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СУТНІСТЬ ПОНЯТТЯ БЕЗПОРАДНОГО СТАНУ ОСОБИ ЯК ВАЖЛИВА СКЛАДОВА ПІД ЧАС РОЗСЛІДУВАННЯ ЗЛОЧИНІВ

Анотація. Сучасна правова база попри означення безпорадного стану у відповідних нормах кримінального, адміністративного, цивільного законодавства, не дає відповіді на питання, що саме слід розуміти під таким станом, через відсутність будь-яких зафіксованих в її змісті визначень або тлумачень цього поняття. Саме цим визначена актуальність теми дослідження. Метою наукової статті є розробка тлумачення безпорадного або іншого небезпечного для життя стану, з подальшою можливістю відповідного удосконалення чинного законодавства України. Провідним методом дослідження виступає метод порівняльно-правового аналізу. У статті здійснено аналіз наявних у юридичних та наукових джерелах визначень поняття безпорадного стану особи. За результатами проведеного дослідження, представлено авторську позицію щодо сутності поняття безпорадного стану. Ідентифіковано причини, які можуть виступати чинниками безпорадного стану. Наголошується, що безпорадний стан особи, за певних умов, може трансформуватися в небезпечний стан особи, унаслідок якого існує загроза порушення прав громадян. Автори роблять висновок, що безпорадний стан – це не тільки фізичний чи психічний стан, у якому може перебувати особа, а й фізіологічний стан (психофізіологічний), як його чинник, виступає складовою змісту безпорадного стану. Ідентифікація обсягу і змісту прав громадян, які потребують зовнішнього забезпечення через перебування відповідних громадян, володільців цих прав у безпорадному або іншому небезпечному для життя стані, ще одне завдання вирішення якого попередньо потребує з'ясування сутності безпорадного стану або суміжних станів. На основі проведеного аналізу запропоновано авторське визначення поняття безпорадного стану, а також визначено його особливості

Ключові слова: небезпечний стан, порушення, забезпечення, права громадян

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THE ESSENCE OF A HELPLESS STATE OF A PERSON AS AN IMPORTANT COMPONENT IN THE INVESTIGATION OF CRIMES

Abstract. *The modern legal framework, despite the definition of a helpless state in the corresponding provisions of criminal, administrative, and civil legislation, does not answer the question of what exactly should be understood by such a state due to the lack of any definitions or interpretations of this concept. This determines the relevance of this study. The purpose of this study is to develop an interpretation of a helpless or other life-threatening condition, with the subsequent possibility of the corresponding improvement of the current legislation of Ukraine. The leading method of research is the method of comparative legal analysis. The study analyses the definitions of the concept of a helpless state of a person available in legal and scientific sources. Based on the results of the study, the author's position on the essence of the concept of a helpless state is presented. The causes that can act as factors of a helpless state are identified. It is noted that the helpless state of a person, under certain conditions, can transform into a dangerous state of a person, as a result of which there is a threat of violation of citizens' rights. The authors conclude that a helpless state is not only a physical or mental state in which a person can be located, but also a physiological state (psychophysiological), as its factor, acts as a component of the content of a helpless state. Identification of the scope and content of the rights of citizens in need of external security due to the presence of the relevant citizens, owners of these rights in a helpless or other life-threatening state, another task of solving which requires prior clarification of the essence of the helpless state or related states. Based on the analysis, the authors propose an original definition of the helpless state, as well as determine its features*

Keywords: *dangerous condition, violation, security, citizens' rights*

INTRODUCTION

The concept of a helpless state is used by the legislator in many regulations, but the greatest attention is paid to it in the criminal legislation of Ukraine. That explains the fact that most modern scientists refer the term "helpless state" to the category of criminal law concepts, in connection with which they have carried out and are developing various problems related to the being of victims in a helpless state.

Therewith, the correct identification of the essence of a helpless state, according to the authors, is also quite important for the forensic science and for the performance of direct functional duties by officials of pre-trial investigation bodies, because:

1) the current version of the Criminal Code of Ukraine¹ does not contain an interpretation of such a state;

1. Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

2) in order to clarify the circumstances of criminal actions related to the use of the helpless state of a person, their exact qualification, collection, evaluation, research, and use of evidence, it is vital to establish the exact definition of this term.

Furthermore, in the legislation of Ukraine, which regulates the activities of individual state authorities, the concept of a helpless state occupies a separate place, and is quite important, because the correct identification of a helpless state is interrelated with the proper performance of official duties by the relevant authorised persons of some state authorities, which achieves the performance of tasks defined for these bodies. In the context of the above, first of all, this refers to the functioning of those state bodies whose competent component makes provision for ensuring the implementation of citizens' rights, protecting them from any encroachments, as well as restoring them in case of violation, including for persons in a helpless state.

However, the modern legal framework, despite the definition of a helpless state in the corresponding provisions of criminal, administrative, and civil legislation, does not answer the question of what exactly should be understood by such a state due to the lack of any definitions or interpretations of this concept. The situation is further complicated by the fact that special legislation regulating the activities of bodies that investigate crimes, along with a helpless state, mentions the possibility of a person being in another life-threatening state, the interpretation of which is not available. This state of affairs, according to the authors, can negatively affect the process of investigating crimes related to the use of a helpless state of a person, because, for example, the processes of searching, detecting, recording, research, evaluating, and using evidentiary information about such types of crimes are directly related to the accurate identification and introduction of a unified approach to the interpretation of the helpless state.

The study of the concept of helpless and other life-threatening states was carried out by such scientists as: Yu.M. Antonyan [1], S.A. Mironyuk [2], V.Ya. Tatsiy [3], V.I. Tiutiuhin [3], I.A. Fargieva [4], M.I. Khavronyuk [5], M.D. Shargorodsky [6] and others [7]. At the same time, their developments do not take into account those aspects that are related to the activities of pre-trial investigation bodies in the process of investigating crimes related to the stay of injured persons in a helpless or other life-threatening state.

1. LEGAL ANALYSIS OF PHYSICAL AND PSYCHOLOGICAL COMPONENTS OF A PERSON'S HELPLESS STATE

Starting a study, one should pay attention to the content of Paragraph 4 Part 1 Article 18 of the Law of Ukraine "On the National Police"¹ according to which, one of the obligations of a police officer is to provide urgent, in

particular pre-medical and medical care to persons who find themselves in a helpless state or a condition dangerous to their life or health. At the same time, the National Police is an authority whose main task finds its external expression in ensuring a wide range of human and civil rights and freedoms in various situations; in this regard, the duty of a police officer to provide medical or pre-medical care to a citizen who is in a helpless or other life-threatening state is primarily related to ensuring the police the right of such a citizen to life and health.

In turn, this does not mean that the rights of citizens who are in one of the above-mentioned states are limited only to the right to life and health, on the contrary, the content of the rule of law, which is reflected in Paragraph 4 Part 1 Article 18 of the Law of Ukraine "On the National Police"², is conditioned by the lack of a clear interpretation and differentiation of a helpless and other life-threatening state on the part of the legislator, the consequence of which is the lack of a clear idea of the scope of the rights of citizens who need to be secured by the relevant authorised officials. Thus, the identification of the scope and content of the rights of citizens in need of external security due to the presence of the relevant citizens, owners of these rights in a helpless or other life-threatening state, another task of solving which requires prior clarification of the essence of the helpless state or related states.

Turning to the sources that reveal the essence of the concept of a helpless state, first of all, one should consider the Resolution of the Supreme Court of Ukraine No. 5 "On judicial practice in cases of crimes against sexual freedom and sexual inviolability of the individual"³. Thus, paragraph 5 of the resolution states that the condition of the injured person should be recognised as helpless when, due to a minor or elderly age, physical disabilities, mental disorders, a painful or fainting state, or for other reasons could not understand the nature and meaning of the actions performed with them or could not resist.

Analysing the above definition, it should be immediately noted that although it allows understanding the essence of a helpless state, it also has a clear criminal legal aspect, contains the qualification component of the committed crime. Given this, clarifying the essence of the helpless state in the criminal legal field is important in order to correctly understand and determine the circumstances of the case to accurately "form" a measure of punishment proportional to the act committed – a sanction. At the same time, through the lens of forensic science, the helpless state is primarily interesting because its awareness allows exploring and developing both approaches to preventing the commission of crimes that are associated with the presence of victims in a helpless or other life-threatening state, and the methodology for investigating such crimes, which, as a rule, is associated with the specific features of collecting

1. Law of Ukraine No. 580-VIII XII "On the National Police". (2015, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/580-19#Text>.

2. *Ibidem*, 2015.

3. Resolution of the Plenum of the Supreme Court of Ukraine No. 5 "On judicial practice in cases of crimes against sexual freedom and sexual inviolability of the individual". (2008, May). Retrieved from <http://zakon2.rada.gov.ua/laws/show/v0005700-08>.

evidentiary information. Therefore, the definition of the concept of helpless state in the forensic plane should be based on the specific features of investigating the types of such crimes, as well as the corresponding features inherent in evidence.

Considering the above definition of a helpless state, on the one hand, it should be agreed that its main determinants are as follows: 1) infancy; 2) old age; 3) physical disabilities; 4) mental disorder; 5) painful condition; 6) fainting. However, taking into account that the main determining consequence of a person's being in a helpless state, including one associated with the above determinants, is the inability of a person to understand the nature of the actions performed with them or the inability to resist, it is incorrect to say that a person's belonging to the above categories determines their personal helpless state.

The fact is that, for example, despite the clear age limits for defining the categories of "minor", it cannot be said that only before such a person reaches the age of 14, they are not incapable of realising the nature of the actions performed with them, being in a conscious state, since the development of each individual can occur before reaching the age of 14 and after it. In this regard, O. V. Shtyrlov [8] notes that it is not uncommon for a minor to realise the danger or resist even upon reaching the age of 14, due to a mental retardation not related to a mental disorder, during the commission of a crime against him. In such cases, the question of recognition of the helpless state is subject to resolution only through a comprehensive forensic examination, which should determine the minor's mental underdevelopment.

In addition, of interest is Shtyrlov's position regarding the fact that the helplessness of a minor is determined and described by indicators of such components as: 1) physical development; 2) mental characteristics; 3) mental performance [8]. The authors believe that the totality of the components of helplessness of minors proposed by the scientist is sufficient to solve the problem of establishing their immediate helpless state. A similar reverse algorithm for achieving a state that makes it impossible to realise the nature of the actions performed or the ability to resist may be typical for the elderly. However, the physical and psychological changes that occur due to aging and are inherent in the elderly are quite individual in nature. That is why not all elderly people can be in a helpless state.

At the same time, based on the understanding of the essence of the unconscious state, according to the authors, it can be argued that every person who is in an unconscious state cannot be aware of the nature of the actions performed with them and cannot resist. Summarising the above, the conditions that determine the helpless state of a person (adolescence; old age; physical disabilities; mental disorder; painful state; fainting state), in the authors' opinion, should be classified according to the following criteria:

1) those that inevitably lead to a helpless state of the

person, for example, the person being in an unconscious state or in a dream;

2) those that can lead to the onset of a helpless state of the person (significantly increase the probability of a helpless state of the person), for example, old age, adolescence, etc.

A kind of confirmation of the above is that criminal legislation, unlike administrative legislation, does not mention another life-threatening condition of a person. In addition, Paragraph 6 Part 1 Article 67 of the Criminal Code of Ukraine¹ states that upon assigning a sentence, the aggravating circumstances are recognised as follows: the commission of a crime against a minor, an elderly person, or a person who is in a helpless state, which is direct evidence that the legislator does not identify minors, as well as elderly people, with those in a helpless state.

In the context of studying the components of a helpless state, the authors of this study draw attention to the opinion of Ya.V. Hetmantseva [9], who studied the issue of helpless state as a circumstance aggravating criminal liability. By the helpless state of a person, the scientist understands such a physical and mental state when they are incapable of realising the nature of the actions performed with them, or being aware of such actions, cannot resist the criminal. Among the reasons for being in this state, the author cites, in particular: alcohol intoxication of the victim, fainting, physical or mental disabilities, etc.

Analysing the above-mentioned reasons for the helpless state, it is quite interesting that Hetmantseva also refers the state of alcoholic intoxication of a person to such reasons. Sharing this position of the author, it should be noted that the state of intoxication of a person should not be limited to that caused by alcohol consumption. No less dangerous intoxication, as a possible reason for a person's being in a helpless state, can be caused by the use of narcotic drugs, as well as drugs that reduce the level of attention and reaction speed. At the same time, when it comes to the state of intoxication as a cause that can lead to a helpless state, it is impossible to agree that intoxication is a physical and/or psychological state that Hetmantseva mentions in the basis of his definition of a helpless state.

Considering the fact that the helpless state of a person, which can pose a threat of violation of the rights of citizens to life and health, has become most widespread in the field of road safety, it is necessary to pay attention to relevant scientific developments. Thus, exploring the issue of a dangerous driver's condition that increases the risk of a road accident, I.I. Galak [10] notes that the physical and psychological requirements for the driver are determined with the consideration of the driver's activities. The receipt of information is determined by the bandwidth of the driver's psychophysiological state and their ability to process it. Since while driving the driver must perceive a considerable amount of information about the nature and mode of movement, the state of the roadway, the environment, means of regulation, the state of components and

1. Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

assemblies of the vehicle and ensure safe movement on the road, these mandatory functions of the driver are provided by a complex of psychophysiological factors.

In this regard, I.I. Galak fairly notes that the presence of a vehicle driver in a state of alcohol or drug intoxication leads to: 1) a decrease in physiological functions (decreased accuracy and visual acuity, slowing movements); 2) deterioration of psychological functions (decreased attention, dulled sensations). Therefore, considering the above, a helpless state is not only a physical or mental state in which a person can be, as stated by Ya.V. Hetmantseva [9] in his study, but is also a physiological (psychophysiological) state, as its factor, a component of the content of a helpless state, which, in addition, should be recognised as its feature.

2. THE TERM “HELPLESS STATE” IN THE EXISTING SYSTEM OF RELATED CONCEPTS

Continuing the research, one should pay attention to some provisions of the study of the helpless state of a person conducted by S.V. Dyomenko [11], in the content of which, the scientist, relying on the theory of “special victim”, which was proposed by P.S. Dagal [12], makes an attempt to determine the place of the concept of “helpless state” in the existing system of related concepts. For this purpose, the author, having divided the category of special victim based on “victim’s condition”, notes that the analysis of the criminal law allowed him to distinguish the following types of states of victims, namely: 1) a state of pregnancy; 2) a life-threatening condition; 3) a helpless state; 4) a vulnerable state; 5) a forced state; 6) a state of dependence.

Analysing the conditions of a special victim, selected by S.V. Dyomenko [11], it is quite interesting that given the provisions of criminal legislation helpless state and life-threatening condition constitute separate categories. At the same time, since the fact of the onset of a helpless state of a person does not always border on a threat to their life and health, the identification of the concepts of a helpless state and a life-threatening state, according to the authors, is not correct. However, being a person in a helpless state considerably increases the probability of transforming a helpless state into a state dangerous for life and health, as a result of which there is a threat of violation not only of the rights of such a person to life and health, but also of other rights that are related to the person’s social status, as well as the factors that led to the threatening situation.

In addition, the indicated possibility of transforming a helpless state into a dangerous state, as a result of which the rights of citizens may be infringed or violated, largely depends on ensuring the rights of citizens who find themselves in a helpless or dangerous state by the relevant competent public authorities [13]. As for the understanding of the concept of vulnerable state, guided by the provisions of the scientific and practical commentary to the Criminal Code of Ukraine¹, it should be understood as the state of a person that is conditioned by physical or mental properties

or external circumstances, which deprives or restricts their ability to be aware of their actions (inaction) or manage them, make independent decisions of their own free will, resist violent or other illegal actions, a combination of serious personal, family, or other circumstances [14].

An attempt to give a comparative assessment of the helpless state and the vulnerable state was made by S.V. Dyomenko [11]. The author notes that the “helpless state” describes the property of a person opposite to the “vulnerable state” – it implies the inability of a person to understand the nature and significance of actions performed with them. In contrast, a vulnerable state exists when the victim is deprived or restricted of the ability to be aware of or manage their actions (inaction). In addition, the concept of a vulnerable state is broader in its content and has additional features: “make independent decisions at will”, “a combination of difficult personal, family, or other circumstances”. At the same time, these categories have a common feature – the inability of a person to “resist” [11]. Thus, in agreement with the above statements, according to the authors, it should be noted that a vulnerable condition has a number of sufficient differences that allow determining its belonging to the category of a life-threatening condition.

Investigating the state of pregnancy and the state of dependence of a special victim in terms of their attribution to a helpless state, the study of O.V. Shtyrlov [8] is quite interesting. Studying the legislation of foreign countries [15] in order to study the category of helpless state and its components, the researcher draws attention to the fact that the criminal codes of the Azerbaijan Republic [16] and France [17], as a kind of helpless state, determine the state of pregnancy of a woman who is being criminally assaulted. The author adds that the state of pregnancy of a woman, especially at a later date, seems to restrict the physical capabilities of a woman who is being criminally assaulted, and often reduces them to zero, and because of this, a woman cannot independently take measures to eliminate the danger from the criminal, which he or she can take advantage of under certain conditions. Thus, the scientist emphasises that the state of pregnancy refers to a physiological helpless state [8].

As for the state of dependence as a determinant of the helpless state in a broad understanding, O.V. Stirlov emphasises that the Criminal Codes of the Republic of Azerbaijan [16], the Republic of Kazakhstan [18], the Republic of Tajikistan [19], in particular, in the system of terms and concepts, to some extent determining the helpless state of the victim, included the concept of dependence (official or other) of the victim on the person who encroaches on them. The researcher notes that under certain circumstances, official or other dependence can create a state of helplessness for the victim. This is possible when the perpetrator, using the dependence of a particular person on him or her, puts them forcibly in a position where the addict loses the ability to independently take measures to eliminate the danger that threatens them, first of all, from

1. Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

the person on whom they depend. Among the persons who are dependent on the perpetrator, the author refers to those victims whose will is suppressed by dependence on the perpetrator (hence it is also called reactive helplessness) [8].

Notably, the helpless state caused by the dependence of a person on the perpetrator is not in the forensic, but in the administrative and legal plane, because it has a subordinal component of the official relations of the manager with the subordinate (dependent). However, the dependence of a person as a possible cause of a helpless state is not always described by an official (subordinated) component. Thus, in particular, Paragraph 6 of the Resolution of the plenum of the Supreme Court of Ukraine No. 7 “On Judicial Practice in Cases of Inheritance”¹, interprets a helpless state as the condition of a person due to old age, serious illness or injury, when he or she cannot independently provide the conditions of his or her life, requires outside oversight, assistance, and care².

Considering this fact, the helpless state of a person due to the dependence of a person can find its external expression in the civil law plane and be associated with old age, serious illness, or injury. It should be separately noted that in the civil law plane, in contrast to the process of investigating relevant crimes, for a helpless state, the fundamental component is described by the inability of a person to provide living conditions, the need for outside oversight, assistance, and care. Thus, summarising the above, according to the authors, it is necessary to offer an original definition of the helpless state of a person, as a result of one or more physical, mental, physiological features of the state of a person, as a result of which their will is suppressed by dependence on the person who encroaches on them, or they are incapable of realising the nature of the actions performed with them, cannot resist them, cannot independently provide the conditions of their life, require outside oversight, assistance, and care, which can lead or leads to the inability to freely choose the behaviour regarding the exercise of their rights, as a result of which there is a threat of their violation and the need for security provided by officials of the relevant state authorities.

In the process of carrying out activities aimed at preventing crimes, it is necessary to take into account the states that determine the helpless state of a person. In the authors’ opinion, they should be classified according to the following criteria:

1) those that inevitably lead to a helpless state of the person, for example, the person being in an unconscious state or in a dream;

2) those that can lead to the onset of a helpless state of the person (significantly increase the probability of a helpless state of the person), for example, old age, adolescence.

Among the features of the helpless state of a person that must be taken into account in the process of investigating corresponding crimes, the following should be distinguished, in particular:

1. Conditioned by objective and subjective factors.
2. Based on sufficient indicators of physical, mental, and physiological characteristics of the individual.
3. The fact that a person becomes helpless does not always imply a threat to their life and health or the possibility of violating other civil rights.
4. The being of a person in a helpless state significantly increases the probability of its transformation into a life-threatening state, as a result of which there is a threat of violation not only of the rights of such a person to life and health, but also of other rights related to their social status.
5. Finds its external expression in the planes of administrative, criminal, and civil law.
6. Activates the activities of officials of state authorities to ensure the rights of citizens being in such a state.

CONCLUSIONS

Thus, the authors define a helpless state as a state of a person caused by one or more physical, mental, or physiological characteristics, as a result of which their will is suppressed by dependence on the person who encroaches on them, or they are incapable of realising the nature of the actions performed with them, cannot resist such actions, or cannot independently secure the conditions of their life. In the process of carrying out activities aimed at preventing crimes, it is necessary to take into account the states that determine the helpless state. The main determining consequence of a person’s being in a helpless state, including those associated with the above-mentioned determinants, is the inability of the person to understand the nature of the actions performed with them or the inability to resist such actions. In addition, the helpless state of a person conditioned by the dependence of a person can find its external expression in the civil law plane and be associated with old age, serious illness, or injury.

Considering the above, the key feature of the meaning of the helpless state in the process of solving and investigating crimes related to the use of such a state of the injured person is that it makes it possible to realise the role of such a state as a catalyst for the commission of relevant crimes stipulated by the current criminal legislation. As a result, a mechanism for preventing and countering such crimes should be developed in the field of forensic science, as well as the introduction of effective and complete collection of evidence in the event of such crimes, including tactics for their investigation by relevant officials of pre-trial investigation bodies.

1. Resolution of the Plenum of the Supreme Court of Ukraine No. 7 “On Judicial Practice in Inheritance Cases”. (2008, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/v0007700-08#>.

2. *Ibidem*, 2008.

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