



Criminal and Administrative Legal Characteristics of Offenses in The Field of Countering Drug Trafficking: Insights from Ukraine

Olena Volobuieva¹; Yevhen Leheza²; Vita Pervii³; Yevhenii Plokhuta⁴; Roman Pichko⁵

¹ Donetsk State University of Internal Affairs

^{2,5} University of Customs and Finance

³ Dnipropetrovsk State University of Internal Affairs

⁴ Western Interregional Office of the Ministry of Justice

Corresponding author's email: yevhenleheza@gmail.com

Article Information

Submitted : September 29, 2023

Reviewed : October 10, 2023

Revised : November 18, 2023

Accepted : December 2, 2023

Keywords: Countermeasures; Liability; Narcotic Drugs and Psychotropic Substances

Doi:10.20961/yustisia.v12i3.79443

Abstract

Drug addiction in Ukraine has been showing signs of an epidemic and represents one of the potential threats to Ukraine's national security. This article highlights the regulation of the ratio of criminal and administrative liability as to countering offences in the sphere of trafficking of narcotic drugs, psychotropic substances, their analogues and precursors. The research method is presented as comparative-legal (legislation of Ukraine, Holland, Germany, Italy, Spain, Switzerland, Netherlands, Austria, Portugal and Finland) and systematic analysis. The sanctions for drug crimes provided for in the legislation countries are divided into three groups, namely hard policy group, strict control group, and liberal group. Summing up the analysis of the legal regulation of the fight against drug crime in different countries, it should be noted that international legal acts govern most countries' legislation. At the same time, the legislation and executive system of punishments of various states in combating drug crimes are specific, due not so much to the country's national characteristics but to the concretely formed criminogenic situation in this area.

I. Introduction

In the last century, the spread and abuse of narcotic drugs and their illegal trafficking appeared in the world as a global threat to humanity. According to UK law enforcement agencies, more than 75% of self-interested, violent, and corrupt crimes are committed on the basis of drug trafficking and illegal drug sales. In the US, the average drug addict commits more than 200 crimes annually. Unfortunately, since Ukraine being a part of

globalization processes, the scale of illegal drug turnover (trafficking) and drug addiction is critical. In scientific circles and public consciousness, there is a widespread position that the key means of restraining the scale of the drug epidemic include bringing guilty persons to criminal liability for illegal actions with drugs under the relevant articles of Chapter XIII of the Special Part of the Criminal Code of Ukraine (hereinafter referred to as the Criminal Code of Ukraine) and Articles 44, 106-1, 106-2 of the Code of Ukraine on Administrative Offenses (hereinafter referred to as the CUAO). In addition, a number of recent editions of the draft new Criminal Code of Ukraine (starting with the control text dated July 25, 2021) recognize the illegal production, manufacture, acquisition, storage of narcotic drugs and psychotropic substances in small quantities without any purpose sale as a criminal offense (in the project edition of 14 and 24 November 2021 - without the purpose of diversion) ([Criminal Code of Ukraine \(draft\): control text, 2021](#)). Such actions are currently recognized as an administrative offense under Article 44 CUAO (Criminal Code of Ukraine (draft): control text as of 14.11.2021, 2021). We can be sure that the criminalization of these acts is due to the desire to curb the already critical scale of the spread of drug crimes and drug addiction in Ukraine.

Liberal processes taking place in a number of countries in Europe and the world in the sphere of regulating turnover of certain narcotic drugs, the widespread prevalence of drug addiction among the population of Ukraine, and therefore the associated illegal manufacture, production, acquisition, storage, transportation, forwarding of narcotic drugs and psychotropic substances (Article 44 of the Criminal Code of Ukraine on Administrative Offenses, Articles 307, 309 of the Criminal Code of Ukraine) determine the relevance of the research on the limits of the criminal legal response to the illegal circulation of narcotic drugs or psychotropic substances in small quantities without the purpose of sale (transfer).

The theoretical principles of criminalization of crimes (criminal offenses) were developed in the works by O. O. Dudorov, M. I. Khavronyuk, P. L. Fris, D. O. Balabanova, G. A. Zlobin, V. M. Kudryavtsev, O. I. Korobeyev, V. O. Navrotskyi, O. M. Hotin, M. I. Melnyk, A. A. Mitrofanov and other scientists. It should be noted that today, in the study of criminalization, the questions of the grounds, principles, conditions and reasons for criminalization, their number and interrelationships are of a debatable nature, but the relevant discussions "...are actually not related to the essence of criminalization rules, but to their systematization (grouping) and the general name of such requirements" ([Dudorov, 2017](#)). So, for example, what O. O. Dudorov and G. A. Zlobin call social and socio-psychological principles of criminalization ([Kudryavtsev, 1982](#)), and what D. O. Balabanova calls grounds for criminalization ([Balabanova, 2007](#)). Without discussing these issues theoretically, we will discuss the framework of the approach in the study of criminalization, which determines the basis for the criminalization of an act according to the level and nature of its social danger ([Dudorov, 2014](#)), and divides its principles. criminalization into two main groups: 1) social and socio-psychological and 2) system-legal and criminal law) ([Kudryavtsev et al., 1982](#)).

According to scientists, social and socio-psychological principles include the principles of social harm, the principles of relative prevalence of an act, the proportionality of positive and negative consequences of criminalization, and criminal-political adequacy ([Dudorov, 2017](#)). In connection with the specifics of this research, we will focus on the basis of criminalization and the social and socio-psychological principles of criminalization of an act. However, systemic legal principles are aimed at ensuring that new things introduced do not reduce the quality of criminal legislation, and especially its systemic characteristics.

Within the framework of our chosen approach, the principle of social danger corresponds to the grounds of criminalization of actions: the degree and nature of the public danger of an act planned to be criminalized must cause significant (and not any other) damage to the objects of criminal law protection ([Dudorov, 2014](#)). The primary role in determining the public danger of illegal production, manufacture, acquisition and storage of narcotic drugs and *psychotropic substances* belongs to the characteristics of the offender who commits the said actions. After all, as rightly noted by P. L. Fris, social danger is a characteristic not only of a certain act, but also of the person this act is committed by ([Tatsii, 2013](#)).

Order of the Ministry of Health of Ukraine, No. 188 “On Approval of the Table of Small, Large and Especially Large Quantities of Illegally Traded Narcotics, Psychotropics and Precursors” dated 01 August 2000 stipulates that small quantities include narcotic drugs and psychotropic substances that do not exceed 10 daily doses determined according to the Narcotics Control Agency UN International. In view of this, as well as taking into account the absence of the purpose of sale (transfer), as intended in Article 44 CUAO and the corresponding norms of the draft Criminal Code of Ukraine, it can be confidently stated that the subject of the offense is represented by consumers of narcotic drugs or psychotropic substances and/or small traders in the event that there is no procedural evidence regarding the purpose of sale (transfer) of narcotic drugs or psychotropic substances confiscated from them (On approval of the table of small, large and especially large sizes of narcotics, psychotropic substances and precursors circulating illegally, 2000). In the structure of persons involved in the illegal turnover of drugs and psychotropic substances, they are characterized by the least social danger, especially in comparison with the participants and leaders of organized forms of drug crimes (Strategy of the state policy on drugs for the period up to 2030, 2023).

Apart from that, it should not be ignored that some of the consumers and/or small traders in question are drug addicts who are psychologically and physically dependent on certain drugs or psychotropic substances ([Stephanie Apsari Putri, 2022](#)). Therefore, it is pointless to hope that it will be stopped by strengthening legal responsibility for the purchase, storage or transportation of these means, even in the amount of a certain daily dose. Criminalizing these acts will only add to the psychological pressure on them.

However, will such a measure be appropriate? Will it bring the expected results? Will we not get an excessive criminalization of activities in the sphere of illegal trafficking of narcotic drugs and psychotropic substances?

The methodological basis of the research is a set of methods and techniques of scientific knowledge. The main role in this system belongs to the general scientific dialectical method of cognition, which makes it possible to investigate problems in the unity of their social content and legal form, to carry out a systematic analysis of legal regulation of the ratio of criminal and administrative liability as to countering offenses in the sphere of trafficking of narcotic drugs, psychotropic substances, their analogues and precursors. With the help of the logical-semantic method, the conceptual apparatus was deepened, the general principles of legal regulation of the ratio of criminal and administrative responsibility as to combating offenses in the sphere of trafficking of narcotic drugs, psychotropic substances, their analogues and precursors were determined. Systemic-structural and comparative-legal methods made it possible to investigate the concept and content of the relationship between criminal and administrative responsibility as to combating offenses in the sphere of trafficking in narcotic drugs, psychotropic substances, their analogues and precursors,, as well as the problems of the activities performed by entities ensuring counteraction to illegal turnover (trafficking) of narcotic drugs and psychotropic substances. The historical-legal method was used to study the state and general nature of the ratio of criminal and administrative liability as to countering offenses in the sphere of trafficking in narcotic drugs, psychotropic substances, their analogues and precursors. With the help of the formal-legal method, the content of legal norms (which provide for criminal and administrative liability as to countering offenses in the sphere of trafficking of narcotic drugs, psychotropic substances, their analogues and precursors, was investigated.

II. Findings and Discussion

A. The Ratio of Criminal and Administrative Liability as to Countering Offenses in the Sphere of Trafficking of Narcotic Drugs, Psychotropic Substances, Their Analogues and Precursors in Ukraine

In the structure of offenses in the field of illegal trafficking of narcotic drugs and psychotropic substances (Articles 44, 106-1, 106-2 of the CUAO, Articles 305-320 of the Criminal Code of Ukraine) the social danger of illegal production, manufacture, acquisition and storage of narcotic drugs or psychotropic substances in small quantities without the purpose of sale (transfer) is also characterized by a much smaller degree and nature in comparison with the public danger of illegal sale of narcotic drugs and psychotropic substances, as well as their illegal production, acquisition, storage, transportation and forwarding for the purpose of sale (Article 307 of the Criminal Code of Ukraine) and without the purpose of

sale in the amounts provided for in Article 309 of the Criminal Code of Ukraine ([Leheza et al, 2022](#)).

According to the **principle of the relative prevalence of an act** “...excessive prevalence of an act, even if it constitutes a public danger, is an argument not for, but against its criminalization, although it may seem somewhat unexpected to a layperson” ([Kudryavtsev et al, 1982](#)). Nowadays the scale of illegal drug turnover (trafficking) and drug addiction in our country is critical. According to the Ministry of Internal Affairs, there are officially about 500,000 drug addicts in Ukraine, and more than 170,000 of them use drugs regularly ([Moklyak, 2018](#)). According to the methodology for assessing the latency of non-medical use of drugs, developed by the Ministry of Health in accordance with international recommendations, in the conditions of Ukraine, the number of registered persons using narcotic drugs with non-medical purposes is 5 times as great as the registered number, and in recent years the number of such persons is about 2.5 million people. All these persons are currently the subjects of offenses provided for in Article 44 of the CUAO and / or Article 309 of the Criminal Code of Ukraine. It is unfortunate to realize this, but the given numbers give reason to talk about their excessive prevalence. We have to admit that law enforcement agencies are unable to prosecute such a large number of people for actions related to consumption of narcotic drugs. It can be stated that Article 309 of the Criminal Code of Ukraine is applied selectively and the principle of inevitability of punishment is by no means implemented. Conversion of an administrative offense provided for in Article 44 of the CUAO, into a criminal offense, will only strengthen this trend ([Leheza et al, 2019](#)). An even greater number of acts declared criminally illegal will remain unpunished. Is this state of affairs really capable of keeping a more or less large number of our citizens from using narcotic drugs and psychotropic substances? Will mass impunity for a new criminal offense increase the authority of law enforcement agencies and the state as a whole?

With such questions in mind, we move on to the next principle of criminalization of actions - the principle of proportionality of positive and negative consequences of criminalization of actions. Content of this principle consists in the fact that criminalization of an act will be allowed only when we are sure that the positive social results of the criminal law applied are going to significantly exceed the inevitable negative consequences of criminalization ([Kudryavtsev et al, 1982](#)). In order to predict the possible consequences of criminalization of an administrative offense provided for in Article 44 of the CUAO, we will analyze statistical data on the number of registered acts qualified under Articles 307 and 309 of the Criminal Code of Ukraine, and the number of criminal proceedings directed to the court with an indictment under these articles (Statistical

information on the state of crime and the results of the prosecutor's investigation activities, 2023).

Statistical data (tabel 1) on registered criminal offenses related to illegal circulation (trafficking) of narcotic drugs, psychotropic substances, their analogues and precursors in Ukraine.

Period of time %	The number of registered criminal offenses in Ukraine	The number of registered criminal offenses related to illegal turnover of narcotic drugs, psychotropic substances, their analogues and precursors	The specific weight of criminal offenses related to the illegal turnover of narcotic drugs, psychotropic substances, their analogues and precursors in the structure of crimes,
2015	563534	33961	6.02
2016	529141	30499	5.78
2017	565182	25908	4.58
2018	592604	23029	3.89
2019	523911	29010	5.54
2020	487133	27007	5.54
2021	444130	28774	6.48
2022	360622	27437	7.6

(Tabel 1: registered criminal offenses in Ukraine)

After the entry into force of the new Criminal Procedure Code at the end of 2012, in the following period, namely 2013-2015, the ratio of registered crimes provided for in Articles 307 and 309 of the Criminal Code of Ukraine was almost 1:2, respectively (average of 8152 and 16766 crimes, respectively). In 2016, the number of crimes registered under Article 309 of the Criminal Code of Ukraine exceeded the corresponding figure under Article 307 of the Criminal Code of Ukraine by 7.6 times (17,398 and 2,293 crimes, respectively). It can be explained by the process of active formation of the newly created National Police, and therefore, for the correctness of the analysis, we will not take into account the indicators of 2016. In 2017-2018, the ratio of recorded crimes under Articles 307 and 309 of the Criminal Code of Ukraine was almost 1:4 (an average of 5241 and 19047 crimes, respectively), in 2019 this ratio was 1:3 (6165 and 18483 crimes, respectively), in 2020 it was 1:2 (8150 and 15735 criminal offenses respectively) ([Nesterenko et al, 2021](#)).

In 2013-2015 correlation of criminal proceedings sent to court with an indictment according to Articles 307 and 309 of the Criminal Code of Ukraine also amounted to approximately 1:2 (an average of 5,454 and 13,028 proceedings) ([Korneyev et al, 2018](#)).

Therefore, drug addicts are people who were and remain the main object of criminal prosecution by law enforcement agencies. This state of affairs undoubtedly criminalizes this area, increases the number of convicts, diverts police attention from combating drug traffickers, and at the same time involves the use of large material and human resources. All this proves the need to humanize the law, targeting it to combat truly “painful” drug processes and phenomena.

B. Comparative Legal Analysis of the Legislation on Countering Drug Crimes in Ukraine and Certain European Countries

The illegal trafficking of narcotic drugs and its organized segment - drug business - in the world have a growing tendency and are one of the most dangerous types of organized crime. These areas are characterized by the transnational nature, professionalism, high technical equipment of criminal groups, the presence of their own intelligence and counterintelligence, possession of the newest forms and methods of resistance to law enforcement authorities and judicial authorities. In addition, drug business causes an increase in the number of patients with drug addiction, as well as growth of selfish and violent crimes ([Pohoretskyi, 2007](#)).

Since Ukraine is a party to all the main Conventions, its legislation largely complies with the provisions of these Conventions. Achievements of the national legislator include the fact that Ukraine was the first CIS countries to agree domestic legislation in the sphere of control over the turnover (trafficking) of narcotic drugs, psychotropic substances and precursors with the requirements of the relevant UN conventions, and this was reflected in adoption of the relevant legislation. As Tim Lindsey described, Indonesia, Singapore and Vietnam, have markedly different legal systems and, as a result, divergent criminal laws and practice. These differences are most apparent in criminal procedure and approaches to the death penalty, in both policy and practice (Maskun, 2017).

Thus, Ukraine’s legislation provides for strict control over the turnover (trafficking) of narcotic drugs and psychotropic substances, their analogues and precursors, a ban on carrying out actions with them for the purposes that contradict legal regulations, as well as measures of liability for violation of such regulations.

The Law of Ukraine “On Narcotic Drugs, Psychotropic Substances and Precursors” defines the legal and organizational principles of the state policy regarding the turnover (trafficking) of narcotic drugs, psychotropic substances and precursors in Ukraine; the powers of executive authorities, establish the procedure for the state control, clearly provide for the rights and obligations of

individuals and legal entities in the sphere of turnover (trafficking) of narcotic drugs, psychotropic substances and precursors (On narcotic drugs, psychotropic substances and precursors, 1995).

The next, quite important point in this area is presented as the Law of Ukraine “On Measures to Counter the Illicit Trafficking of Narcotic Drugs, Narcotic Substances, Precursors and Abuse” Taking into account international norms this law defines the system of measures in Ukraine, directed against the illegal turnover (trafficking) of narcotic drugs, psychotropic substances and precursors and their abuse, and it also defines the rights and obligations of legal entities and citizens in connection with the application of this Law.

This Law also defines the organization of countering illegal turnover (trafficking) of narcotic drugs, psychotropic substances and precursors, and namely: The Ministry of Internal Affairs of Ukraine, the Security Service of Ukraine, the General Prosecutor’s Office of Ukraine, the State Customs

Committee of Ukraine, the State Border Guard Service of Ukraine, the central executive authority in the sphere of health care of Ukraine and other executive authorities are responsible for countering illegal turnover (trafficking) of narcotic drugs, psychotropic substances and precursors within the limits of the powers granted to them by law (On measures to counter the illegal circulation of narcotic drugs, psychotropic substances and precursors and their abuse, 1995).

The Criminal Code of Ukraine occupies a leading position in this area. This law (namely Chapter Compared to other European countries, Ukraine has the highest number of crime components (*corpus delicti*) in the field of narcotics, namely sixteen. Regarding other European countries: the largest number of analyzed crime components (*corpus delicti*) is contained in the Bulgarian Criminal Code - eight; the smallest amounts are presented in the Danish and Norwegian Criminal Codes - three *corpus delicti* each ([Horokh, 2010](#)).

The threshold for prosecution in Ukraine is extremely low: the amount of criminal liability involved is much less than the average single dose for a drug addict.

Thus, according to order No. 188 “On Approval of the Table of Narcotics, Psychotropic Substances and Precursors in Small, Large and Especially Large Quantities Trafficked Illegally.”, the Ministry of Health of Ukraine approved the table, and the so-called “threshold” for bringing criminal liability was determined.

Let us emphasize that the threshold in Ukraine is much lower than in most European countries.

Sizes of drugs, which if illicitly possessed cause criminal liability in certain countries:

Type of Drug	Ukraine	Russia	The Federal Republic of Germany	The	Austria	Portugal	Finland
Cocaine	from 0.02 g	0.5 g	1-2 g	0.5 g	15 g	2 g	1.5 g
Marijuana (Cannabis)	from 5 g	6 g	6-30 g	30 g	20 g	25 g	15 g
Amphetamine	from 0.15 g	0.2 g	10 pills.	0.5 g	10 g	1 g	3 g
Opium, opium extract	from 0.5	1 g	--	--	--	--	--
Heroin	from 0.005	0.5 g	1-2 g	0.5 g	3 g	1 g	1 g

Conventional daily dose volumes that are not scientifically substantiated, which are the basis for calculating small, large and especially large quantities of narcotic drugs and psychotropic substances in illicit circulation, are the cause of difficulties and abuse (including corruption) in the classification of crimes related to drug trafficking. As a result, one real dose of a psychoactive substance with such a conditional daily dose calculation turns into several single doses and, as a result, the crime is qualified under the part of the article of the Criminal Code that provides for a more severe punishment ([Zhilyna, 2010](#)).

According to the sanctions for drug crimes provided for in the legislation, countries are divided into three groups:

The first group is “hard policy group”. This group of countries includes Malaysia, Iran, Pakistan, China, etc., where the fight is carried out by the harshest means, up to the death penalty, and the legislation regarding drug dealers is maximally strengthened. For example, within a period of only one year and a half over a thousand people were publicly executed in Iran in accordance with the Law of 1989.

The second group is “strict control group”. The countries of this group (Great Britain, France, Austria, etc.), it is inherent that the state bodies exercise strict control over the turnover of any types of narcotics, there is an active confrontation with the drug mafia, but the most radical measures are not used.

As in other countries, the problem of drug crime in Great Britain is also quite relevant. In 1964, The Drugs (Prevention of Misuse) Act was adopted. According to this Act, enterprises that manufacture and sell narcotic products were obliged to significantly limit import and export of narcotic drugs. The law dated 02 June, 1965 provided for basic provisions on criminal liability for illegal distribution of narcotics with a detailed list of types of drugs that are prohibited to be imported and exported without special permission.

In 1967, in connection with the widespread use of heroin and hallucinogenic substances such as LSD, the Dangerous Drugs Act was adopted. The Criminal Justice Act of 1982 introduced significant changes in the system of criminal punishments for female offenders, mainly in terms of the procedure for imposing and carrying out imprisonment. Since May 1983, the country also began to revise its criminal policy regarding offenses performed by minors. A person who has not reached the age of 17, as a rule, is sentenced to a term of imprisonment of no more than 1 year. Young people can be sent to temporary detention centers if the court finds it possible to impose a prison sentence of less than 4 months. If a criminal act is committed by women under the age of 17, the court, having found them guilty, does not impose a punishment in the form of deprivation of liberty. Women between the ages of 17 and 21 have a minimum detention period of 3 weeks. In addition, the reform of England's criminal policy for minors involves the expansion of all kinds of educational programs (for example, establishing a two-hour weekly minimum for general education and an hour minimum for physical training).

Since 1994, there has been a multi-faceted strategy to counteract drug abuse, which provides for implementation of measures to combat narcotic drugs according to five priority directions. The fight against the demand for drugs is carried out in two directions: Detention of those who are not yet abusing them, and rendering help to those who have already got addicted ([Kopotun, 2015](#)).

France, which being one of the main producers of poppy straw, exercises effective control over production based on introduced systems of licensing and criminal penalties, which limit the extent of leakage and illegal use not only of this narcotic drug, but also of other types of narcotics. In France, not only individuals (natural persons), but also legal entities are held criminally liable.

In addition to the main types of punishments, the court may issue a decision on imposing an additional punishment in the form of confiscation of installations, equipment and all property that served, directly or indirectly, to individuals and legal entities guilty of committing a criminal act related to the illegal drug trading helping them to commit a criminal act; confiscation of all or part of the convicted person's property; deprivation of a license for a period of 5 years or closure of an establishment, if the owner committed criminally punishable illegal drug transactions (or such transactions were committed with his/her complicity).

One of the main features of French legislation consists in the establishment of similar punishment limits for both completed crimes and attempted crimes.

The third group is the "liberal group". This group includes countries where some types of "soft" drugs are partially allowed. Its most famous representatives are Holland, Germany, Italy, Spain and Switzerland. However, after analyzing

the Dutch solution to the outlined issue, it can be found that there is practically no experience in countering drug trafficking in this country. There is a double standard in relation to drugs, which on the one hand allows to export marijuana grown on the territory of the state to the Western Europe, and on the other hand it stimulates the flow of “drug tourists”. Moreover, Holland (primarily Amsterdam) has turned into the “drug pit of Europe”.

In Italy, illegal handling (offer, sale, transfer, etc.) of narcotics in small amounts for consumption by another person, storage of narcotics for consumption by another person, as well as illegal production of narcotic substances (with the selection of qualifying features - “in a large amounts” and “organized illegal production of narcotic substances”) are recognized as criminal offenses ([Zhilyna, 2010](#)).

Also, members of armed mafia groups in this country (criminal groups whose members carry firearms or explosives or hide them in hiding places) are subjected to a higher criminal liability for illegal actions in the sphere of drug trafficking.

Spanish legislation is the most indicative in the area of differentiation of liability for committing illegal actions with different types of drugs. After the introduction of the Dutch model (legal drug use for non-medical purposes) in Spain in 1985, the number of registered drug addicts increased from 200,000 to 1.5 million, and the country turned into a transshipment base for drugs from all over the world. This significantly affected the size of punishments. Currently, Spanish legislation presupposes punishments for acts with “soft drugs” for a term of up to 17 years and 4 months, instead of 6 years, as before; and for hard drugs this period is up to 23 years and 4 months, instead of 12 years, as before ([Tylchyk et al., 2022](#)).

The principle of criminal-political adequacy consists in the fact that the content of each criminal-law novel in one way or another should reflect the general directions of the state criminal policy ([Kudryavtsev et al., 1982](#)). It should be noted that criminalization of the acts provided for in Article 44 of the Criminal Code contradicts the purpose, tasks and principles of the still valid State Drug Policy Strategy for the period until 2020, as well as the project of the State Drug Policy Strategy for the period until 2030 ([Dymko et al., 2017](#)). Both documents recognize the need for reorientation of measures against illegal turnover of narcotic drugs and psychotropic substances from criminal sanctions to administrative correctional, bio psychosocial and preventive measures.

Thus, on the basis of unreasonably low «thresholds» for criminal liability for what is not considered a crime in most civilized countries of the world, thousands of drug addicts in Ukraine receive punishment every year, and taxpayers are forced to pay almost UAH 3,800 for custody of each such person (according

to the Secretariat of the Human Rights Commissioner of the Verkhovna Rada (2016), the state allocates UAH 126 for the daily maintenance of a convicted person³), which is significantly higher than the amount of the average pension of most citizens of retirement age.

So, we can see that the resources of law enforcement agencies in countering crimes are not unlimited. Increase in the number of recorded criminal offenses, as well as criminal proceedings sent to court with an indictment under Article 307 of the Criminal Code of Ukraine is carried out at the expense of a decrease in the number of similar indicators under Article 309 of the Criminal Code of Ukraine ([Leheza et al, 2023](#)). Transforming the illegal production, manufacture, acquisition and storage of narcotic drugs or psychotropic substances into a criminal offense will require law enforcement agencies to increase the number of personnel, organizational and material resources for conducting a pre-trial investigation in the form of an inquiry in comparison with the resources required for administrative proceedings. Costs of the state and society to investigate the facts of acquisition, storage, transportation of, say, cannabis up to 5 grams or opium extract up to 0.5 grams by persons mentally and physically dependent on these substances will increase disproportionately to the possible positive effect in the form of general drug addiction prevention. There is no certainty that the increase in costs for the fight against users and small dealers of narcotic drugs or psychotropic substances will not be carried out at the expense of saving resources for countering more socially dangerous manifestations of drug crime or at the expense of other socially beneficial purposes.

On the basis of the above, it is proposed to leave the illegal production, manufacture, purchase and storage of narcotic drugs or psychotropic substances in small quantities without the purpose of transfer as administrative offenses and not to turn them into criminal offenses. Effectiveness of countering drug addiction and drug crime should be increased by not strengthening repressive measures against users of narcotic drugs and psychotropic substances, but by improving preventive work with them and risk groups, and by weakening factors of drug addiction, and the systemic offensive nature of combating organized criminal groups in the field of drug trafficking.

A comparative research of legislation in the sphere of combating narcotic crimes in different states made it possible to highlight the properties of the legislative solution to the fight against drug addiction and narcotics in European countries; and these properties are related to the national features of the legal system of the state, presence of international legal obligations at the level of interstate relations and they are also dependent on whether the state is to a greater extent an exporter (producer country), importer (consumer country) or a transit country of narcotic drugs.

Summing up the analysis of the legal regulation of the fight against drug crime in different countries, it should be noted that the legislation of the vast majority of countries in the world is governed by the international legal acts. At the same time, the legislation and executive system of punishments of various states in the sphere of combating drug crimes are specific, which is due not so much to the national characteristics of the country, but to the concretely formed criminogenic situation in this area. Given the existing features of the legal systems that regulate responsibility for drug trafficking and drug addiction in different countries, the general trend is a sharp increase in penalties for organized forms of crimes related to illegal turnover (trafficking) of narcotic drugs and psychotropic substances.

III. Conclusion

According to the sanctions for drug crimes provided for in the legislation, countries are divided into three groups: the first group is the “hard policy group” (Malaysia, Iran, Pakistan, China, etc.); The second group is the “strict control group” (Great Britain, France, Austria, etc.); liberal group”, this group includes countries where some types of “soft” drugs are partially allowed. Its most famous representatives are Holland, Germany, Italy, Spain and Switzerland.

Thus, we come to the conclusion that criminalization of illegal production, manufacture, acquisition and storage of narcotic drugs or psychotropic substances in small quantities without the purpose of transfer (sale), unfortunately contradicts the socio-psychological principles of criminalization of acts for the following reasons: 1) These actions are the least socially dangerous in comparison with similar actions provided for in Articles 307-309 of the Criminal Code of Ukraine. 2) A too high spread of drug addiction (which means the illegal production, manufacture, purchase and storage of narcotic drugs or psychotropic substances in small quantities without the purpose of sale (transfer)) is beyond the practical capabilities of criminal justice. 3) There is a risk that criminalization of these acts will lead to the fact that the efforts of law enforcement agencies will be aimed at fighting them at the expense of saving personnel, material, technical, and organizational resources for other socially useful purposes and countering more socially dangerous manifestations of drug crimes. Negative social consequences of criminalization of the administrative offense provided for in Article 44 of the CUAO, will exceed the expected positive result in the form of a decrease in the demand for narcotic drugs and psychotropic substances. 4. Criminalization of illegal production, manufacture, purchase and storage of narcotic drugs or psychotropic substances in small quantities without the purpose of transfer (sale) is contrary to the state policy on narcotic drugs.

References:

- Balabanova, D. O. (2009). General principles of the theory of criminalization. Actual problems state and law. Issue 47. pp.145-148.
- Criminal Code of Ukraine (draft): control text as of 07/25/2021. URL.:<https://newcriminalcode.org.ua/upload/media/2021/08/12/1-kontrolnyj-tekst-proektu-kk-25-07-2021-1.pdf>
- Criminal Code of Ukraine (draft): control text as of 14.11.2021. URL: <https://newcriminalcode.org.ua/upload/media/2021/11/25/kontrolnyjproekt-kk-24-11-2021.pdf>.
- Criminal Code of Ukraine (draft): control text as of November 14, 2021. URL.:<https://newcriminalcode.org.ua/upload/media/2021/11/15/1-kontrolnyj-tekst-proektu-kk-14-11-2021-oznaky.pdf>
- Dudorov, O. O. (2017). Criminal law: theory and practice (selected works). Kyiv: Wait, pp. 51-54.
- Dudorov, O.O., Havronyuk, M.I. (2014). Criminal law: study guide / General. ed. E. Havronyuk Kyiv: Waite. p.944
- Dymko, I., Muradian, A., Manzhula, A., Rudkovskiy, O., Leheza, Ye. (2017). Integrated approach to the development of the effectiveness function of quality control of metal products. Eastern European Journal of Enterprise Technologies. 6/3 (90). P. 26-34. DOI: 10.15587/1729-4061.2017.119500.
- Horokh, P. (2010). Liability for «narcotic» crimes: a comparative legal analysis of the legislation of some European and Asian states. Actual problems of the state and law. 2010, 4, pp.379-385.
- Kopotun, I. M. (2015). Preventing the illegal circulation of narcotics in Ukraine and foreign countries. Scientific works of NU OYUA. 2015, pp. 74-80.
- Korneyev, M., Zolotukhina, L., Hryhorash, T., Leheza Ye., Hryhorash O., (2018). The development of small business as a source of formation of local budget revenues in Ukraine. Investment. Management and Financial Innovations. 15 (1). P. 132-140. DOI:10.21511/imfi.15(1).2018.12
- Kudryavtsev, V.N., Dagel, P.S., Zlobyn, G.A., Kelina, S.G. (1982). The foundations of criminal law prohibition: criminalization and decriminalization Kyiv: Nauka, pp.1982. 304.
- Leheza, Ye. O., Filatov, V., Varava, V., Halunko, V., Kartsyhin, D. (2019). Scientific and practical analysis of administrative jurisdiction in the light of adoption of the new code of administrative procedure of Ukraine. *Journal of Legal, Ethical and Regulatory Issues*. Vol. 22, Issue 5. 2019. P. 1-8. URL.:<https://www.abacademies.org/articles/scientific-and-practical-analysis-of-administrative-jurisdiction-in-the-light-of-adoption-of-the-new-code-of-administrative-proced-8634.html>

- Leheza, Ye. Shablysty, V. Aristova, I. V. Kravchenko, I. O. Korniakova, T. (2023). Foreign Experience in Legal Regulation of Combating Crime in the Sphere of Trafficking of Narcotic Drugs, Psychotropic Substances, their Analogues and Precursors: Administrative and Criminal Aspect. *Journal of Drug and Alcohol Research*. Vol. 12 . No. 4, 1-8. DOI: <https://doi.org/10.4303/JDAR/236240>
- Leheza, Ye., Pisotska, K., Dubenko, O., Dakhno, O., Sotskyi, A. (2022). The Essence of the Principles of Ukrainian Law in Modern Jurisprudence. *Revista Jurídica Portucalense*, December, 342-363. DOI: [https://doi.org/10.34625/issn.2183-2705\(32\)2022.ic-15](https://doi.org/10.34625/issn.2183-2705(32)2022.ic-15)
- Maskun, Maskun (2017) "DRUGS LAW AND LEGAL PRACTICE IN SOUTHEAST ASIA: INDONESIA, SINGAPORE, AND VIETNAM," *Indonesia Law Review*: Vol. 7: No. 1, Article 14. Available at: <https://scholarhub.ui.ac.id/ilrev/vol7/iss1/14>
- Moklyak, S. V. (2018). Criminal and legal characteristics of illegal production, production, acquisition, storage, transportation, forwarding or sale of narcotic drugs, psychotropic substances or their analogues committed by an organized group: autoref. thesis ... candidate law Sciences: 12.00.08. National Acad. rights of Sciences of Ukraine, Scientific Research Institute crime problems named after VV Stashis. Kharkiv, 2018. p. 20
- Nesterenko, A., Maryniak, N., Trush, M., Yesimov, S., Bohiv, Ya., Pervii, V. (2021). Comparative analysis of the essence of abuse of power in international legal sciences and Ukraine. *Cuestiones Politales*. Vol. 39 (70). pp.640-648.
- On measures to counter the illegal circulation of narcotic drugs, psychotropic substances and precursors and their abuse: Law of Ukraine dated February 15, 1995 No. 62/95-vr. Bulletin of the Verkhovna Rada of Ukraine. 1995, No. 10.
- On narcotic drugs, psychotropic substances and precursors: Law of Ukraine of February 15, 1995 No. 60/95-vr . Bulletin of the Verkhovna Rada of Ukraine. 1995. No. 10.
- On the approval of tables of small, large and especially large sizes narcotic drugs, psychotropic substances and precursors that are in illegal possession circulation: Order of the Ministry of Health of Ukraine dated August 1, 2000 No. 188. URL: <https://zakon.rada.gov.ua/laws/show/z0512-00#Text>.
- Pohoretskyi, M.A. (2007). Agency work of federal law enforcement agencies of the USA in the field of combating illegal drug trafficking. Legal adviser. 2007. 5 (19). pp.101-105.
- State drug policy strategy for the period up to 2020. (2013). Order of the Cabinet of Ministers of Ukraine dated August 28, No. 735-r. URL:<http://zakon.rada.gov.ua/laws/show/735-2013-%D1%80#n8>.
- S. A. Putri, "Administrative Enforcement of Food Safety Regulation in Indonesia: Loopholes and Recommendations," *LAW REFORM*, vol. 18, no. 2, pp. 282-297. Doi: <https://doi.org/10.14710/lr.v18i2.47415>
- Statistical information on the state of crime and the results of the prosecutor's investigation activities / General Prosecutor's Office of Ukraine: officer. website URL: <https://www.gp.gov.ua/ua/statinfo.html>.

- Strategy of the state policy on drugs for the period up to 2030. (2023). project Order of the Cabinet of Ministers of Ukraine. URL: <https://moz.gov.ua/uploads/ckeditor/%D0%93%D1%80%D0%BE%D0%BC%D0%B0%D0%B4%D1%81%D1%8C%D0%BA%D0%B5%20%D0%BE%D0%B1%D0%B3%D0%BE%D0%B2%D0%BE%D1%80%D0%B5%D0%BD%D0%BD%D1%8F/2021/05/18/%D0%A1%D1%82%D1%80%D0%B0%D1%82%D0%B5%D0%B3%D1%96%D1%8F.pdf>.
- Tatsii, V. Y. (2013). Legal doctrine of Ukraine: in 5 vols. Vol. 5. Criminal and legal sciences in Ukraine: state, problems and ways of development. Kharkiv: Pravo, 2013. 1240 p.
- Tylchuk, V., Matselyk, T., Hryshchuk, V., Lomakina, O., Sydor, M., Leheza, Ye. (2022). Administrative and legal regulation of public financial activity: Regulación administrativa y legal de la actividad financiera pública. *Cuestiones Políticas*, 40(72), 573-581. <https://doi.org/10.46398/cuestpol.4072.33>
- Zakalyuka, A. P. (2006). Narcotics crime: criminological characteristics and prevention: science and science. manual / Institute studied problem criminality of the National Security Service of Ukraine. Kyiv, 2006. p.294
- Zhilyna, N. Yu. (2010). Features of international legal warning and fight against drug crime, drug addiction and addiction. *Scientific Bulletin of BelGU. Ser. Philosophy. Sociology. Right*. 2(73), 11, pp.116-125.