

The essence of state coercion in the mechanism of legal regulation

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Abstract. The paper analyzes the essence of state coercion. Its exceptional social value is justified, since it is a key factor in maintaining public order and security. It is proposed to consider the power of an autocratic entity as the basis of coercion. Particular attention is paid to the issue of digitalization of public administration, which should be based on the appropriate level of information systems of legal regulation used by state authorities. The prospects for the introduction of artificial intelligence as a subject decision making on the application of state coercion measures are analyzed. The materials and generalizations obtained as part of the study can be used for further study of the problems of the institute of state coercion in modern Russia.

1 Introduction

The topic of state coercion is one of the central issues in domestic political and legal thought. The representatives of domestic political and legal thought analyzed the features of the development and functioning of the institution of state coercion in the Russian political, legal and social space. They (each at its own theoretical and methodological level, using the conceptual apparatus characteristic of a particular era) reflected the main directions and results of previous studies in the field of law, legality and state coercion.

State coercion as a multidimensional socio-legal phenomenon can be considered from different perspectives. At the same time, there are various approaches to reveal its essence and content: psychological (strong-willed), social (managerial), legal (judicial). Together these approaches provide an opportunity for deeper understanding of the content of state coercion as a type of social coercion and legal phenomenon, its social role and purpose in a democratic legal state.

The concept of state coercion was developed in domestic legal science of the 1970-1980s of the 20th century taking these approaches into account.

An example of the legal interpretation of coercion is the definition proposed by A.I. Kaplunov: "...this is a method of influence that implies that the state bodies and their officials apply measures established by law, which represent a system of legal restrictions, deprivation, encumbrances or other actions that make it possible to force obliged persons to fulfill the instructions assigned to them and comply with the prohibitions established by law, as well as ensure law and order, security of a person, society and the state from potential and real threats" [6].

The most common approach in the domestic literature is the approach, according to which coercion is considered primarily as a method, a means of influencing people, their behavior. The proponents of this approach define coercion as the means which influence a team or an individual by a social community or an individual to achieve a particular outcome; a method of influence that ensures the actions by people against their will, in the interests of the coercer. Adhering to a similar opinion, A.I. Kozulin emphasized that coercion "is a violent method of exercising public power and is expressed in such an impact on the behavior of people in which they are deprived of the opportunity to act contrary to the requirements".

The issue of state coercion does not lose its relevance at present, since it is one of the keyways of the state influence on the population through the authorities [7]. At the same time, when the state and subject entities interact, it is necessary to maintain a balance of interests that allows, on the one hand, implementing the functions of state power to the necessary extent, and on the other hand, preventing unjustified state interference in the life of the subject population.

State coercion in the rule of law is justified if it is carried out, ultimately, to protect human rights and thereby ensure the common good. State coercion in the rule of law is characterized by the following features.

The institution of state coercion is also conditioned by sociocultural traditions: state coercion performs different functions in predominantly collectivist and individualistic social cultures.

The Constitution of the Russian Federation as a rule of law state (Part 1, Article 1) refers to human rights and freedoms as the highest value (Article 2), defines them as inalienable, belonging to birth, not allowing cancellation or diminution (Part 2, Article 17, Part 2,

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Article 55), and accordingly proceeds from the assumption that it is directly existing human rights that determine the meaning of the existence of public authority institutions and the content of their activities (Article 18) [5].

It is necessary to consider the institution of state coercion in modern Russia based on these axiological patterns.

Coercion in legal interpretation should be understood as a method of influence manifested in the implementation of legislated rules of conduct by state authorities, which together constitute a set of legal restrictions, deprivation, or other similar measures to force the coercible person to comply with the established requirements of the law.

The measures of state coercion enshrined in the current legislation are diverse and may, depending on the basis of application, be classified into two groups: measures of legal responsibility and measures not constituting a legal responsibility. The latter, depending on the goals, may be classified into legal recovery measures, or protection measures; procedural enforcement measures; preventive (preventive) measures; state coercion measures aimed at maintaining public needs; state coercion measures aimed at ensuring the functions of the state and its institutions.

2 Materials and Methods

The theoretical and methodological basis of the study is significantly bound to approaches to the institution of state coercion existing within the framework of the theory of state and law, the theory of constitutional law, political and legal doctrines. The study of state coercion in modern Russia utilized, first, formally legal (dogmatic, legal method) based on the logical methods of working with legislative material (analysis, synthesis, deduction, comparison, classification), the technique of its interpretation, including teleological, and legal construction.

The empirical basis of the study was the provisions of the Constitution of the Russian Federation, the decisions of the Constitutional Court of the Russian Federation, the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, the decisions of the European Court of Human Rights, the provisions of federal constitutional laws and federal laws.

The scientific novelty of the study consists in the identification and analysis of the axiological and dogmatic components of the institute of state coercion in modern Russia.

3 Results and Discussion

Russian statehood and the domestic legal system went through a very difficult historical path, many stages of which were contradictory, took place, as they say, as part of a clash of their own (traditional) and 'borrowed' legal and political norms, institutions, principles, and values.

The main deep feature of coercion is the imposition of its will by the power entity to the subject and the fulfillment of the will of the coercive subject by the latter. As for the nature and purpose of coercion, the legal literature states that "coercion is one of the necessary essential signs of any power, an element of its content". Based on the above, it is believed that the essence of social coercion lies in the organization of the unconditional fulfillment of the power coercive wills (imposition of power will).

It should be borne in mind that coercion as a method of force is applied only in conditions of conflict of interest and acts as a means of resolving it. Currently, conflict is considered by most scientists as the main engine of social development: the dialectical law of unity and the struggle of opposites, which defines the division into opposites, their struggle and resolution as the driving start of all development, fully applies to the laws of development not only of nature, but also of human society. In this context, with regard to democracy, it is not justified to shift the focus from violence and coercion to other means. The issue is that violence and coercion are legal and performed within the framework of human rights.

Besides, at present, there is an urgent need to change the methodological guidelines to study the Russian law and, of course, the states, these two, closely related elements of Russian state-legal existence.

It should be noted that science lacks a universally shared, universally accepted approach to interpreting state coercion. State coercion is defined differently by researchers.

State coercion may be defined as a set of measures of power external influence carried out on behalf of the state, aimed at forcing the subjects of law to certain behavior. State coercion is a power relationship characterized by the asymmetric position of the coercive and coercive parties.

The main feature of state coercion in the conditions of the rule of law is the legally established limits of the possible, permissible, and in some cases the necessary forced influence of the state on the subjects of law.

State coercion may be defined as a set of measures carried out on behalf of the state, aimed at forcing the subject to certain behavior, to commit certain actions.

These circumstances allow concluding that the basic and general conditions for the interpretation of state coercion in the situation of the rule of law, the supremacy of law and the rule of human rights should be governed by the highest value of human and civil rights and freedoms, having a natural and inalienable character with the consequence of the impossibility of their legislative cancellation or diminishment, and the resulting goals of the existence of the state in modern Russia, as well as by a fair court as an institution controlling the procedure of state coercion, which, indeed, means the restriction of rights [4].

At the same time, the connection of state coercion with restriction and even deprivation of the right is necessary, but it seems that there is not enough condition for the characterization of state coercion at the present stage, since it does not take into account the changed

regulatory legal framework of the possible interpretation of state coercion, which is characterized by the consolidation of the principles of the rule of law, the supremacy of law and the rule of human rights as in the Constitution of the Russian Federation, and at the level of generally recognized principles and norms of the international law and international treaties of the Russian Federation.

The essence of the phenomenon is its constant fundamental characteristic, the presence of which mediates its very existence. State coercion may be represented in the form of a process, the elements of which are the subject, the object and the legal connection between them. Despite the fact that both participants in legal relations from a social point of view are subjects, when state authorities implement coercion, the latter act as a subject, and the coerced (his behavior) as an object. This feature serves as one of the constant characteristics of coercion [1].

The basis of coercion is the power of an autocratic entity. An indicator of the possibility of coercive influence is the presence of the force of the state authority or its official to ensure the subordination of the object as a physical possibility of influencing the person and their property. Indirect coercion (psychological) is also based on the threat of physical impact and is therefore effective. In this regard, the main feature of coercion is seen in the fact that the autocratic subject imposes their will on the subject, and the latter executes the will of the coercive subject.

Regarding the essence, it is noted that coercion is one of the essential signs and elements of the content of all power [7]. State coercion is characterized by exceptional social value, since it is a key factor in maintaining public order and security. Coercion makes it possible to minimize deviant behavior through a legitimate restriction of the individual's freedom of action and motivate their law-abiding behavior. It should be noted that in this context, state coercion is a way to protect public relations and increase the level of legal culture of the population.

M.N. Petrenko, in order to systematize the developed approaches to the goal-setting of the essence of state coercion, proposed conditionally different three groups, where "the first group includes the approaches of those authors who understand the purpose(s) of coercion as a means of ensuring security; the second group includes the approaches of researchers, which consider the goals (tasks) of coercion the behavior of a person necessary for society; the third group should include those research approaches according to which the goals (tasks) of coercion are identical to the goals (tasks) of the coercer" [9]. The author also generalizes a number of basic properties of state coercion, which include the following:

- "first, specifying the actions in the interests of coercion as the purpose (task) of coercion;
- second, indication of the will of the coerced person as the subject of the influence;
- third, the obligatory availability of resources by the coercive person;

- fourth, the obligatory divergence of the parties to the relationship;
- fifth, the indication of coercion as a form of social relations" [8].

Based on the postulates of the theory of law, it is possible to define state coercion as a way enshrined in legal norms to ensure the achievement of the goals and fulfillment of the tasks of executive bodies of state power and their officials in the implementation of control and supervision functions [10].

The current process of digital transformation of public administration should be based on the appropriate legal basis, which determines the formation of an optimal model of its legal regulation. It is impossible to solve the problem of creating such a model, including without an adequate mechanism of state coercion. The introduction of artificial intelligence into public administration gives rise to a set of problems in the implementation of legal responsibility as a method of state coercion. This trend is directly related to the emergence of the possibility of unlimited state digital discretion in the process of state coercion [3].

The rapid digitalization of public administration in the absence of information systems of legal regulation used by state authorities is currently a conceptual problem and may subsequently significantly reduce the level of public confidence in the state.

4 Conclusion

State coercion may be defined as a set of measures of power external influence carried out on behalf of the state aimed at forcing subjects of law to certain behavior.

The specificity of the goals of state coercion predetermines its qualitative originality, and social value, first of all, is the fact that with its help social tension is removed, conditions for the unhindered progressive development of society are created. Thus, in human society, the generality of coercion is determined by the fact that, being a mode of influence, it also acts as a means of resolving widespread conflicts, including those in which it is impossible to remove contradictions between social actors in other ways.

State coercion has a normative nature, or the normative nature of state coercion. The normative nature of state coercion consists in the fact that it is carried out by the bodies of the state within their competence established by the constitution and laws that are not contrary to the constitution, and in accordance with the procedure established by the constitution and such laws [10].

Artificial intelligence in the aspect of the application of state coercion measures has several advantages and disadvantages. Impartiality, minimization of corruption risks, analysis of a huge range of sources, expanding the number of accounting factors when making a decision may be its key advantages. However, they also give rise to disadvantages. The objectivity of decisions made by artificial intelligence on the application of state coercion measures, with their full validity from the point of view

of the current legislation, poses a threat to the disproportionate degree of influence when applying state coercion to unlawful behavior of a person in a certain situation [11]. It is not possible to lay all potentially possible situations in the decision-making algorithm by artificial intelligence.

Thus, artificial intelligence cannot act as a subject of decision-making on the use of state coercion, but has all the prerequisites for becoming an effective tool for the legal and law enforcement activities of the state.

There are several key problems of the implementation of state coercion based on the study of law enforcement practice:

- violations of the principles of enforcement – most often expressed in the adoption of unfair decisions, which are based on circumstances and facts leading to the exact opposite legal result;
- multiple subjects of state-coercive influence and uncertainty of jurisdiction leading to impunity and arbitrariness on the part of unscrupulous persons, ‘shifting’ responsibility from one state body to another, and, as a result, leveling the authority of the state and law, giving rise to mass legal nihilism, and ultimately to the impossibility (or unwillingness) to protect violated rights by applying coercive measures to the ‘guilty’ person [2].

This problem may be addressed through several measures, namely:

- by imposing an obligation on the relevant authority not authorized to make a decision on this situation due to its lack of authority to indicate the competent authority, or by introducing a ban on the refusal to protect rights on the basis of the lack of authority to consider a life situation and the application of coercive measures, establishing the duties of state and other jurisdictional bodies with power, by independently determining the jurisdiction and sending an appeal, materials and documents to the relevant authorized entity;
- lack of regulation of the procedure for applying coercive measures, incomplete regulation of the procedural side of the implementation of state coercion, violations of the procedure established in the legislation violate the unity of legal practice, create unjustified scope for law enforcement discretion, etc. In this regard, to strengthen the guarantees of the rights of victims, it is advisable to use the interpretation of the principle of legality common in the procedural law. This fundamental principle in its content has material and procedural elements, and a violation of the rule of law will be not only a violation of the norms of substantive law, but also the violation of procedural norms governing the procedure of state coercion;
- fuzzy consolidation of grounds and measures of state coercion leads to unjustified application of state coercion measures, identification of different-order measures of coercion, unjustified expansion of the scope of the chosen coercion measure, etc.;

The study of the problem of state-legal coercion in the context of legal statehood may be continued in the direction of finding criteria for determining the optimal limits of state coercion, as well as a more thorough analysis of trends and prospects for its development.

As a result, it may be concluded that the problem of state coercion is always relevant. This is confirmed by the variety of approaches to solve theoretical issues related to certain aspects of state coercion in modern Russia.

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