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THEORETICAL DEFINITENESS OF THE CONCEPT OF STATE LEGAL COERCION

Annotation. *State-legal coercion investigated as a legal category that expresses the conditionality attached to public power activity by legal forms, principles and norms. The legal condition of State coercion determines its legitimacy and public acceptance as a necessary instrument for the protection, implementation and restoration of the violated rights and freedoms of citizens. The basic features, properties and indicators of the effectiveness of State law enforcement were analysed. The legal form of the compulsory power derives from the ethical imperatives of its agents.*

Keywords: *state coercion, legal restrictions on power, legal forms of state coercion, functions of the state, coercive measures, political regime.*

Formulation of the problem. The metamorphosis of the new regime of political power takes on the characteristics of hybrid forms, mimicry and the apparent legitimacy of democratic institutions. Effective enforcement measures by the authorities are legally binding. However,

public authority applies also illegal ways of influencing public life, transforms into trivial power impulse. It ignores legal requirements, institutions of public opinion and control. The traditional perception of coercion also conditioned by the archaic mental traditions of etatism.

The legal basis of state coercion means its legitimacy and public acceptance as a necessary instrument for the protection, protection, exercise and restoration of violated human and civil rights and freedoms. State coercion in its modern sense, as a legal category, defines it as public power activity, types and degrees of coercion are subject to legal principles and norms, and its organization (institutions, powers, legal resources) implemented in legal forms. Such forms contain a system of requirements for subjects of state law enforcement under a democratic regime. International legal and national legal ethical standards are also included in legal requirements. These standards are enshrined in modern ethical codes of conduct for public servants. State-legal coercion is justified by the moral and legal requirements of legal ethics in public administration and public service. Therefore, the legitimacy of coercion dictates the formation of «ethical infrastructure» for all institutions of power.

Analysis of recent research. The Analyst covers the issues of State coercion [1] and its types [2–4]. The main features [5] and the specificity of state coercion as a method of exercising state power [6] and a modern state [7] are analyzed. The focus of attention on this issue has become relevant in the study of the characteristics of the exercise of State coercion in a democratic regime [8].

Coercive measures by the State in the field of public law [9] and features of constitutional and legal coercion [10, c. 14] are important in publications. Important accent is placed on the issue of the *moral basis* of public authority and its coercive activities [11]. New approaches to the problem of coercion reflected in encyclopedic [12] and educational literature [13, c. 87–89; 14, c. 375–390].

The **purpose of the article** is specific to the problem and focuses on the study of the coercive activities of the institutions of power. The only legitimate form of coercion is obviously State-law coercion, which is characteristic of affirming the essential qualities of the *rule of law*. The specificity of its legal content and the attributes of power

learned through separation from related categories. The review of coercion should be linked to the changing political regimes of state power. The study should reflect the real extent to which entities comply with the requirements of legal principles, norms and international standards for putting into practice of state coercion, as well as establish clear criteria for distinguishing legitimate coercion from unrestricted political pressure.

Basic material presentation. The legal nature of the state indicates that the organization of the institutions of power must have a legal dimension, that its activities must take legal forms, and that the enforcement mechanism operates under a regime of legal restrictions.

Civilized forms of coercion conditioned by the legal nature of public power, therefore should be enshrined in the concept of *«state-legal coercion»*.

The content of this concept always related to the characteristics of political regimes and their dynamics. Sociology reflects the adaptation of State coercion to the specifics of the renewal of the regime of public power. A state cannot relinquish a coercive function even in democratic transit. At the same time, the law acts as a criterion for the validity and legitimacy of coercive measures and determines the socially justified and necessary means of coercive measures. However, modern statehood does not preclude the coercive (non-legal) and forceful arbitrariness of power.

The legitimization of state coercion relies on society's acceptance of the inevitability of its use. However, society legitimizes power only if it uses coercive means to protect and restore the violated rights and freedoms of the individual.

The specificity of the method of State coercion in the politico-legal space of the democratic transit society is that any coercion on behalf of the State directly or indirectly concerns the rights and freedoms of citizens, restricting them justifiably or unjustifiably, Legitimate or illegitimate. Legally justified coercion directed, first, at the motives of the antisocial behavior of subjects of law, at the contradiction between the general and individual will, which forcibly removed from power, encouraging the lawful behavior of individuals and institutions of public power.

The dynamics of the political and legal systems of societies in transition often accompanied by the metamorphosis of the political regime, often taking on *hybrid forms*, mimicry and the external legitimization of democratic forms and institutions.

In reality, the boundaries of coercion by the authorities have turned out to be legal, consistent with legal principles and normative prescriptions (the constitutional-legal model of State coercion) and extra-legal («etatism» in model of state coercion). They manifest themselves in a democratically oriented society as a trivial power vacuum, in practice not limited to the rule of law as an imperative for power. It barely responds to public opinion, forming it artificially from manipulated data, incorrect poll sociology, and so on. This is due to the weak modernization of the national legal system, the absence of democratic legal traditions of ideological justification, organization and functioning of power.

The boundaries of state coercion have traditionally been associated with an oppressive form of government. The traditional perception of the need for coercion stems from an archaic public consciousness. His long development formed a dialectical pair of mental traditions. Etatism perceived the state as a «pattern» capable of solving social problems. Today, this stereotype manifested in social infantilism and expressed in the forms of underdevelopment, weakness or lack of real institutions of civil society. Another tradition, legal nihilism, denies the social value of law, human rights and its implications for the rational and legal organization of institutions of power.

Today, the managerial emphasis shifted to methods of influence in which the State authority operates in a legal format, subject to legitimate coercion and reasonable restriction of rights and freedoms. Coercion encourages compliance with legal regulations, not merely sanctions.

State coercion may be state coercion can be considered as legal if its types and measures are defined by legal principles and norms, and its organization (system of institutions, powers and legal resources) is carried out in the legal forms of public power activity, which are laid down in the normative legal acts of the branches of the legislation. In addition, the system of requirements for the subjects of coercion includes ethical standards – international and national law, which are

enshrined in modern professional ethical codes of conduct for public servants.

The concept of state coercion should explored in the context of mutual connection and unity of power and law. In the perception of the state, coercion is an important attribute of public power and embodied in its special mechanism, functions, modalities of its exercise and sovereign attributes. On the other hand, coercion is the basis of the law, its definition, substance and formal features. State coercion is among the primary attributes of a right and embodies legal incentives and restrictions. Coercion expresses the will and normative nature of the law. It defines the basic attributes of the right and the derived legal institutions, such as the system of legal responsibility.

The existence of coercion is not contrary to the principles of the rule of law, but, on the contrary, is conditioned and limited by them for the following reasons. 1) Coercion is monopolistic in the institutions of public power – State and municipal bodies. 2) The principle of the legal restriction of state authority means the legitimacy of such authority, which perceived by society as the legality and justice of the state's claim to voluntary subordination of power. 3) The law, in the expression of the balanced will of society, to legitimize state coercion, the potential of which embodied in the law itself and supported by the state. 4) Coercion is required as an effective means of overcoming social conflict [15]. 5) Coercion becomes relevant in view of the sharp exacerbation of the problem of terrorism and extremism in the world, its cruelty and trans-nationalization. 6) The expansion of the sphere of coercion in international relations, where negative processes have led to the emergence of severe forms of influence aimed at eliminating armed conflicts and appeasing parties to conflicts of a religious, inter-ethnic or other nature. A new form of peacemaking has emerged – peace enforcement [16, c. 60].

The practice of recent years has led to the misconception of State coercion as a secondary method of public administration. The role of coercion is essentially a question of the extent, intensity and direction of the influence of the State in public relations. The legitimacy of coercive state action based on public recognition and control of the validity of coercive measures, which must be formalize in normative legal acts.The coercive influence of the rule of law is justified if it

exercised in order to protect human rights and the common good. The democratic principle of the legal restriction of the state provides that its coercive function of power may be exercise on legal grounds and in legal forms. Such coercion is of a legal nature and expressed by the concept of state-law coercion [17; 18].

State law enforcement is the influence of authorized bodies of public authority, which regulated by the procedural rules of law and uses legal means to restrict the rights and freedoms of subjects in order to comply unconditionally with the requirements of legal norms.

The essence of coercion is to exert a physical, organizational or mental restrictive influence on a certain subject and applied independently of its consent in order to orient its conduct towards positive patterns, in accordance with the requirements of the subject of authority, and to ensure law and order and public safety.

In terms of content, state-legal coercion is primarily the legal activity of public authorities, which reflected in the legitimate imposition of political will in the form of power decisions. The legal consequences of coercion entail the termination, restriction or deprivation of the rights and freedoms of persons and organizations.

The grounds and prerequisites for the use of coercion are, first of all, the aberrant legal behaviour of the offender, as well as the prevention of harm and restriction of the rights of citizens, and a real threat to society or human life. This may be the reason for the introduction of total vaccination aimed at overcoming the COVID pandemic and the frequent introduction of lockdown.

The essence and characteristics of State-law coercion are reflected in a short list of its characteristics and have a general meaning. 1) Coercion is the result of a conflict between the will of the State, as expressed in the law, and that of the subject. Grounds for the use of coercion for committing or threatening to commit offences, as well as other legal anomalies undesirable to society and the State. 2) Coercion influences the mind, will and behaviour of the subject. 3) It causes negative legal restrictions to be imposed on the person. 4) It carried out by entities authorized by the State (police, procuratorial, State executive, tax, customs, controlling entities, etc.). 5) Its social function is to protect the interests of citizens, society and the State. Coercion must be balance with methods of persuading,

encouraging and encouraging lawful behaviour. 6) It promotes the implementation of the law by applying physical pressure in the event of a person's refusal to voluntarily comply with it. 7) Coercion exercised in legal forms, within the limits of the authority of the subject and in accordance with a specific procedure established by law within the framework of protective legal relations. In the legal system, there are separate branches whose purpose is to establish the order (procedure) for the implementation of legal sanctions (for example, criminal procedural law). The procedure not only regulates the use of coercive measures, but also makes them subject to control and appeal. 8) State-law coercive measures are presented in the ways in which they are used. Their specificity depends on such indicators as the specific composition of the subjects of application of the measures; the type of measures applied; the specificity of the legal facts that give rise to the use of coercive measures; and the nature of the procedural regulation of the activities of authorized entities; The special features of the purpose of coercive measures. Among the main ways in which State law enforcement measures are applied, the legislation provides for jurisdictional, supervisory and administrative measures. 9) Legal liability (basic form), compulsory restoration of violated rights, procedural protection of substantive rights, administrative prevention and suppression of offences, and protection of law and order in exceptional circumstances.

The legal form of state coercion – its constitutive component, which defines the legal limits of power – shows that it is possible to use it only on the basis of legal principles and a specific legal norm, which establishes: the type of coercive measure, modalities and procedure for their application. Its choice is based on subjective and objective factors. A coercive measure is considered to be fair, provided that the condition of reasonableness and proportionality of the act is met. It is applied only within the limits of the subject's competence and only in the prescribed procedural order. The existence of a procedural form not only records the use of coercive measures, but also makes them public, and, consequently, provides access for public scrutiny. The legal form of State coercion includes a separate group of coercive legal measures, has a specific legal purpose, legal grounds

for their application and specific legally defined consequences that are fixed in a legal act.

State law enforcement ensures effectiveness: a) Preventive measures (means) to prevent offences or extraordinary events where there is a possibility of substantial harm to society. For example, requisition of vehicles to deal with natural disasters, inspection of passengers and their luggage, introduction of a quarantine regime (lockdown) during epidemics. b) Measures to suppress offences. Unlike preventive measures, they apply only to offences that are actually committed, for example, seizure of knives and firearms without authorization to possess them, detention or arrest of persons who have committed administrative offences, etc.). c) Legal protection measures applied to the subject for failure to comply with a legal obligation, with a view to restoring the violated rights of other persons. For example, protective measures include forceful forfeiture of property (vindication), forfeiture of debt. d) Legal liability measures applicable to the commission of an offence.

State law enforcement disassociates itself from related concepts such as violence. It has features of structure, functions, types, forms, means, grounds and applications. The legal opinion on the nature and purpose of state coercion based on the *etatiste model* of law and was associated with violence, punishment and the function of subjugating opponents of the political regime in non-legal forms.

Therefore, state coercion cannot be consider as a category isolated from the dynamics of modern political regimes, which are conditionally divided into «traditional» and «modernist». Each is essentially a regime for the modernization of authoritarianism, using authoritarian populist means, methods and forms of modernization. Therefore, the implementation and real sociology of State coercion presupposes its adaptation to the specificities of the political regime.

Conclusions. The model of state coercion and its purpose in a modern society should be understood and investigate from the standpoint of the dialectical and genetic connection between power and law. The legal nature of State power requires that it be organized and operated in the form of legal restrictions, since its enforcement function exercised in legal forms. Such coercion therefore reflects the legal nature of public authority and is referred to by the notion of state

law coercion. The issue of state coercion therefore focuses on the coercive function of institutions of power under the rule of law, the only legitimate form of which is coercion under the law of the State.

The legitimization of State coercion derives from public recognition of its inevitability as an instrument for the protection, protection, exercise and restoration of human rights.

The specificity of its legal content and attributes is known in the changing circumstances of the political regimes of States and reflects the state of legal guarantees for the implementation of legal principles and norms of forced activity.

The problem of the legitimacy of State law enforcement must be viewed in the light of the fact that it always accompanies the movement of public life and that its moral and legal justification must be based primarily on ethical arguments and incorporated into legal ethics. Today it is a relatively new trend in the development of public administration in all forms of functioning of the State, involving the use of legitimate coercive measures, the formation of «ethical infrastructure» for all institutions of public power without exception.

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Теоретическая определенность концепта государственно-правового принуждения

Аннотация. *Государственно-правовое принуждение исследуется как правовая категория, выражающая обусловленность публично-властной деятельности правовыми формами, принципами и нормами. Правовая обусловленность государственного принуждения определяет его легитимность, общественное признание как необходимого инструмента защиты, охраны, осуществления и восстановления нарушенных прав и свобод гражданина.*

Анализируются основные признаки, свойства государственно-правового принуждения и показатели его эффективности. Правовая форма принудительной функции власти обусловлена включением этических императивов к ее субъектам и средствам.

Ключевые слова: *государственное принуждение, правовые ограничения власти, правовые формы государственного принуждения, функции государства, меры принуждения, политический режим.*

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Теоретико-правова визначеність концепту державно-правового примусу

Анотація. *Державний примус досліджується, виходячи з визнання правової природи державної влади та правових обмежень його функціонування. Примусова функція влади вимірюється правовими підставами та формами здійснення і відображена поняттям державно-правового примусу. Його легітимація спирається на суспільне порозуміння щодо неминучості його використання. Однак суспільство легітимізує владу тільки за умов її функціонування у відповідності до соціальних очікувань і використання примусових засобів для загального блага.*

Специфіка методу державного примусу в політико-правовому просторі соціуму часів демократичного транзиту полягає в тому, що примус

прямо або побічно обмежує права і свободи громадян обґрунтовано або необґрунтовано, легітимно чи нелегітимно. Мотивом юридично обґрунтованого примусу є передусім антисоціальна поведінка суб'єктів права, протиріччя між загальною та індивідуальної волею, які влада знімає примусово, стимулюючи правомірну поведінку громадян та інститутів влади.

Правова обумовленість владного примусу визначає його легітимність, суспільне визнання як необхідного інструменту захисту, охорони, здійснення і відновлення порушених прав. Сучасне розуміння державного примусу як правової категорії дозволяє визначити його як публічно-владну діяльність, види і ступінь якої обумовлені правовими принципами і нормами, а її організація (інститути, повноваження, правові ресурси) здійснюється в законодавчо визначених правових формах, що містять систему вимог до суб'єктів державно-правового примусу.

Здійснення примусу в правових формах – його визначна властивість. Процесуальні форми застосування примусу стимулюють їхню прозорість і доступність для інститутів громадського контролю. Державно-правовий примус легітимований моральними вимогами правової етики до суб'єктів публічного управління.

Владний примус є чинником динаміки політичного режиму. Традиційне сприйняття примусу є архаїкою ментальних традицій. Громадська думка поступально змінює уявлення про державний примус від етатистських до правових. Соціологія відображає процес адаптації його змісту до специфіки режимів – традиційних і модернізаторських, у яких примусова функція влади на етапах демократичного транзиту не виключає, однак, примусового владного свавілля. Метаморфози політичного режиму набувають гібридних форм, мімікрії, видимої легітимності, коли владні примусові заходи реально обумовлені правовими імперативами в тій же мірі, у якій можуть набувати форму владного свавілля, ігноруючи правові вимоги суспільства, громадської думки, громадського контролю та ін.

Проблему державно-правового примусу доцільно розглядати з урахуванням того, що легітимний владний примус завжди супроводжує суспільний рух, а його морально-правове обґрунтування посилається передусім на етичні аргументи, включені в правову матерію – правову етику. Владний примус легітимований у публічному управлінні, державній службі її моральними вимогами щодо формування «етичної інфраструктури». Сьогодні це – відносно новий тренд розвитку нової моделі публічного управління,

державної служби та всіх без винятку інститутів публічної влади, що виконують примусові функції держави. Правові вимоги до державного примусу мають містити етичні стандарти – міжнародні та національні, які реалізовані в сучасних професійних етичних кодексах державних службовців.

Ключові слова: *державний примус, правові обмеження влади, правові форми державного примусу, функції держави, заходи примусу, політичний режим.*