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### **Coercion to give as a socially dangerous act of a crime under article 373 of the Criminal Code of Ukraine**

**Abstract:** The meanings of the term “coercion” in criminal law: a legal consequence of the commission of crimes, and as precluding criminality of the act, as a circumstance mitigating punishment, as a sign of the objective side of certain crimes. It is analyzed the semantic meaning of the word “coercion”. The notion of “coercion to testify”.

**Keywords:** coercion to testify; a socially dangerous act; the violence; the impact on the victim.

The Constitution proclaims that man, his life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value (Part. 1 of Art. 3). Consequently, one of the areas following this provision is to protect individuals from criminal coercion.

The Criminal Code of Ukraine the term “coercion” is treated differently. First, as a legal consequence of committing crimes (it is through the concept of “primus” (in Ukrainian) is proposed sentencing in Part 1 of Art. 50 of the Criminal Code of Ukraine). Secondly, as a circumstance precluding criminality (Article 40 of the Criminal Code – the physical or mental coercion). Third, as a circumstance in mitigation of punishment (Section 6 Part 1 of Art. 66 of the Criminal Code – committing a crime under the influence of coercion). Fifth, as a sign of the objective side of certain crimes: Part. 2 of Art. 142, part 2. 143, Art. 154, Art. 157, Art. 173, Art. 174, part 2. 180, Art. 280, Art. 300, Art. 301, Art. 303, Part 3. 342, Art. 355, Art. 373, Art. 386, Art. 404 of the Criminal Code of Ukraine. In these cases, the Ukrainian

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language with the correct terminology is different concepts – “primushuvannya”, “primushennya” that “primus”. This indicates that the legislator has defined only the most general the concept of “coercion” that existing criminal laws of Ukraine did not disclose in relation to specific offenses.

In Art. 343 of the Criminal Code criminalizes forced to testify under questioning by the illegal actions of the prosecutor, investigator or employee of the department performing the operational – search activity. Such actions are punishable by restraint of liberty for a term up to three years or imprisonment for the same term. If these actions were associated with violence or mockery of a person in the absence of torture, such actions are punishable by imprisonment for a term of three to eight years.

Given that in the Criminal Code is no “terminology” section, which would have offered a definition of “cross-cutting” of criminal law concepts, as well as different approaches of forensic scientists to the definition of “coercion”, consider it appropriate within the article highlight the issue of its contents in Art. 343 of the Criminal Code of Ukraine.

Issues in criminal law enforcement in the works covered P.P. Andrushko, R.Sh. Babanly, M.I. Bazhanov, Y. Baulin, M.D. Durmanov, T.Y. Kobozeva, M.I. Korzhansky, O.M. Popov and others. But today there is no common understanding of “coercion” and in the few scientific studies that affect this and related questions. In addition, there are no proceedings, examines in detail the criminal enforcement as a criminal - legal concept, including as part of compulsion to testify.

In Ukrainian and Russian languages, the word “coercion” comes from the verb “force – force” and means “to compel to do something, anything to encourage the power” [1]. In the dictionary of synonyms indicates that coercion, violence forced - it's synonymous. Violent shade of the concept of “coercion” really can be traced in almost every definition. Thus, the term “coercion” in its semantic content in Ukrainian and Russian languages is targeted coercing the will of man, jeopardizing his freedom of action.

Analyze the scientific literature dealing with such a crime against justice as coercion to testify as to what is meant by the concept of “coercion” in the appropriate part of forensic scientists.

N.A. Popov in the analysis of art. 302 of the Criminal Code, citing the lack of characteristics of the term “coercion” in the criminal law, the concept of a socially dangerous compulsion formulated on the basis of the generic concept of criminal procedural coercion, changing some characteristic symptoms last from positive to negative. Coercion is considered socially dangerous as they impact exercised against the wishes of the person, it does not provide the freedom to choose a particular variant of behavior and violates individual rights and freedoms in order to achieve pleasing to coerce behavior. This scientist concluded that bribery, deception, threats to commit legal actions do not correspond to the indications of crime “Coercion to testify”. So, deception and bribery, to include most content of the concept of coercion, do not correspond to such a generic concept, and therefore cannot be the objective side of the crime. They are not peculiar to the imperative, is characteristic of coercion (the person remains the possibility of free choice). Criminal responsibility for such acts, said the scientist, is set if the perpetrator seeks to achieve the goal of forcing perjury [3, p. 81].

I.Y. Buneva believes that unlawful coercion – a set of unacceptable means of influence used by the authority to the participants in the process, limiting the freedom of their behavior, which compels to perform certain actions against their will under threat of harm to the legitimate rights and interests of [4, p. 57].

A.A. Kalashnikov believes that “unlawful coercion – it is against the law impact by officials of bodies involved in criminal proceedings, the will and the behavior of the participating entities in it by the violation of their rights and freedoms , forcing the latter to perform certain actions or refrain from them” [5, p. 158].

Ukrainian authors of the textbook “Crimes against justice” believe that coercion - is committing unlawful pressure on the person questioned, causing violated her rights and freedom of expression is limited [6, p. 68].

M.N. Golodnyuk analyzing art. 302 of the Criminal Code notes that under “duress understood such an impact on the person questioned, which suppresses his will ...” [7, p. 193].

Among other definitions of “coercion” in relation to other formulations crime wise to pay attention to such.

S.S. Tikhonov argues that the notion of coercion “covered public relations resulting from the physical and mental effects of one person to another, encroaching on the right of privacy of the last to make him fit to enter the guilty manner” [8, p. 99].

Coercion – “Coercing a person to another person to commit any act against the latter's own will” – said V. Kalugin [9, p. 10].

E.G. Veselov offers considered coercion “person filing requirements, backed by violence or threat of violence, and activities to comply with this requirement” [10, p. 5].

D.V. Popov gives the following definition: “Coercion – it is a deliberate, socially dangerous, corruptly influencing an individual achieved by a physical or (and) mental abuse, as well as through other illegal actions (inaction) to compel the person to perform any act or refrain from acting” [11, p. 71].

V.Y. Rounov believes that coercion in understanding the legislative process can only mean, while the final result – the performance or non- requirement of no legal significance to address the issue of criminal responsibility. Forcing involves the requirement of conduct, which does not harm most objects of criminal law protection. The exception to this rule – forced to testify because such waiver is a separate crime, and the person who refused to testify under the influence of coercion, harm the object of criminal law protection. In this case, the scientist sees the relationship with the General Part of the Criminal Code as harm interests as a result of physical or mental influence may be deemed to preclude criminality [12, p. 112-113].

All of the definition of “coercion” is basically similar, as referred to the same essential features thereof: public danger; wrongfulness impact; violent impact, forcing entails the restriction of freedom of will, intentional exposure, the purpose of

exposure, expressed in unlawful demand – force a person to act in their own interests or the interests of third parties.

Common to all definitions proposed in the literature is the definition of coercion through a generic term (impact Coercing cluttered).

It seems that the key to the concept of coercion is precisely focused on the impact on the free will of the individual. While emphasizing its external, violent.

Common to many of the above definitions of “coercion” is an indication of its purpose – the pursuit of the victim from committing needed for coercing a socially dangerous act. Focus coercion to commit an act is its inherent property. Coercion is always reduced to the requirement to take some action or inaction. Believe that illegal requirement is one of the main elements of coercion. In the case of an offense under Art. 302 of the Criminal Code – a requirement to provide appropriate evidence.

Wrongful claim characterized as persistent, imperative request addressed to the victim, who is as strong resembles rather peremptory orders to commit certain acts last. And when qualifying criminal offense categorical requirements should be determined by setting the offense. Imperative nature of such a requirement for the victim should not be in doubt.

Since coercion involves saying a requirement, obviously, that the information contained in this requirement should easily reach outward and coerced them to be perceived. Therefore it is impossible in the real sense to talk about coercion in relation to a person who does not adequately perceive or do not understand the information that is trying to bring to compel him (because of mental, social, linguistic or other circumstances). Although these actions, which are depended on the circumstances, may be qualified as an attempted coercion.

Thus, the defining characteristic of crimes involving a sign of coercion, is the impact on the victim, in result of which is his *prinevolivanie* (tempted) to commit (or abstain) of the desired action. Method effects if and is defined in the law, it is usually not complete and not entirely accurate. That is often forced to interpret the law enforcer the concept of «coercion» and related concepts in his specific offenses.

Specificity of coercion appears in the mechanism and the nature of its impact on the will. Effect on freedom of will of the person under duress is characterized by its restriction. Coercion can only be committed “against” the will of the person. Restricting the freedom of the will in forcing means that the limited range of choices the victim's behavior. Limitation itself will result in a forced suppression process will. Speaking about the suppression, we mean interference in individual decision-making sphere, military pressure on the freedom of the will.

Suppression characterizes the fact of violent intervention in the sphere of human freedom. After all requirements offender deliberately (consciously) are accepted for execution (but not willingly, but by force). Free process of making decisions on the basis of internal evaluation is suppressed. There is a kind of confrontation of wills. The victim, assessing the degree of pressure exerted, internally subject to the requirements of the criminal. However, the possibility of committing willful act saved.

Act under duress is twofold: if Coercing the person may be committed in the form of inaction (deprivation of food, water), the requirement expressed itself wrongful active – only action.

Coercion is a violent impact, the purpose of which is cluttered with the coerced act a certain way against his own will.

Thus, the structure of the criminal law is enforcement as part of a crime under Art. 373 of the Criminal Code can be summarized in the following main components:

- Focused on the impact on the free will of the individual. We believe it necessary to point out that, in our opinion, an additional direct object of coercion should show that the offense and encroaches on the natural human right to determine their own behavior, in other words, the right to free expression of the face. We believe that the inclusion of this aspect will form a clearer theoretical understanding of the essence of coercion as a criminal offense, as well as to distinguish it from the attacks that are different in terms of content – “ordinary” violent attack (threat of murder, bodily injury, rape, theft and others):

- Violent impact;

– Presentation of wrongful claims.

Coercion in criminal law is always a negative impact on the mind and will of man, which resulted in limited real opportunity to make a volitional act of the victim. Forcing always creates some emergency.

Given the above it seems appropriate under criminal coercion understand intentional wrongful physical and (or) mental effects on the face, restricting freedom of the will, to force him to perform an action (inaction) against their own will and in the interests of coercing or persons represented by him.

In Art. 373 of the Criminal Code the term “coercion” is filled with a special meaning, due to the specific wording of the relevant evidence of a legislator:

– Coercion is a meaningful impact on the freedom of the will of persons with respect to whom the investigative action is performed as an interrogation;

-- Coercion may manifest as both physical and mental effects on the victim;

– Require the victim regarding evidence. Victims of crime under Art. 373 of the Criminal Code are suspect, accused, witness, victim, and expert. This is an exhaustive list of victims. It is provided in Part. 2 of Art. 95 of the Criminal Code regulating the procedure for obtaining testimony as a source of procedural indications;

– Coercion can only be done during interrogation. Remedial features interrogation regulated depending on the stage of criminal proceedings: a preliminary investigation – Articles 223-228, 232 Code of Criminal Procedure Chapter 20, Section III of the Criminal Procedure Code of Ukraine, during the proceedings (proceedings in the trial court ) – Articles 351-354, Chapter 356 28 section IV of the Criminal Procedure Code of Ukraine;

– Coercion committed special subject – prosecutor, investigator or employee units engaged in the operational – search activity;

– Forcing occurs only intentionally.

Thus, coercion as a socially dangerous act as part of a crime under Art. 373 of the Criminal Code of Ukraine – is intentional wrongful physical and (or) mental effects prosecutor, investigator or employee of the department performing the operational – search activity on the face, which is made with respect to the

interrogation (the suspect, accused, witness, expert), limiting the freedom of the will, when applied during interrogation in order to force him to commit actions (inaction) against their own will and in the interests of coercing or persons represented by him – to testify.

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