, does not provide for the possibility of appealing against the decision, therefore the decision comes into force from the moment of its adoption.

The application by the court of imposing fines on persons is a right, not an obligation of the court, which gives the parties evidence to substantiate their claims and objections, given the adversarial nature of the civil process and the obligation of each party.

Summarizing the above, it becomes known that in many respects the legislation of both countries provides for fairly similar measures when using the drive[24].

However, there are still distinctive points in the application of this measure of procedural coercion in both countries, and the similarity largely comes from the process of incorporation of law.

Next, we turn to the consideration of measures of procedural coercion in the form of a warning.

This measure of procedural coercion is regulated in each Civil Procedure Code of the countries, which is the most common measure in response to the unlawful behavior of subjects during judicial proceedings[25].

An analysis of legislative acts makes it possible to characterize this measure in terms of general signs of procedural responsibility and the means of response used in connection with it. The warning is characterized by the presence of state coercion, since the civil court itself appoints this measure. It is declared presiding on behalf of the court to a person who violated the procedural order in a court session, or who did not comply with the lawful orders of the judge.

Art. 145 Code of Civil Procedure of the Republic of Uzbekistan. While the legislation of the Russian Federation establishes 2 stages, that is, firstly, the procedural law, for example, Art. 159 Code of Civil Procedure of the Russian Federation, secondly, the procedural rules of the court, which is in force in each court and determines the specifics of conduct in court hearings and the rules of collapse in court. Compared to the legislation of the Russian Federation, the measure of procedural coercion in the form of a warning is regulated only by the Code of Civil Procedure of the Republic of

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[24] Ibratova F. BANKRUPTCY OF A LIQUIDATED BUSINESS ENTITY: PROBLEMS AND SOLUTIONS //Norwegian Journal of development of the International Science. – 2021. – Т. 2021. – С. 45.

[25] Ласкова В. Г., Салмина С. Г. К вопросу об ответственности за процессуальную недобросовестность в судебном процессе //Вестник Югорского государственного университета. – 2016. – №. 1 (40). – С. 234-236.

Uzbekistan. But in both states, in case of violation of substantive norms, the court has the right to issue a warning[26].

The procedure for assigning a warning is not regulated in detail in the procedural acts, the Code of Civil Procedure only speaks of announcing a warning in case of violation of the order of the court session[27].

The application of such a coercive measure shall be reflected in the minutes of the court session.

Control over the execution of the warning is carried out by the judge or the court itself, since it is this person who is authorized in the event of non-compliance with the procedural order in the future to impose a more severe measure of coercion in the form of removal from the courtroom[28].

Analyzing the above, it can be noted that the warning, which is enshrined in the civil procedural legislation of the Republic of Uzbekistan, is a measure of procedural responsibility. Thus, it is possible to formulate the concept of a warning as a kind of procedural coercion measures applied by the court to a person who violated the procedure established by the Code of Civil Procedure of the Republic of Uzbekistan in a court session, which consists in verbally notifying the subject of these violations, followed by entering this fact into the protocol of the court session, the execution of which is entrusted to the court who took this action[29].

Now let's analyze the next measure of procedural coercion as removal from the courtroom.

This measure of procedural coercion is similar in nature to a warning and is aimed at ensuring the same interests and preventing disorganization and disorder in the judicial process, so that the inappropriate behavior of the subject does not interfere with the correct and objective consideration of the case[30].

Signs of removal from the courtroom are somewhat similar to a warning: this measure is also a type of state coercion and is applied by the court[31].

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[26] Николайченко О. В. ПОСЛЕДСТВИЯ НЕСОБЛЮДЕНИЯ ГРАЖДАНСКИХ ПРОЦЕССУАЛЬНЫХ НОРМ И ГРАЖДАНСКАЯ ПРОЦЕССУАЛЬНАЯ ОТВЕТСТВЕННОСТЬ //Вектор науки Тольяттинского государственного университета. Серия: Юридические науки. – 2012. – №. 2. – С. 44-46.

[27] Ibratova F. B. et al. Special features of modern legal systems: cases and collisions. – 2017.

[28] Манохин В. М., Разгильдиева М. Б. Проблемы классификации мер финансово-правового принуждения //Вестник Саратовской государственной юридической академии. – 2012. – №. Дополнительный. – С. 178-185.

[29] Babakulovna I. F., Ibraiymovich E. B., Sodikovich O. S. SIMPLIFIED PRODUCTION IN THE ECONOMIC PROCESS AND ITS FEATURES: NATIONAL AND FOREIGN APPROACH //International journal of professional science. – 2022. – №. 5. – С. 42-50.

[30] Ibratova F. B. The Concept and Characteristics of Bankruptcy Procedures for Business Entities With the Status of a Legal Entity //Middle European Scientific Bulletin. – 2022. – Т. 20. – С. 143-147.

[31] Babakulovna I. F. GROUNDS FOR THE INTRODUCTION OF BANKRUPTCY PROCEDURES FOR AN INDIVIDUAL ENTREPRENEUR OR AN INDIVIDUAL WHO HAS LOST THE STATUS OF AN INDIVIDUAL ENTREPRENEUR //International journal of professional science. – 2022. – №. 1. – С. 5-9.

However, it should be noted that removal from the courtroom is a more severe measure than a warning, since it deprives a person of the opportunity to participate in the consideration of the case, the term of which is limited by the court session in whole or in part[32].

According to Art. 145 of the Code of Civil Procedure of the Republic of Uzbekistan, it is possible to remove from the court session under the following conditions:

• in violation of the order in the court session by a party or a third party;

• in case of repeated violation of the order by a person participating in the case, witnesses, experts, specialists, translators;

• in case of disobedience of a prosecutor or a lawyer, if it is possible without prejudice to the case to replace this person with another.

In the above cases, removal from the courtroom is possible if such a coercive measure as a warning has already been applied to the subject, in other words, in this case, the offense occurs when there is a repetition of actions[33].

The material basis and the procedure for applying such a measure are contained in the procedural acts - for example, Art. 159 of the Code of Civil Procedure of the Russian Federation establishes the form of application of this measure by a court ruling, as in the Code of Civil Procedure of the Republic of Uzbekistan. All this should also be included in the minutes of the court session.

The Code also does not provide the concept of removal from the courtroom, therefore, it is possible to characterize the concept of removal as a separate measure of procedural coercion applied to a person who has repeatedly violated the established procedure for holding a court session, who has a procedural penalty in the form of a warning imposed by the court in the manner regulated by civil procedural by law with the issuance of a procedural act in the form, determination or order of the court[34].

The next step in giving a definition and difference will be a judicial fine. Judicial fines are imposed by the court in cases provided for by the Code of Civil Procedure of the Republic of Uzbekistan.

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[32] Ibratova F. TERMS IN CIVIL LAw AND ThEIR APPLICATION IN LEGAL PROTECTION OF CITIZENS IN ThE REPUBLIC OF UZBEKISTAN.

[33] Загидуллин М. Р. Реализация юридической ответственности в гражданском процессе //Право и экономика: междисциплинарные подходы в науке и образовании. – 2017. – С. 59-62.

[34] Ibratova F. B., Erezhepov B. I., Ortikov S. S. ECONOMY, ORGANIZATION AND MANAGEMENT OF ENTERPRISES, INDUSTRIES, COMPLEXES //Editorial team.–2019. – 2019. – Т. 1. – С. 13-19.

The legal nature of the court fine is quite controversial. In other words, a judicial fine must have such general theoretical features as are found in other measures of procedural responsibility[35].

Firstly, a judicial fine is directly related to state coercion, that is, this measure is assigned by the competent state body, namely the court.

Secondly, a judicial fine is applied to the person who committed the offense, for example - as indicated in Part 3 of Art. 159 of the Code of Civil Procedure of the Russian Federation, violation of the procedure established by law in a court session or a manifestation of contempt of court.

The Code of Civil Procedure of the Republic of Uzbekistan provides that, based on the results of considering the issue of imposing a judicial fine, the court shall issue a ruling, a copy of which is immediately sent to the person on whom the fine has been imposed. And according to part 3 of Art. 105 of the Code of Civil Procedure of the Russian Federation, the court shall issue a decision, a copy of this decision shall be sent to the person on whom the fine has been imposed. But the Code of Civil Procedure of the Russian Federation does not indicate the time period for submitting this decision in comparison with the Code of Civil Procedure of the Republic of Uzbekistan.

Judicial fines are collected at the expense of the state. If a fine is imposed by the court on officials, they are collected from their personal funds.

In accordance with Art. 148 of the Code of Civil Procedure of the Republic of Uzbekistan, within five days after receiving a copy of the court ruling, a person may ask the court that imposed the fine to release or reduce the amount of the fine. This application is considered at the court session with notification of the person on whom the fine has been imposed. However, the absence of this person is not an obstacle to the consideration of the application.

In the Republic of Uzbekistan, a private complaint can be filed against a ruling on imposing a court fine, on refusing to release a fine or reducing its size, while in the civil process of the Russian Federation the possibility of appealing a court ruling within ten days from the date of receipt of a copy of the imposition of a court fine[36].

Now we turn to bringing a person to administrative responsibility, specified in Art. 150 Code of Civil Procedure of the Republic of Uzbekistan,

[35] Гизатуллина И. И., Тувалбаева Р. И. ПРОБЛЕМЫ ШТРАФНОЙ ГРАЖДАНСКО-ПРОЦЕССУАЛЬНОЙ ОТВЕСТВЕННОСТИ //Проблемы экономики, организации и управления в России и мире. – 2017. – С. 59-61.

[36] Фролов М. В. О мерах процессуальной ответственности как разновидности процессуального принуждения //Вестник Волжского университета им. ВН Татищева. – 2010. – №. 72. – С. 26-29.

while there is such a measure in the Code of Civil Procedure of the Russian Federation.

A person who violated the order in the court session or showed other disrespect to the court may be brought to administrative responsibility by the court.

Contempt of court is manifested in the following conditions:

• malicious evasion of a witness, plaintiff, defendant, other persons participating in the case from appearing in court;

• in disobedience of the specified persons and other citizens to the order of the presiding officer;

• in violation of order during the court session.

The establishment of the fact of contempt of the court by the judge (the composition of the court) directly in the court session where this offense was committed is announced to the offender immediately without removing the court to a separate room (conference room).)[37]. This fact is recorded in the minutes of the court session. In this case, a protocol on an administrative offense is not drawn up. [38].

The person in respect of whom the fact of contempt of court has been established, as well as other persons participating in the case, have the right to give their explanations.

The decision on an administrative offense is drawn up by the presiding judge after the end of the court session on the case in a separate room (conference room), signed by the judge (the composition of the court)[39].

If contempt of court is shown in the court session and the offender left the courtroom, if contempt of court is shown outside the court session, and also if evasion from appearing at the court session is established, the protocol on the offense is drawn up by the assistant (senior assistant) of the judge or other by an employee of the court on the oral order of the chairman of the court or the chairperson of the court session, as indicated in the protocol on the offense.

Thus, the above measures of procedural coercion will allow the court to ensure the interests of persons involved in the proceedings and prevent disorganization and disorder in the trial, so that the inappropriate behavior

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[37] Ibratova F. Bankrotlik to ‘g ‘risidagi ishlarda prokuror ishtiroki.

[38] Федоров И. З. Допустимое ограничение прав и свобод человека и гражданина в стадии предварительного расследования: назначение, классификация, сущность, межотраслевая связь //Вестник Российского университета кооперации. – 2014. – №. 4 (18). – С. 62-66.

[39] Струнков С. К. Процессуально-правовые средства: проблемы теории и практики //Дисс. на соискание уч. ст. канд. юрид. наук. Саратов. – 2003. – С. 63.

of the subject does not interfere with the correct and objective consideration of the case.

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