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THE MAIN ADMINISTRATIVE AND COERCIVE MEASURES IN COMBATING DRUG TRAFFICKING IN UKRAINE: PRIORITY RESOURCE IN CONTEMPORARY PROCESSES OF LAW REFORM IN UKRAINE

Summary. The article discusses the main administrative and enforcement measures in the fight against drug trafficking in Ukraine as a priority source in the modern processes of law reform in Ukraine.

Key words: administrative and enforcement measures, drug trafficking, reform of the legislation.

At the official level, namely in the Strategy of state policy on drugs for the period until 2020, approved by the Cabinet of Ministers of Ukraine 28 August, 2013 № 735-R (hereinafter – the Strategy), it is recognized that the spread of drug addiction and drug crime in Ukraine over the last ten years has become one of the most acute social problems, not solving of which leads to the infliction of harm to human health, the negative impact on the social sphere and is also a threat to the national security of the state [1].

Unfortunately, this situation is confirmed by the extremely negative statistical information. Thus, in particular, general situation in Ukraine is characterized by overall high level of drug use by persons not for medical purpose, to be exact we have – 33 persons 10 thousand population in the state (in comparison with 21 person in 2003), and according to sociological research, 35% of first year students of vocational schools and 25% of university students have experience of drug use [1]. Thus, the scope of drug trafficking and the constant increase of crimes in this area has all hallmarks of a complex problem, the solution of which has strategic importance for the state. Today, state coercion to persons, who break relations in this sphere, is carried out in three stages: the first – by means of administrative and civil law, which confine the possibility of committing offences and crimes in the sphere of turnover of narcotic drugs and psychotropic substances; the second – by means of administrative and criminal procedure law (by the operational-search activity), which stop committed drug crimes, and only in the third stage – by means of criminal law, which determines criminal liability for committing them [2, p. 6]. However, unfortunately, we should state the fact of rather low efficiency level of such impact.

This situation, in fact, has actualized investigations and scientific search on relevant problems, which are realized by the representatives of the science of administrative law, criminal law and criminology in recent years. In particular, theoretical and practical problems of counteraction, prevention, combating with illicit trafficking of narcotic drugs and psychotropic substances, in different years were investigated by many scientists-lawyers, such as: D. Adylov, A. Habiani, E. Hasanov, E. Gerasimenko, V. Glushkov, S. Didkivska, M. Ikramova, C. Karpovich, O. Kovalkin, V. Kolpakov, K. Kurmanov, M. Lehetskyy, V. Malinin, A. Mayorov, E. Martynchyk, D. Metreveli, N. Miroshnichenko, A. Muzyka, A. Naden, I. Nykyforchyn, M. Prokhorova, S. Roganov, L. Soroka, V. Smitiyenko, Y. Tkachevskyy, V. Tymoshenko, E. Fesenko, D. Shtan'ko, M. Hruppa and others. However, taking into consideration the negative progressive statistics, the raised problem requires further study and research. Besides that, a number of issues in the application of administrative coercive measures in the sphere of drug trafficking still needs thorough investigation.

L. Soroka rightly indicates, that the current Ukrainian antidrug legislation is to a certain extent oriented on fixation of the need for action only in the field of tertiary prevention, namely, focusing on the fight against criminal organizations or involuntary treatment of persons with drug problems, this approach, as is by the scientist, convincingly emphasizes contradicts to the documents of the UN Commission on narcotic drugs. In addition, the changes by the criminal law related to the strengthening of the fight against the illicit trafficking of narcotic drugs and psychotropic substances do not result in of illegal actions in this sphere [3, p. 5].

Therefore, it appears that an inefficient use of the potential of administrative and coercive measures as a preventive nature, as well as administrative penalties should be considere one of the causes of low efficiency of state coercion in this sphere. In our view, taking into account the recent trends of the humanization of law, the decriminalization of certain criminal acts, in addition to punitive and coercive measures, the state, represented by the appropriate authorities, should focus its efforts on the prevention of such phenomena as drug addiction and illegal turnover of narcotic drugs.

Moreover, the above – mentioned Strategy, emphasizes that one of the preconditions for a substantial increase in the number of crimes and offenses related to drug trafficking is a low level of effectiveness and lack of scientific validity of preventive, socio-medical, law enforcement measures for counteraction to drug addiction and drug crime. That is why the strategic paradigm of state drug policy comes as the need for a comprehensive transition from the punitive, criminal law oriented anti-drug measures to the therapeutic and preventive ones as the most effective in fighting against drugs addiction [1].

At the same time the specifics of prevention in this area should cover not only drug trafficking and be concerned with offenders or potential offenders, which, for example, may be manifested in such the most common measures of administrative coercive measures as: the demand of cessation of separate actions; checking of documents; inspection of things and personal inspection; the

realization of administrative supervision of the persons on whom it is installed, as well as control over persons, sentenced to criminal punishment other than deprivation of liberty; registration and official warning of persons; medical examination of the condition of persons etc. It is seen that the prevention must lies in the promotion of healthy lifestyle, creating steady rejection of the consumption of any narcotic drugs and psychotropic substances by people, profound work with potential drug users (persons who, due to biological, psychological or social reasons, are in circumstances which make them use alcoholic beverages or drugs), the elimination of recurrence of drug dependence etc. (so-called universal, selective and indicative prevention).

First of all, these forms of prevention should be applied to minors and young persons, among whom, according to official data, there is an increasing number of drugs users ant those, who commit crimes and administrative offenses in this area. Therefore, prophylactic measures of drug use by children and youth are the priority of social policy, prevention of negative manifestations in the behavior of juveniles and should aimed at the prevention of the abuse of alcohol, tobacco and other substances, including the combined use of drugs in both legal and illicit trafficking [1]. In this context, there is an absolutely fair thesis of M. Lehetskyy, which states that the analysis of practice in the fight against juvenile delinquency in this area suggests a lack of purposeful work of the authorized bodies and officials to prevent this category of offenses. According to the scientist, this situation is largely explained by a weak theoretical development of problems of administrative responsibility of minors for offences in the sphere of illegal turnover of drugs, psychotropic substances and precursors, the lack of scientifically based recommendations for the proper organization of prevention and mechanism for enforcement of antidrug legislation [4, p. 3–4].

According to the Strategy, drug prevention in Ukraine today is performed by:

– implementing preventative strategies for forming life skills, which are proven by the best international and domestic practice, developing new and improving existing programs and methods of solving the problems of drugs and alcohol according to the requirements of MES to scientific, methodical and educational publications;

– ensuring state support for the development extracurricular education;

– development and introduction of mechanisms for coordination of the activity of state institutions and public organizations in the sphere of prevention of using psychoactive substance for non-medical purposes;

– implementation of strategies for reducing the level of demand for illicit drugs among young people, formation of life skills, abilities to cope with the risks and threats related to drugs;

– preparing and implementing of a set of preventive measures aimed at improving the psychological and pedagogical parents' competence etc.;

– providing educational institutions at the expense of budgetary funds with a sufficient number of informational and instructional materials for preventive work with pupils, parents and teaching staff;

– providing development of infrastructure for comprehensive social and educational, medical and psychological assistance to children and their parents;

– implementation of modern methods of preventive work to the training programs for pedagogical staff and general practitioners which will help overcome the negative effects among children, pupils and students;

– establishment and implementation of methods for early detection of children who are at risk because of their exposure and other factors, which could lead to early drug use (children whose parents are in the labor emigration abroad, children from families with problems of addiction; children who received psychological trauma as a result of abuse or sexual violence, homeless children);

– profound and systematic monitoring and evaluation of the efficiency of drug prevention and introduction of appropriate adjustments in its organization and content based on the data available [1].

It should be noted, that these measures, unfortunately, are somewhat abstract and more similar to the goals and prospects of further government influence on these negative factors. It is fair to say, that despite the existinse system of preventive measures, it is not effective enough. In our opinion, it can be explained by the insufficient level of their financial and logistical support. In the short term, taking into consideration the poor state of the economy, a variant of the quickest solutions to this problem, of course, is the attraction of funds of individuals – citizens, natural individual-entrepreneurs, public associations, private companies, international non-governmental organizations. Various kinds of charity events, such as concerts, sports events, initiated by the state, may be the forms such cooperation.

Another component of administrative coercive impact on drug trafficking in Ukraine is administrative penalties, which according to art. 23 of the Code of Ukraine on Administrative Offences (hereinafter – the CUAO), is the measure of liability that applies to individuals who commit administrative violations [5]. Within the limits of CUAO, in article 44 there is a composition of offence "Illegal manufacturing, purchase, storage, transport, transfer of narcotic drugs or psychotropic substances without intent to sell in small amounts".

According to the Unified state register of court decisions for the period from 01.01.2009 to 01.01.2014 under art. 44 of CUAO 3 717 are rendered Regulations. The analysis of judicial practice on bringing to administrative responsibility according to this article, including accumulated in the Resolution of the Supreme Court of Ukraine "On judicial practice in cases of crimes related to narcotic drugs, psychotropic substances, their analogues or precursors" of 26.04.2002 p. № 4 [6] suggests that the offense is confirmed by the protocol on administrative offense; protocol of inspection of the scene, experts opinion, resolution to close criminal proceedings under art. 309 of the Criminal Code of Ukraine.

The direct object of this offence is public relations in the sphere of turnover of narcotic drugs and psychotropic substances and generic object is the population health. Such relations are governed by the Law of Ukraine "On narcotic drugs, psychotropic substances and precursors" on 15.02.1995 [7], the Law of Ukraine "On measures against illicit trafficking of narcotic drugs, psychotropic substances and precursors and abuse of its" on 15.02.1995 [8] and other relevant legal acts. The objective side of the offense involves the illegal production; illegal acquisition; illegal possession, illegal transportation, transfer of narcotic drugs or psychotropic substances without intent to sell in small amount. These actions entail administrative liability in the case when they are carried out illegally, in violation of the requirements established by law. An important conditions of qualification of mentioned actions is to establish the absence of intent to sell narcotics in the implementation of these actions, and the amount of narcotic drugs and psychotropic substances, which should be small. The subject of the offense is a sane person who has reached 16 years. The subjective aspect lies in the direct intent.

Moving to the penalties for this offense, it should be noted, that the sanction of this article is an alternative, that provides an imposition of a fine ranging from twenty-five to fifty non-taxable

minimum income of citizens or community service for a term of twenty to sixty hours or administrative arrest up to fifteen days.

According to practitioners, including law enforcement officers and judges, individuals who commit such acts are often drug addicts, minors, and sometimes infants, with average age from 12 to 14 years. So, in practice, quite often there are cases when the person who committed the act under art. 44 of CUAO, avoids liability on the grounds of insanity or insufficient age for administrative responsibility and continues his illegal behavior. Moreover, law enforcement officers recognized, that they don't even make up protocols on administrative offences in respect of those individuals who systematically carried out, for example, illegal production, acquisition or storage of narcotic drugs or psychotropic substances, if such people are drug addicts, applying to them measures of administrative suspension (administrative detention, personal inspection and inspection of things, seizure of narcotic or psychotropic substances, etc.), without resorting to preventive conversations and other actions.

In other words, the question of the effectiveness and adequacy of administrative penalties (fines, community service, administrative detention) for illegal manufacturing, purchase, storage, transport, transfer of narcotic drugs or psychotropic substances without intent to sell in small amount arises. In our opinion, the solution to this problems lies in the general modification of penalties for administrative offences and searching for alternatives in the application of measures to drug addicts and minors under the age of administrative responsibility. Firstly, a compulsory treatment along with the penalties it should be provided (in particular, by analogy with that, enshrined within the Criminal code of Ukraine) to the persons who at the time of the offence or after it being in a state of chronic mental illness, temporary disorder of mental activities, dementia or other painful conditions. In particular, in the case of committing the offense provided in art. 44 of CUAO by a drug addict, which is confirmed by the results of the medical examination, it would be logical to apply the offender measures of compulsory treatment of drug addiction, alcoholism, etc., followed by resocialization of the individual. At least, compulsory treatment will help the violator to get rid of the negative influence of drug addiction, give a chance to "return to society" and to put an end to systematic violations of the relevant norms, which sometimes lead to the committing of crimes or HIV/AIDS diseases or even fatalities. It is seen, that this approach can actually provide at least for this kind of administrative offences the adequacy of the applied sanctions and measures and, most importantly, makes possible to achieve the purpose of an administrative penalty which is the education of persons who have committed administrative offence, in the spirit of observance to laws of Ukraine, respect for the rules of cohabitation, and prevention of committing further offences by the offender and other persons.

Of course, in practice there will be many questions about the mechanism of coercive measures, implementation sources of its financing etc. However, at this moment it is important to draw public attention to the search for, alternative instruments to influence drug addicts who systematically commit administrative violations praided in art. 44 of CUAO, and attract a great circle of scholars and practitioners to the discussion. Today, it is important at least to offer a possible model of sanctions to this kind of subjects of administrative liability, which may be the topic of discussion and constructive criticism, and in perspective, may be the basis of the system of administrative penalties for the future codified administrative-tort act. There is a similar situation related to the problem of measures applicable to minors, such as the improvement of the system, increasing their efficiency etc. In this context it should be noted that any of currently known drafts of codes concerning administrative offences in this area unfortunately does not contain such innovations [9; 10].

It should be noted that the problem raised on in this article might be solved by the introduction of the institute of criminal offense, since those administrative offenses which are tried in court (including the ones provided in art. 44 of CUAO) will come under the "jurisdiction" of criminal offenses. As its know, the only legal act, which establishes the mechanism for the implementation of the institute of criminal offenses, is the Concept of reforming the criminal justice of Ukraine, approved by the Decree of the President of Ukraine on 08.04.2008 № 311/2008 (hereinafter – the Concept). According to its statements the category of criminal offenses should include: a) the separate acts are minor offenses that under the current Criminal Code of Ukraine and which will be recognized by the legislator as not having a significant degree of public danger according to the policy of humanization of criminal law; b) acts that have judicial jurisdiction and are not managerial (administrative) in its nature provided by CUAO [11]. Supporters of the inclusion of administrative offences in the category of criminal offenses note that this will result in the "criminalization" only in form or name, but not in substance, as the conviction in cases of criminal offences will not affect the realization of individual rights in the future (on for public service, etc.) because of the absence conviction; unfinished criminal offense will not lead to criminal liability; instead of a short term of imprisonment (administrative arrest) offense preventive measure of detention will not be applied; will be applied to a perpetrator of criminal [12; 13].

O. Gladun notes on this occasion that the situation does not deny the fact that a significant portion of individuals who previously would have been considered to be subjects to administrative penalty, will have the status of prosecuted or released from criminal liability. The fact that they will not be exposed to such stringent restrictions and deprivation compared to those people who have committed crimes, only shows compliance of measures of legal reaction to the degree of public danger (harm) of the criminal offense. Even the fact of conviction itself is enough to determine the fate of such person for years. The existence of the institute of conviction without punishment in criminal law suggests that the state recognizes sufficient condemnation expressed in the judgment for proper educational and preventive effects on individual convicts. In addition, information about the individuals who has committed a criminal offense will be displayed in the criminal justice statistics (special records) and this information will accompany them throughout their lives [13]. However now it is too early to talk about the introduction of institute of criminal offenses in the legislation of Ukraine.

So, in conclusion, it should be emphasized that the problem of illicit trafficking of narcotic and psychotropic substances, the constant growth of drug-dependent persons will not fade away until its solution becomes a real (not paper) strategic task of the state, the realization of which will be carried out not only by means of criminal repressive tools, but also with systemic and systematic application of a combination of preventive and other administrative coercive measures, whose resource is currently practically not realized.

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Коломоєць Т. О., Лютіков П. С. Основні адміністративні та примусові заходи в боротьбі з незаконним обігом наркотиків в Україні: пріоритетні джерела в сучасних процесах реформування законодавства в Україні

Анотація. У статті розглядаються основні адміністративні та примусові заходи в боротьбі з незаконним обігом наркотиків в Україні як пріоритетні джерела в сучасних процесах реформування законодавства в Україні.

Ключові слова: адміністративні та примусові заходи, незаконний обіг наркотиків, реформування законодавства.

Коломоец Т. А., Лютиков П. С. Основные административные и принудительные меры в борьбе с незаконным оборотом наркотиков в Украине: приоритетные источники в современных процессах реформирования законодательства в Украине

Аннотация. В статье рассматриваются основные административные и принудительные меры в борьбе с незаконным оборотом наркотиков в Украине как приоритетные источники в современных процессах реформирования законодательства в Украине.

Ключевые слова: административные и принудительные меры, незаконный оборот наркотиков, реформирование законодательства.