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TÍTULO: El concepto de medidas preventivas en Derecho.

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RESUMEN: Las medidas preventivas son medidas procesales penales de efecto coercitivo aplicadas sobre la base y de la manera establecida por la ley, por el oficial de interrogatorio, el investigador y el tribunal en relación con el acusado (sospechoso) con el fin de evitar que escape de la investigación, investigación preliminar y el juicio, que continúe participando en actividades criminales, impedir los procesos penales, así como la ejecución de la sentencia. No existe consenso en la literatura sobre qué acciones deben considerarse medidas preventivas. El artículo analiza la legislación y la literatura científica.

PALABRAS CLAVES: Medidas preventivas, legislación, violación de la ley.

TITLE: The concept of preventive measures in law

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ABSTRACT: Preventive measures are criminal procedural measures of coercive effect applied on the grounds and in the manner established by law, by the interrogating officer, investigator and court in relation to the accused (suspect) in order to prevent him from escaping inquiry, preliminary investigation and trial, to continue to engage in criminal activities, impede criminal proceedings, as well as enforcement of the sentence. There is no consensus in the literature which actions should be considered preventive measures. The article analyzes the legislation and scientific literature.

KEY WORDS: Preventive measures, legislation, offense, law.

INTRODUCTION.

The development of science is always associated with the improvement of its conceptual apparatus. It should be agreed with the opinion of V.B. Zherebkin that “not only the development of theoretical problems of law, but also the application of the law in practice, largely depends on the accuracy and rigor of concepts and categories of legal science. The more precise the law, the easier it is to execute. The accuracy of laws is determined, first of all, by the accuracy and severity of the concepts by which they are expressed. Uncertain, inaccurate concepts lead to ambiguity and vagueness of the law, which inevitably complicates the understanding of its meaning and negatively affects the practice of application” (Zherebkin, 1976)

The Code of Criminal Procedure of the Russian Federation contains many concepts requiring clarification and specification. One of such concepts is the term “preventive measures”. Chapter 13 of the Code of Criminal Procedure of the Russian Federation is devoted to preventive measures; however, it does not contain the definition of a concept, which gave rise to discussions within the framework of criminal procedure science.

Complying with the law, each scientist in his research offers his own definition of the term “preventive measure”, focusing on those aspects that, in his opinion, are decisive.

Considerations and analysis of some of the definitions presented in the legal literature.

As noted in the legal literature, preventive measures are primarily an integral part of coercive measures. So, for example, Z.F. Kovriga under measures of restraint understood measures of procedural coercion that restrict the freedom of action of the accused (suspect), are applied in accordance with the criminal procedure law and are aimed at the successful implementation of tasks of justice and protection of society from persons who committed a crime (Kovriga, 1975).

However, this concept is not universal, since if we consider a preventive measure only as a measure by which the freedom of action of the accused is limited; then, it is necessary to exclude bail and personal guarantee from the system of preventive measures (Kovalenko, 2019).

The last two preventive measures ensure the proper behavior of the accused (suspect) by means of property (material) or moral and psychological impact and are not related to the restriction of a person’s freedom.

DEVELOPMENT.

Methodology.

The methodological basis of the research consists of general scientific, private scientific and special methods of cognition. The analysis method was used in the interpretation of regulatory legal acts, the study of special legal literature.

Discussion and results.

Yu. D. Livshits, in his definition, indicates the nature of coercion and believes that preventive measures are preventive measures of state coercion, which are used to carry out the tasks of justice by the bodies of inquiry, preliminary investigation, prosecutors and the court against the accused (in

exceptional cases and the suspect) and their purpose is to prevent him from evading the investigation and trial, to deprive him of the opportunity to prevent the establishment of truth in a criminal case, to continue criminal activity as well as for sentencing (Livshits, 1964).

Professor Z.D. Enikeev, in his definition, also focuses on the nature of coercion and reveals the concept of preventive measures through their legal nature: “preventive measures are specific measures that protect the interests of criminal proceedings, the main purpose of which is to create the most favorable conditions for the unimpeded search for the truth in a case, ensuring the real responsibility of the perpetrator and the suppression of his criminal activity” (Enikeev, 1982).

The most detailed definition of the concept of "preventive measures" gives Professor V.A. Mikhailov, in whose opinion, preventive measures are measures of state (procedural) coercion established by law, with the help of which by restricting the accused's personal rights and personal freedom, obtaining property guarantees, personal or public surety, as well as monitoring (supervision, supervision) of the accused the latter eliminates the possibility of hiding from the bodies of inquiry, preliminary investigation, court, absent without appropriate permission from the place of residence or temporary residence, warning unlawful opposition of the accused to the establishment of truth is suppressed, neutralized and eliminated, his proper behavior is ensured, which excludes the commission of new crimes, the timely appearance of calls of the investigating authorities, the prosecutor, the court, as well as the execution of the sentence (Mikhailov, 1997).

These definitions of the term “preventive measure” are based on the criminal procedure legislation of the RSFSR; therefore, at present, due to the introduction of the new Code of Criminal Procedure of the Russian Federation, they do not correspond to legal reality.

Modern legal literature also contains several points of view regarding the problem of defining the term “preventive measure”. Consider some of the definitions proposed in scientific research.

I.K. Trunov, L.K. Trunova believe that preventive measures are procedural means of a coercive nature that are applied in the field of criminal proceedings by authorized officials and state bodies, if there are grounds and in the manner established by law, with respect to the accused and suspects for the prevention and suppression of unlawful actions of these persons with a view to successful investigation and resolution of the criminal case and the performance of other tasks of the criminal proceedings (Trunov, et al., 2003). In this definition, the authors do not focus on the fact that preventive measures are one of the types of measures of criminal procedural coercion but consider them as “procedural means” that are coercive. Particular attention in the concept is given to the objectives of preventive measures (Trunov, et al., 2003).

Professor S.P. Shcherba, on the contrary, indicates that preventive measures are coercive measures provided for in criminal procedure legislation that temporarily limit the rights and freedoms of the accused (suspect) and are applied to him in order to prevent the possibility of hiding from the investigation and the court, to prevent the preliminary investigation and trial of the case, to continue criminal activity, as well as evade the execution of a court sentence (Shcherba, 2004). In the given definition, the institution of preventive measures is considered as coercive measures that are temporary for the accused (suspect) in nature. S.P. Shcherba expresses in the definition the position of those scientists who believe that preventive measures include only state coercion, that is, physical impact.

Another position is held by N.V. Tkacheva, who formulated the following concept: preventive measures are actions to compulsory restrict or deprive the rights and freedoms of the accused (suspect), including with the help of moral and psychological influence, used by persons authorized by law on the grounds specified in the criminal procedure law (Article 97 of the Code of Criminal

Procedure of the Russian Federation), to ensure that the accused (suspect) fulfills procedural duties and prevents his undesirable behavior, which requires strict observance of the law, which is able to counter the use of coercion within the limits caused by the needs of society (Tkacheva, 2004). The definition draws attention to the heterogeneous nature of coercion in preventive measures and indicates that it includes, in addition to physical impact, psychological and moral impact (Baranov, 2008).

In the above concepts of preventive measures, there are both similarities and some differences. Most authors note that preventive measures have an inherent sign of coercion. Coercion is a method of influence that ensures that people perform actions against their will, in the interests of the coercive side. The need for it arises when the aspirations of two subjects are contradictory, of which one prescribes the fulfillment of its requirements to the other. With the help of coercion, the freedom of action of a person is limited, and his desired behavior is stimulated.

An indication in the definition of the term “preventive measure” of “coercive nature” or “means of procedural coercion” is justified, since each of the preventive measures includes the restriction of human rights and freedoms, but one should agree with the reservation of Professor S.P. Shcherba that this restriction is temporary.

It is necessary to include in the concept of preventive measures an indication of their criminal procedural nature, which allows to narrow the range of measures of coercive influence. However, the use of the phrase “state” is, in our opinion, redundant, since procedural coercion is a priori state.

CONCLUSIONS.

Thus, preventive measures should be understood as criminal procedural measures of coercive effect applied on the grounds and in the manner established by the Code of Criminal Procedure of the Russian Federation, by the interrogating officer, investigator and court in relation to the accused

(suspect) in order to prevent him from escaping inquiry, preliminary investigation and court, continue to engage in criminal activities, impede criminal proceedings, as well as enforcement of the sentence.

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