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PROBLEMS OF ADMINISTRATIVE RESPONSIBILITY FOR OFFENSES IN THE FIELD OF ILLEGAL TRAFFIC OF NARCOTICS AND PSYCHOTROPIC SUBSTANCES

Андрій Чаус. ПРОБЛЕМАТИКА АДМІНІСТРАТИВНОЇ ВІДПОВІДАЛЬНОСТІ ЗА ПРАВОПОРУШЕННЯ У СФЕРІ НЕЗАКОННОГО ОБІГУ НАРКОТИЧНИХ ЗАСОБІВ ТА ПСИХОТРОПНИХ РЕЧОВИН. Дослідження питання адміністративної відповідальності за правопорушення у сфері незаконного обігу наркотиків було і залишається одним із найбільш актуальним у дослідженнях вчених-адміністративістів.

Узагальнені сутність і призначення інституту адміністративної відповідальності у сфері обігу наркотичних засобів та психотропних речовин, результати сучасних досліджень в цьому напрямі. Розглянуто проблеми його вдосконалення з урахуванням виникаючих проблем і колізій реалізації змін в адміністративному законодавстві як з позиції теорії адміністративного права, так і з урахуванням правозастосовної практики та пропозицій щодо їх вирішення.

На основі наших досліджень, зокрема, в цей час назріла необхідність: закріплення дієвого механізму здійснення обміну інформацією між органами Національної поліції України і установами охорони здоров'я про осіб, які перебувають на обліку в наркологічних диспансерах неповнолітніх, а також наркозалежних дорослих осіб; встановлення можливості та спрощення механізму проведення медичного огляду осіб, щодо яких є достатні підстави припускати, що вони перебувають у стані алкогольного або наркотичного сп'яніння, без отримання згоди самої особи або його законного представника; посилення адміністративної та кримінальної відповідальності за втягнення у вживання і незаконний оборот наркотиків, одурманюючих та психотропних речовин тощо.

Ключові слова: адміністративна відповідальність, наркотичні засоби, психотропні речовини, їх аналоги і прекурсори.

Relevance of the study. At the forefront of the fight against the problems of drug addiction and drug crime, the measures implemented by the state to combat illegal drug trafficking continue to remain. The main ones are measures of criminal responsibility for crimes and administrative responsibility for administrative offenses in the sphere of circulation of narcotic drugs and psychotropic substances. Administrative responsibility in this area is an important measure to combat the illegal circulation of narcotic drugs and psychotropic substances, because among the total amount of all registered offenses, administrative offenses make up a larger part than criminal manifestations. In this regard, the study of problematic issues of legal regulation of administrative responsibility for offenses in the field of drug trafficking is relevant and timely in order to increase the effectiveness, countermeasures and prevention of offenses in the field of trafficking in narcotic drugs and psychotropic substances.

Recent publications review. Such scientists as K. Afanasyev, O. Volokh, I. Golosnichenko, S. Honcharuk, O. Dzhuzha, N. Zolotaryova, T. Minka, V. Kolpakov, V. Marchak, D. Nikyforchuk, S. Podlinev, S. Sayenko, O. Striltsiv, M. Khruppa and others devoted their works to the problems of administrative responsibility for offenses in the sphere of trafficking in narcotic drugs and psychotropic substances.

The research paper's objective is to highlight the problematic issues of bringing to administrative responsibility for offenses in the field of illegal trafficking of narcotic drugs and psychotropic substances and combating violations in the field of anti-narcotic legislation. Formulate comprehensive conclusions and practical recommendations regarding the improvement of the procedure for prosecution. Also put forward proposals for solving this problem at the legislative level.

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To determine the mechanism of bringing to administrative responsibility for offenses in the field of illegal circulation of narcotic drugs and psychotropic substances and methods of combating violations in the field of anti-narcotic legislation.

Discussion. Let's start the research with the characteristics of the concept of «administrative responsibility».

When elucidating positions on the concept of administrative responsibility, it should be noted that V. Kolpakov has a fairly well-founded position in this aspect, who understands administrative responsibility as the compulsory, in compliance with the established procedure, application by an authorized subject of the measures provided for by the legislation for the commission of an administrative offense influence, which is performed by the offender. It follows from this that real administrative responsibility arises upon the availability of normative, factual and documentary grounds [1, p. 76]. Investigating the specified problem, V. K. Kolpakov identified derivative signs of administrative responsibility:

1. Bringing to administrative responsibility is possible only as a result of committing an administrative misdemeanor.

2. It consists in the application of coercive measures, as a rule, administrative fines. Article 23 of the Code of Administrative Offenses states that an administrative penalty is a measure of responsibility [2].

3. The purpose of administrative responsibility is:

a) upbringing of a person in the spirit of compliance with laws, respect for the rules of cohabitation;

b) preventing the commission of new misdemeanors.

4. The right to bring to administrative responsibility is granted to many entities, among which are bodies of executive power, local self-government, courts (Article 213 of the Code of Administrative Offenses). A complete list of them is contained in Chapter III (Articles 218–244) of the Code of Administrative Offenses.

5. The act of bringing to administrative responsibility may be adopted:

a) individually (judge, official of relevant authorities);

b) collegially by voting (executive committees and administrative commissions).

6. The legislation establishes a special procedure for bringing to administrative responsibility (drawing up a protocol, collecting and evaluating evidence, issuing a resolution, etc.).

7. Norms regulating administrative responsibility are contained in acts of different legal nature: a) codes (KupAP, Customs Code of Ukraine); b) laws; c) rules, and rules can be approved by the Cabinet of Ministers of Ukraine, central bodies of executive power, decisions of local councils (art. 5, 182 of the Code of Administrative Offenses) [3, p. 78].

Continuing the analysis of the concept of administrative responsibility, we will recall the scientific positions of other administrative scientists. Thus, S. Honcharuk defines administrative responsibility as a specific form of response of the state in the person of its competent bodies to the commission of administrative misdemeanors, according to which the persons who committed these misdemeanors must answer to the authorized state bodies for their illegal actions and incur administrative penalties for this recovery in accordance with the procedure established by law [4, p. 19]. Considering this, in his studies K. Afanasiev notes that three main points of view regarding the concept of administrative responsibility have been formed in Ukrainian administrative law. According to the first, it is the application of coercive measures to offenders (Yu. Bityak, L. Koval and others); according to the second, it is the definition of property restrictions, as well as personal benefits and interests for committing administrative offenses (E. Dodin and others); according to the third, administrative responsibility is a set of administrative relations that arise in connection with the application of administrative penalties to the subject of the misdemeanor [5, p. 4].

In the theory of administrative law, the prevailing position is that the subject of an administrative offense is narcotic drugs and psychotropic substances. And this is true, since the subject is the things of the material world, in relation to which administrative offenses are committed. It should be noted that the current legislation defines narcotics that are included in the List of substances of natural or synthetic origin, drugs, plants that pose a danger to the health of the population in the event of their abuse.

Psychotropic substances are included in the List of substances of natural or synthetic origin, drugs, natural materials that are capable of causing a state of dependence and exerting a depressing or stimulating effect on the central nervous system or causing disturbances in

perception, or emotions, thinking or behavior and are a health hazard for the population in case of their abuse.

In her research, N. Zolotaryova points out the triple importance of the subject of administrative offenses in the sphere of trafficking in narcotic drugs and psychotropic substances, namely: 1) the subject of social relations protected by regulatory norms in the sphere of trafficking in narcotic drugs and psychotropic substances; 2) the subject of the misdemeanor, such as specific narcotic drugs and psychotropic substances used in illegal acts; 3) the subject of unlawful influence is the thing by means of which the misdemeanor is committed [6, p. 7].

The most problematic in practice is the question of grounds for conducting a superficial check by the police. The prosecutor's office pays special attention to this when studying the materials. Namely, after examining the case materials, cases are returned due to the lack of legal grounds for conducting a superficial check of the person and the subsequent seizure of illegal things and objects from the offender. According to the prosecutor's office, there are insufficient legal grounds to stop a suspicious person on the street, check his documents and check his belongings. But as you know, all the above-mentioned actions are regulated by the Law «On the National Police».

If a person has narcotic drugs and other things, the circulation of which is restricted or prohibited, or the storage, use or transportation of which requires a permit, if it is impossible to establish such rights in any other way, the police can apply such preventive measures as:

– verification of a person's documents, during which the police officer has the right to demand from the person the presentation of identity documents and/or documents confirming the relevant right of the person in such cases (Article 32 of the Law) [7];

– interviewing a person if there is sufficient reason to believe that he or she possesses information necessary for the performance of police powers. At the same time, a police officer may invite a person to the police premises for an interview (Article 33 of the Law) [7];

– to stop persons and/or carry out a surface check by a police officer conducting a visual inspection of a person, running a hand over the surface of a person's clothing (performed by a police officer of the appropriate gender (in urgent cases – by any police officer only using a special device or means), a special device or means (Article 34 of the Law) [7];

– surface inspection of the item or vehicle by visual inspection of the item and/or vehicle or visual inspection of the interior and trunk of the vehicle (has the right to demand to open the trunk lid and/or interior door).

In order to apply preventive measures, the police must have sufficient grounds to believe that a person has with him a thing, the circulation of which is prohibited or restricted, or which poses a threat to the life or health of such a person or other persons. During a cursory inspection of an item or vehicle, a person must independently show the contents of the personal items or vehicle to the police officer.

If any traces of an offense are detected during a cursory inspection, the police officer reports to the operative on duty and ensures their safety (security of the scene) until the arrival of the investigative-operational team, which will carry out an inspection in accordance with the requirements of Art. 237 of the Criminal Procedure Code of Ukraine [8].

As for the grounds and procedure for administrative detention, Article 37 of the Law on Restrictions on the Movement of a Person or a Vehicle or the Actual Possession of a Thing authorizes the police to detain a person on the grounds, in the manner and for the time period specified by the Constitution of Ukraine, the Criminal Procedure Code of Ukraine and the Code of Ukraine on Administrative Offenses, with the immediate notification of the responsible police officer in the police unit by means of technical means of each application of the police measure.

Therefore, regarding persons who violated the rules of circulation of narcotic drugs and psychotropic substances, Art. 263 of the Code of Administrative Offenses of Ukraine allows the use of administrative detention for a period of up to 3 days with written notification to the prosecutor within 24 hours from the moment detention, personal inspection, inspection of things and their removal [2].

When conducting a personal examination, the police officer should pay attention to the condition and behavior of the person, which clearly and clearly indicates whether the person is in a state of drug intoxication or not.

When inspecting things, you should pay attention to flashlight batteries, lighters, cigarette packs, packaging from medicines, photographic films, candies, in food products,

which usually serve as a «mobile shelter» when transporting or transporting narcotics.

If, as a result of the examination, the police officer discovers solid, tablet, powdery, ointment-like, liquid unknown substances; packages with unknown substances; parts of plants (hemp, poppy, etc.) left in pockets and on the surface of clothing; household utensils with traces of narcotics, pharmacy utensils; means for the use of narcotic drugs (syringes, needles, etc.), it is used to remove things that have become tools for committing an offense.

According to the general rules, narcotic drugs, psychotropic substances must be removed in the original packaging (that is, in the packaging in which they were found), placing it in the outer packaging, the description of which is recorded in the administrative procedural documents.

In the protocol on personal inspection, inspection of things, in addition to general information, the condition of the person subjected to personal inspection, identifying signs of substances found, type and quantity) is indicated.

In the protocol of seizure of narcotic drugs and psychotropic substances, it is necessary to indicate, in addition to general data, the clothes of the detainee or things in which the substance was found; physical characteristics of the extracted substance (color, smell, type of origin, volume, etc.); where the recovered substance is packed (envelope, cellophane bag, etc.); whether the extracted substance is sealed; are there any comments during withdrawal.

A person who is in a state of narcotic intoxication or who has consumed a narcotic drug or psychotropic substance without a doctor's prescription is sent for a medical examination to a specialized health care institution.

The recovered substance is sent to the expert forensic unit for research. The materials of the administrative case are sent to the court for consideration in accordance with Art. 221 of the Code of Administrative Offenses of Ukraine.

There is another procedure for bringing the offender to administrative responsibility. It is provided for by the following algorithm of actions, in case the investigator receives a report with information about the possible illegal possession of narcotic drugs. In the future, the investigator registers a criminal case in the EDPR and applies to the court for a search. If the request is granted and a decision is obtained, the authorized persons conduct a search, seize drugs, prepare all the necessary procedural documents and send the seized items for examination in accordance with the Code of Criminal Procedure of Ukraine [8].

Since, in accordance with the Instruction on the appointment and conduct of forensic examinations and expert studies, clause 24.1.5., in order to establish belonging to objects containing narcotic substances, psychotropic substances, their analogues and precursors, research is carried out, which is the competence of biological examination.

The main tasks common to all subtypes of material and substance examinations are detection of microparticles or microtraces of certain materials and substances (paint particles, traces of fuel and lubricants, traces of metallization, microfibers, particles of narcotic drugs) etc.).

Since during the examination, it is necessary to define an approximate list of issues to be resolved: Are there traces of narcotic drugs, psychotropic substances, their analogues or precursors on the carrier object (indicate which one exactly)? If there are, which ones exactly? Is this drug a narcotic drug, a psychotropic substance, their analogue or precursor and which (which) exactly, etc. [9]?

After the examination, according to the expert's opinion, the number of narcotics is determined, which further determines whether the illegal substance is sufficient to bring criminal responsibility or not. In the case when the provided narcotic substances are not enough, the investigator of the investigation department closes the criminal proceedings by his decision based on the results of the expert's opinion on insignificance and sends the materials to the prevention workers in order to bring the person involved to administrative responsibility.

Conclusions. The article considered the concept of administrative responsibility, described the procedure for seizing narcotic drugs and psychotropic substances and the procedure for bringing the offender to justice.

On the basis of our research, in particular, there is now necessary to:

- establish an effective mechanism for exchanging information between the National Police of Ukraine and health care institutions about persons who are registered in drug dispensaries for minors, as well as drug-addicted adults;
- establish the possibility and simplification of the mechanism of conducting a medical examination of persons with regard to whom there are sufficient grounds to assume that they are in a state of alcohol or drug intoxication, without obtaining the consent of the person

himself or his legal representative;

– strengthen the administrative and criminal liability for involvement in the use and illegal circulation of drugs, narcotics and psychotropic substances;

– establish a mandatory period of rehabilitation in specialized centers for persons suffering from drug addiction, taking into account the person, the period of use of narcotic substances and the circumstances that contributed to their use;

– improve the mechanism for identifying users of narcotic drugs and psychotropic substances in prisons, assessing their health and organizing drug addiction treatment;

– prepare and submit to the Cabinet of Ministers of Ukraine proposals for the formation of an interdepartmental coordination council on combating drug addiction and a draft regulation on it, in order to coordinate the activities of the central executive authorities and other state bodies in the field of trafficking in narcotic drugs, psychotropic substances and precursors, to combat their illegal trafficking;

– ensure preventive and educational activities for children, young people and their parents on combating drug addiction, promoting a healthy lifestyle;

– prepare and conduct, using the mass media, information measures to overcome stigmatization and discrimination of drug addicts, HIV-infected persons and representatives of groups at increased risk of HIV infection;

– amend the normative legal acts on determining the amount of narcotic drugs, psychotropic substances and precursors in illegal circulation.

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ABSTRACT

The study of the issue of administrative responsibility for offenses in the field of illegal drug trafficking was and remains one of the most relevant in the research of administrative scientists.

The essence and purpose of the institution of administrative responsibility in the sphere of circulation of narcotic drugs and psychotropic substances, the results of modern research in this direction are summarized. The problems of its improvement are considered, taking into account the emerging problems and conflicts of the implementation of changes in administrative legislation both from the standpoint of the theory of administrative law, and taking into account law enforcement practice and proposals for their solution.

Keywords: *administrative responsibility, narcotic drugs, psychotropic substances, their analogues and precursors.*

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КРИМІНОЛОГІЧНА ХАРАКТЕРИСТИКА ЗАГАЛЬНОСОЦІАЛЬНИХ ЗАХОДІВ ЗАПОБІГАННЯ ЗЛОВЖИВАННЮ ПОВНОВАЖЕННЯМИ ОСОБАМИ, ЯКІ НАДАЮТЬ ПУБЛІЧНІ ПОСЛУГИ

У статті здійснено спробу надати кримінологічну характеристику та класифікувати кримінологічні заходи запобігання на загальносоціальному рівні одному з високолатентних кримінальних правопорушень, передбаченого статтею 365² Кримінального кодексу України – зловживанню повноваженнями особами, які надають публічні послуги.

Сутність кримінологічної характеристики таких заходів розкривається через системні заходи загальносоціального впливу на встановлений порядок суспільних відносин в тій чи іншій сфері надання публічних послуг суб'єктами регулювання та контролю, правоохоронними органами та громадськістю з метою забезпечення від зловживань з боку спеціальних суб'єктів, коло яких визначено диспозицією досліджуваної статті закону про кримінальну відповідальність.

Ключові слова: *кримінологічна характеристика, загальносоціальні заходи запобігання, зловживання повноваженнями, публічні послуги, особи, які надають публічні послуги.*

Постановка проблеми. Запобіжна діяльність є фундаментальною у системі кримінологічних заходів протидії актам соціально шкідливої поведінки. З огляду на це питання запобігання злочинності було завжди в центрі наукового дискурсу.

Незважаючи на це, на сучасному етапі комплексне кримінологічне дослідження системи заходів загальносоціального запобігання такого високолатентного кримінального правопорушення, як зловживання повноваженнями особами, які надають публічні послуги, передбаченого ст. 365² Кримінального кодексу (далі – КК) України, у вітчизняній кримінологічній доктрині відсутнє, що неодмінно провокує високий рівень латентності цього діяння, неможливість ефективної кримінологічної протидії та належного розслідування таких правопорушень правоохоронними органами, викликає

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