

## The Procedure and Grounds for Applying the Measure of Compulsory Attendance

**Davronov Doniyorbek**

Lecturer, Department of Civil Procedural and Economic Procedural Law of Tashkent State University of Law

**ABSTRACT:** This article compares the importance of coercive measures, compulsory attendance as a coercive measure, its importance in the legal system, the basis and procedure for its application, civil court theoretical and practical issues related to the use of these coercive measures in the course of conducting cases, analysis of the Civil Procedural Legislation of the Republic of Uzbekistan and its norms based on the civil legislation of foreign countries, a proposal for improving procedural coercive measures in the course of conducting civil court cases and recommendations are included.

**KEYWORD:** Coercive measures, compulsory attendance, warning, court fines, authorized organizations.

The practical problems arising in the conduct of civil court cases, the existing "white spots" in our civil legislation have made the need to strictly and without deviation follow the procedural rules in the civil process an urgent issue. For this reason, amendments were made to our civil procedural legislation and a new chapter "Procedural coercive measures" was introduced in order to ensure strict adherence to procedural procedures. As defined in Chapter 14 of the Civil Procedural Code of the Republic of Uzbekistan, Procedural coercion measures include the following.

1. Compulsory attendance in the cases stipulated by the Civil Procedure Code;
2. Warning;
3. Expulsion from the courtroom;
4. Court fine[1].

Below we will touch on the issues of the basis and procedure of applying coercive measures specified in this article. First of all, we will dwell on the procedural coercion measure of compulsory bringing.

### **Compulsory attendance.**

According to Article 144 of the Civil Procedure Code of the Republic of Uzbekistan, if in accordance with Article 313 of this Code, it is necessary to participate in the court proceedings, or in the cases provided for in this Code, the court deems it necessary to appear in court, the duly informed person shall appear in court without excuse. If he doesn't show up or doesn't give the reasons for his non-appearance, the court may issue a ruling on his compulsory attendance.

Civil Procedure Code of the Republic of Uzbekistan, article 313 provides for consideration of civil court cases. According to it, the court considers the case of finding a citizen incompetent with the participation of the prosecutor and the representative of the guardianship and guardianship body. A citizen whose case is under consideration will be summoned to a court session if his health condition allows. In accordance with the specified article, the person who is considered to be incapacitated must participate in the court session.

It is known that a citizen who cannot understand the importance of his actions or control them due to mental illness or mental retardation can be found incompetent by the court in accordance with the procedure established by the legislation, and guardianship of such a citizen is established[2]. A person may be excluded from participating in a court session if the person's state of health, mental state is temporarily disturbed, or there are other circumstances that prevent the person from participating in the court session. In other cases, the person must participate in the trial.

Also, in the cases specified in Article 186 of the Civil Procedure Code of the Republic of Uzbekistan, i.e., in cases related to the collection of alimony against a minor, the court may consider the participation of the responsible party in the court session mandatory, and in case of non-appearance of the defendant, it may be made mandatory. In this case, the issue of the child's rights, the issue of financial support until he reaches adulthood, is resolved during the civil court proceedings. Therefore, it is possible to consider the participation of the party in court as compulsory.

Procedural coercion measures can be used to bring not only the defendant to the court, but also other participants who may influence the decision of the court. In Article 222 of, Civil Procedure Code of the Republic of Uzbekistan, "In the event that a witness, expert, specialist, interpreter does not appear at the court session, the court shall hear the opinions of the persons participating in the case that the case can be heard in the absence of the absent witness, expert, specialist, interpreter, and continue the trial or issues a ruling on postponing the case discussion". If the summoned witness, expert, expert, interpreter does not appear at the court session for reasons deemed by the court to be inexcusable, procedural coercive measures provided for in this Code may be applied to them. If the summoned witness does not come to the court session according to the second summons, he can be brought in a mandatory manner according to the court's decision. According to this article, if the third parties participating in the court are not present in the court at the time of the court session, the court will consider whether or not it is possible to hold the court session without their participation. If it is not possible to see the case without the presence of an interpreter, expert, witness, expert, the hearing of the court session will be postponed.

If a person has circumstances that exclude his participation in the court and has given the reasons to the court in the appropriate manner, if the court finds these reasons to be justified, it is not possible to apply the measure of procedural coercion. Importantly, in accordance with Article 144 of the Code of Civil Procedure, compulsory summons is a measure of procedural coercion only if the person has been duly informed about the time and place of the court session, whose participation in the trial is required by law or required by the court[3]. It is allowed to be used in cases where it is found that According to our civil legislation, it is not allowed to apply the procedural coercion measure of compulsorily bringing a person who has not been duly notified.

***At this point, a question arises - in what order is the court participant warned?***

As defined in the Civil Procedure Code of the Republic of Uzbekistan, a person who is required to participate in civil court proceedings is considered to have been duly notified of the place and time of the court in the following cases:

- When the relevant court summons or other notification is received personally or from an adult family member or another person living at the specified address;

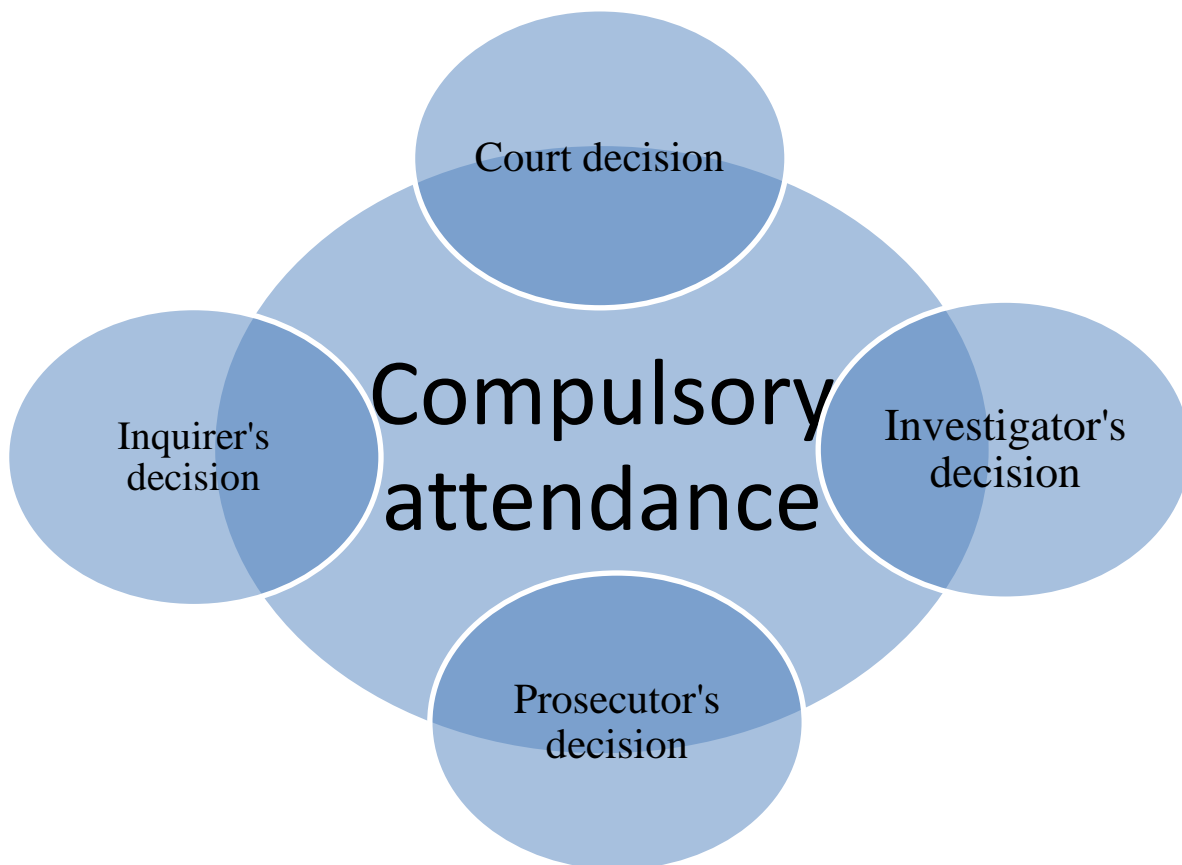
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- Also, if the text message was sent by the court through the e-mail address and there is information confirming that it was sent;
- A court summons or other notification is considered delivered even if the person summoned refuses to receive it, if such refusal is recorded;
- In cases where a report confirming the delivery of the notice using other means of communication ensuring recording is received;

If it is not proven that such a notice was not received or that it was received later, the persons involved in the case are considered to have been notified in the appropriate manner.

If one of the duly warned persons does not come to the court session, (according to Article 220 of the Civil Procedure Code) the trial will be postponed. If the participants of the court who received the notice of the court do not come to the court session for the second time and the court considers that it is impossible to resolve the court case without their participation, the court may apply the coercive measure of compulsory attendance.

According to general principles, the following documents are the basis for bringing a person to court and must be executed within the time limits specified in these documents, i.e., the decision or ruling:



The following must be specified in the court's decision on compulsory delivery:

- The time and place of the decision;
- Name of the court, judge's surname, name and patronymic, secretary of the court session;
- People participating in the work;

- The subject of the dispute and the nature of the issue to be resolved by the decision;
- Reasons that led to the court's conclusion and references to the laws and other legal documents that the court followed;
- Court's conclusion on the issue being resolved;
- The procedure and period of filing an appeal (protest) against the decision.

In addition to the information provided in the decision on compulsory bringing, the date, time and place of compulsory bringing of the person, as well as to which regional internal affairs body was assigned, should be indicated.

In practice, there are many cases of non-appearance in the inquiry and investigation processes, as well as cases of failure to appear at the court session, and the demand for the application of the procedural measure of compulsory bringing has increased. Therefore, in order to regulate these relations, on December 15, 2018, on the basis of Resolution No. 1024 of the Cabinet of Ministers of the Republic of Uzbekistan, "The procedure for the execution of assignments on the compulsory bringing of persons who refuse to appear in court for unexcused reasons, preliminary investigation bodies or on" has been developed. In the Republic of Uzbekistan, compulsory attendance in court cases and investigative processes is regulated only on the basis of the Regulation approved on the basis of the Decision of the Cabinet of Ministers. This Regulation establishes the procedure for the execution of orders for the compulsory bringing of persons who refuse to appear in court for unexcused reasons, preliminary investigation bodies or authorities[4].

The decision of the investigator, investigator, prosecutor and the decision of the court on criminal, administrative or civil cases are the basis for the implementation of the procedural act of compulsory bringing.

As our national legislation does not contain any other normative legal document on the compulsory bringing of persons, the above-mentioned regulation is applied to the conduct of civil court cases, as well as to inquiry and investigation processes. Compulsory subpoena is used to ensure the participation of a suspect, accused, defendant, victim, witness in criminal proceedings or in a court session, provided that they have refused to appear without an excuse.

As defined in the regulation, a person who is obliged to participate in court proceedings in accordance with Article 313 of the Civil Procedural Code of the Republic of Uzbekistan, or whose attendance at the court is considered a requirement by the court in the cases provided for by the Civil Procedural Code, a duly informed person does not appear in court for no reason, or if he does not inform the reasons for his absence, the court may issue a ruling on his compulsory attendance. Also, in accordance with Article 144 of the Civil Procedure Code of the Republic of Uzbekistan, compulsory summons is not applied to minors, pregnant women, persons who cannot attend a court session due to illness, age or other valid reasons. Compulsory bringing of minors in criminal cases is carried out through their parents or their substitutes and introduces the decision (judgment) on compulsory bringing and signs about it.

It can be used in civil court proceedings if one of the duly notified parties does not appear in court, hides from court or does not have a clear place of residence. According to this regulation, the decision of the court on compulsory delivery must be executed within the period specified in this decision. If there are deficiencies in the decision on compulsory delivery, the decision on compulsory delivery is not accepted for execution, and a referral letter is sent immediately to the court that issued the decision to eliminate the deficiencies.

Forced citation is carried out in the following order. On the day that the decision on the application of procedural coercion measures is received by the internal affairs bodies, it is registered by the body's secretariat and entered in the special work log in the appropriate manner, and is handed over to the executive

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by the head of the body or the temporary manager of his duties, and the execution is controlled. An executive preventive (senior) inspector or a criminal investigation officer can be the appropriate person.

In cases where it is necessary to leave the attached territory in order to ensure the execution of the decree on compulsory bringing to another district or region, it is strictly prohibited to hand over the decree to preventive (senior) inspectors. The employee of the internal affairs body must take measures to bring the person to the place and time indicated in the decision on compulsory bringing. It takes all the necessary measures established by law to ensure the execution of this ruling.

The employee of the internal affairs body must follow the rights and legal interests of the person, respect his honor and dignity, and explain his rights and obligations to the person being forcibly brought. If a person who is subject to compulsorily studying or working is studying or working, the administration at his place of study or work will be notified of the ruling on compulsory bringing and instructions will be given to provide practical assistance in ensuring its execution.

In the event of resistance to legal requirements during the execution of forced arrest, the employee of the internal affairs body may use physical force, special tools and firearms against the resisting person in accordance with the Law of the Republic of Uzbekistan "On Internal Affairs Bodies" has the right to accomplish it.

In this case, a report will be drawn up and it will indicate the nature, time and place of the offense and the measures taken against the person. A report will be submitted to the head of the internal affairs body along with a notification about the use of physical force and special means within two days, and within 24 hours about the use of firearms. The court that issued the ruling on compulsory bringing will be informed about it[4].

About every case of damage to the life, health or property of individuals as a result of the use of physical force and the use of special tools, as well as the property of legal entities, as well as all cases where firearms were used the prosecutor will be notified immediately. When the person brought to the court is submitted to the court, he signs and confirms the copy of the certificate (declaration) that they have received the person. In accordance with Article 264 of the Code of Criminal Procedure of the Republic of Uzbekistan, if the internal affairs body determines that it was not possible to bring a person to court due to his absconding, vacation, business trip, serious illness or other reasons, this prepares a reference and informs the investigator, prosecutor or the court that issued the decision or ruling[4].

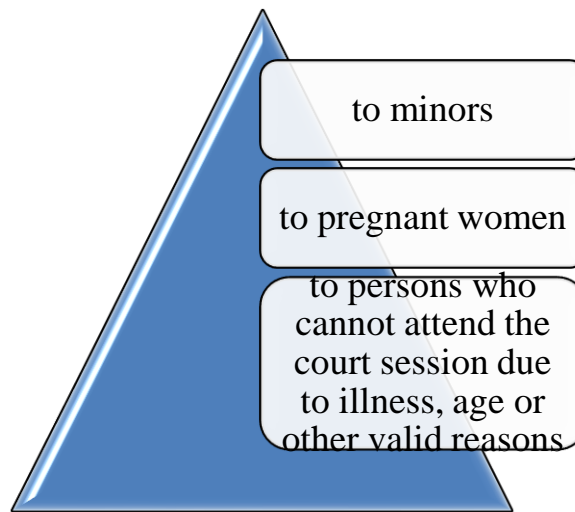
This document describes in detail the circumstances that did not allow for the compulsory bringing of a person, and is signed by the employee who executes the decision on the compulsory bringing, the chairperson of the neighborhood assembly, impartial and other participating persons. If the person who must be brought to the place of summons states that he cannot go to the regional health institution in accordance with the established procedure must confirm the place of summons due to a serious illness, his illness.

The medical certificate issued by the regional health care institution should be attached to the certificate made in connection with the inability to bring the person. In cases where it is not possible to find the place of residence or work of the person who must be forcibly brought, and it takes time to determine the real residence, the judge who issued the decision on compulsory bringing will be notified about this within 5 days. The employee of the internal affairs body must follow the rights and legal interests of the person, respect his honor and dignity, and explain his rights and obligations to the person being forcibly brought. Compulsory delivery of a person is carried out between 06:00 and 22:00.

If a person who needs to be brought to court is found, the employee of the internal affairs body must introduce him to the decision to bring him to court, obtain a receipt and bring him to the court that issued the decision. In this case, the time and place where the person was found, the time when he was brought and

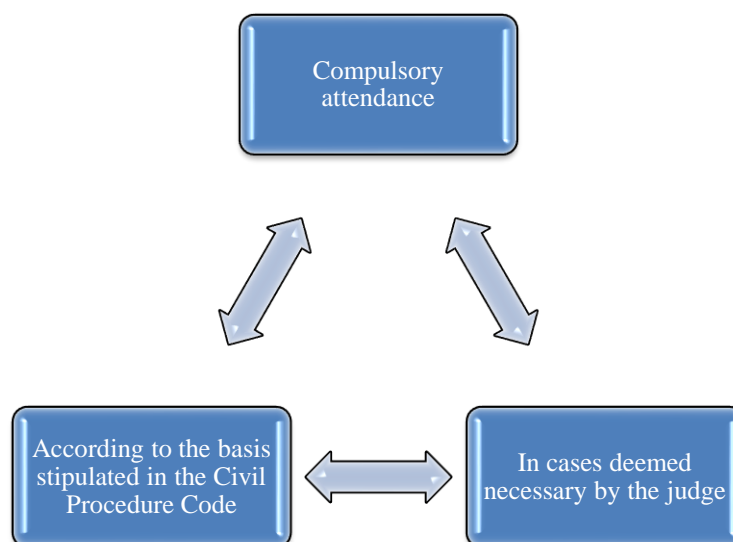
handed over, as well as the information about the application, complaints and requests related to his compulsory bringing should be attached to the decision.

However, in our civil procedural legislation, several exceptional cases are defined, i.e., the procedural coercion measure is not applied to the following persons[5]:



Procedural coercion measure must be executed immediately. A complaint (protest) may be filed against the decision of the court on the application of a procedural coercive measure, but it does not stop the enforcement of the compulsory summons. Therefore, in cases where it is not possible to hear the case without the participation of the parties, and in cases where the court finds it necessary for the parties to participate in the trial, the court is obliged to obligate the persons who did not attend the trial, despite having been duly notified of the date, time and place of the trial. It can be compulsorily brought on the basis of the decision issued on bringing.

In our current legislation, the principles of applying procedural coercion measures are mentioned in the above-mentioned articles. Article 144 of the Civil Procedural Code stipulates that the court may bring the case only if it is provided for in the Civil Procedural Code. It is clear from this that the court must bring the measure of procedural coercion on two grounds, i.e.:



If there are two grounds mentioned above, it is possible to apply the measure of procedural coercion. Importantly, the above two grounds are mutually exclusive for the use of mandatory citation. That is, even if it is stipulated in the Civil Procedure Code, if the judge does not find it necessary, it is not possible to apply the measure of procedural coercion against the person.

On the contrary, if the Civil Procedural Code does not provide for compulsory summons, but in the case of a case, the participation of a person is necessary in the substantive resolution of a civil case, and even if it is considered necessary by the judge, compulsory summons cannot be used as a measure of procedural coercion due to the fact that it is not defined by law. This means that the basis for the compulsory bringing of a person to trial should be only the cases defined in the Civil Procedure Code. It follows from this that coercive measures cannot be used to impose coercion against a person in cases not provided for in the Civil Code.

It is known that in the modern era, social life is rapidly developing, along with new technologies, new social relations are introduced into our daily life. Day by day, new cases are emerging that are not specified in our legislation. Therefore, some norms should not be strictly limited in our legislation. Including procedural coercive measures. In the experience of foreign countries, including the United States of America, "the judge always has the right to require persons to appear in court, even if the person's actions do not require him to appear in court"[6].

Therefore, some norms should not be strictly limited in our legislation. Instead, we should add the sentence "In the cases stipulated by the Civil Procedure Code or in the cases deemed necessary by the court" to our existing legislation. Because, in some cases, the court may consider the participation of a witness, expert or specialist in the court session necessary. In this case, the procedural coercion measure of compulsory bringing cannot be applied because our Civil Procedural Code does not provide coercive measures against these persons. The application of procedural coercion must be within the exclusive authority of the judge.

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