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STATE DRUG CONTROL: EUROPEAN EXPERIENCE AND THE POSSIBILITY OF ITS APPLICATION TO UKRAINE

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SUMMARY

It is established that the provision of state control over drug trafficking in foreign countries can be divided into three groups of legal regimes: especially strict (Pakistan, China), severe (Great Britain, France), liberal (Spain, Netherlands). The main models of social control in the sphere of drug trafficking are presented: repressive, liberal and restrictive. Proposed in the legislation of Ukraine, taking into account the experience of the European Union: the creation of a separate state body with law enforcement functions, as well as an interdepartmental state body (under the government of the state) that would include ministers or their representatives, ministries, departments and representatives of local governments; the preservation of the workplace or training for a sick person with drug addiction for the period of compulsory treatment, if it was carried out for the first time; creation of specialized courts to handle cases of offenses related to drug trafficking; the division of drugs into "heavy" and "light" and to differentiate responsibility for their offenses; the list of narcotic drugs, psychotropic substances and precursors should be envisaged as an annex to the Law of Ukraine "On narcotic drugs, psychotropic substances and precursors"; to introduce into the legislation "new potentially dangerous psychoactive substances" and to introduce visits to control them.

Key words: state control, turnover of narcotic drugs, psychotropic substances and precursors, European Union, improvement of the legislation of Ukraine, models of drug control, legal regimes of drug control.

АННОТАЦИЯ

В статье установлено, что обеспечение в зарубежных странах государственного контроля за оборотом наркотиков можно разделить на три группы правовых режимов: особенно строгий (Пакистан, Китай), суровый (Великобритания, Франция), либеральный (Испания, Нидерланды). Приведены основные модели социального контроля в сфере оборота наркотиков: репрессивная, либеральная и рестриктивная. Предложено в законодательстве Украины с учетом опыта Европейского Союза: создать отдельный государственный орган с правоохранительными функциями, а также межведомственный государственный орган (при правительстве государства), который включал бы министров или их представителей, представителей министерств, ведомств и органов местного самоуправления; сохранить рабочее место или место обучения за больным наркоманией лицом на период принудительного лечения, если оно проводится впервые; создать специализированные суды по рассмотрению дел о правонарушениях, связанных с оборотом наркотиков; разделить наркотики на «тяжелые» и «легкие» и дифференцировать ответственность за их потребление и распространение; предусмотреть перечень наркотических средств, психотропных веществ и прекурсоров как приложение к Закону Украины «О наркотических средствах, психотропных веществах и прекурсорах»; ввести в законодательство «новые потенциально опасные психоактивные вещества» и меры контроля за ними.

Ключевые слова: государственный контроль, оборот наркотических средств, психотропные вещества и прекурсоры, Европейский Союз, усовершенствование законодательства Украины, модели наркоконтроля, правовые режимы наркоконтроля.

Formulation of the problem. The problem of efficiency of state control of narcotic drugs, psychotropic substances and precursors is extremely important for each state. In modern conditions of deepening integration processes poses Ukraine need for effective and optimal directions of improvement of legislation on these issues, using the experience of the European Union.

Actuality of theme. The study of the laws of the European Union in the field of control of narcotic drugs, psychotropic substances and precursors as a method of learning features of social relations regulation in this area is of great scientific and practical and theoretical and cognitive significance, because thanks to the results obtained there are additional opportunities for selecting the best ways to improve national legislation on these issues. For example, the effectiveness of the policies of the European Union in this area indicate the following: in Sweden over the past 5 years there has been a significant reduction in the consumption of narcotics or psychotropic substances, which is the lowest in Europe [1], in addition should also take into account the positive experience of some other European Union countries (of Denmark, UK, Spain, Austria, France, Germany and others.). Therefore, in order to better study the problems of state control

of narcotic drugs, psychotropic substances and precursors in Ukraine and approaches to improve the legislation in this area it is advisable to examine the European experience with different views on their organization and regulation.

The main question of legal regulation of the State control Wikipedia and Ukrainian scientists abroad: V.B. Averyanov, A.F. Andryyko, Y.P. Bytyak, V.N. Garashchuk, V.N. Horshenev, S.V. Kivalov, M.S. Studenykyn. Regarding the study of certain aspects of the State Drug Control: V.A. Tymoshenko investigated criminological problems of ecological focus state drug control; V.M. Yudin defined legal principles of formation and activity of Drug Control; O. Abramov defined features improve the mechanism of regulation of narcotic drugs and psychotropic substances; A.N. Nasonov features found administrative and legal regulation of drugs and others. Unfortunately, improvement of legislation on state control of narcotic drugs, psychotropic substances and precursors in Ukraine using the positive experience of legal regulation of EU countries and taking into account the integrated approach in the scientific literature were not considered.

The aim and purpose of the article is to study the legal regulation of the state control over the circulation of narcotic

drugs, psychotropic substances and precursors in certain states of the European Union with the possibility of its use in Ukraine.

Presentation of the main research material. Through comparative legal analysis of anti-drug laws in foreign countries, the criterion of severity legal measures scientists conventionally divided them into three or four groups [2, p. 10; 3, p. 31]. Holding in foreign countries, state control of narcotic drugs, psychotropic substances and precursors, depending on the direction of government policy in this area it is advisable to divide the (relatively) 3 group. The first – a particularly harsh state policy in the field of control over the circulation of drugs specified where even their storage in small amounts apply penalties up to death (Malaysia, Iran, Pakistan, China, etc.). The second – a harsh government policy in this area, where the total control over their legal circulation, however, the extreme penalties do not apply (Federal Republic Germany, United States, Britain, France and others.). Third – liberal regime stands on circulation of so-called “soft” drugs, psychotropic substances and precursors, although state control over their circulation remains and is quite effective (Spain, Netherlands) [2, p. 164; 4, p. 38–39; 5, p. 217]. In legal scientific literature distinguish such basic model (directions) of social control in narcotic drugs, psychotropic substances and precursors: 1) repressive (or prohibitive) – drug use always leads to negative health and social consequences for persons who consume and society as a whole, so they should be legally prohibited, but their treatment measures subject to strict state control; 2) liberal because drug addiction – a disease because a person can not be punished for it. Using drugs or not – the right of man, society and if this phenomenon is seen as normal, reduce the number of drug users; 3) restrictive (or balanced prohibitive, restrictive) – persons who abuse drugs pose danger to society, and they should apply appropriate measures of administrative and criminal enforcement. Such persons must be ensured their high availability to all kinds of health and social care (treatment, rehabilitation, re-socialization) [6]. It is this model of state policy in the field of control over the circulation become cultivated in most countries, including the countries of the European Union.

In European countries, in the exercise of state control of narcotic drugs, psychotropic substances and precursors main approaches boil down to the fullness of adapting national legislation to the provisions of the Single Convention of 1961 [7] Convention, 1971 [8] and the Convention in 1988 [9]. However, in modern conditions, only two EU countries (Sweden and Denmark) to fully apply the provisions of domestic law above legal documents.

The legal basis of state control in most countries of the European Union constitution and are taken on the basis of laws which define the location, function and the right regulatory authorities. Consider the basic situation in their area of control of narcotic drugs, psychotropic substances and precursors. In the UK, for example, major regulations in this area: The Misuse of Drugs Act 1971 [10], The Medicines Act 1968 [11], Psychoactive Substances Act 2016. According to The Medicines Act 1968 regulates which drugs can be used not for medical reasons and Psychoactive Substances Act 2016, which in 2016 came into effect throughout the UK, fix such a rule, for offenses committed for the first time, the use of psychoactive substances to approved medical and scientific research provided civil penalties, the commission of a second – criminal sanctions. Law to police and local authorities to take such cases differentiated approaches. Also specify that legal regulation of drug trafficking in the UK based on the prohibition of cultivation of narcotic plants. They manufacturing, storage and use is only allowed practitioners and pharmacists who have a license. Activity on imports and exports will be licensed. In The Act on the Control of Narcotic Drugs regulates trafficking for medical or industrial purposes [1].

In most other countries the legislation – this is their national drug strategy. For example, in Sweden a model policy for Drug Control, implemented in 1978, provides access to social and medical assistance to troubled individuals while increasing penalties for their use and the use of compulsory treatment of drug addicts. Since 1980 there introduced a new practice, exemption from prosecution each drug user can be used only once and only for storage of one dose drugs, and then come some legal and social implications. In modern conditions the effectiveness of this approach is the highest compared with the policies of other countries [6]. The Swedish parliament once every 5 years takes “strategy on drugs” and each year the state government takes appropriate one-year action program indicating the priorities. In this regard provides an annual budget for such activities in accordance with the principles of the Action Plan “National Action Plan on Drugs for 2002–2005 years” among the main objectives are to reduce the number of people consuming drugs in order to realize the vision of Swedish society free from drugs. In addition, modern in 2016–2020 years of Swedish drug strategy, A Comprehensive Strategy for Alcohol, Narcotics, Doping and Tobacco, adopted in February 2016, aims to develop a society free from drugs and doping, and seeks to minimize medical and social harm from alcohol and in reducing tobacco consumption [1].

Also noteworthy is the construction of public bodies providing state control over drug trafficking in Spain. It operates The Spanish Council of Drug Addiction and other Addictions, which is responsible for coordinating the recent inter-institutional level. The aim of its work is to improve the development and implementation of strategies and actions related to the trafficking of drugs and other substances that cause dependence; reducing harm to individuals, families and society as well as coordination of such structures as the Government Delegation for the National Plan on Drugs, which carries out the function of coordinating the various agencies at the central, regional and local levels. The main role of the Secretary for Social Policy, the Minister of the Health, Social Policy and Equality of Spain. The delegate of the Government’s National Plan on Drugs is the national coordinator of the strategy to combat drugs in the country. Under his leadership functions interagency group that includes the ministers of the regional offices of autonomous regions, which are responsible for policy on drugs on within their territory. Important role The Inter-autonomic Commission. In each of the 17 autonomous regions of Spain and 2 autonomous cities (Ceuta and Melilla) works commissioner drugs in the United Congress Senate – the Commission to study the problems drug consisting of members of both chambers of the Spanish Parliament – Congress deputies and the Senate, and is preparing a report on the drug and submit proposals to the government regarding the control in this area [12]. We believe that this experience is expedient to introduce into national legislation on control of drug trafficking in terms of prediction particular group (body or committee) that united would ministerial activities departments concerned with the problems of combating drug addiction.

The legislation of most countries of the European Union at bringing perpetrators accountable for violations in drug trafficking involves consideration of the competent authorities of the national lists (lists) of drugs, substances and precursors. For example, in Sweden to drugs include all pharmaceutical substances that fall under the provisions of The Narcotic Drugs Act 1968 and set in the list of drugs [13] issued by The Swedish Medical Products Agency. These lists include all controlled internationally substances as well as such additional substances as “cat”. Note also that the use of ingredients list number 1 (gr marijuana) are prohibited, even for medical purposes [14]. In law lists of narcotic drugs, psychotropic substances and precursors provided in countries such as the Netherlands [15] and

the UK [10]. In the UK, lists of drugs prepared by the Council for supervision of abuse of medicines and approved by Parliament in the form of amendments to The Misuse of Drugs Act 1971 [11]. Recall that in Ukraine this list is a list of drugs, psychotropic substances and precursors, approved by the Cabinet of Ukraine of 6 May 2000, Number 770 [16]. However, in our view, called the list should provide a supplement to the Law of Ukraine “On narcotic drugs, psychotropic substances and precursors” [17] in order to gain legitimacy principle of responsibility, which is found in the use of its bases and penalties within and forms the law.

Proceed to examine the responsibilities laid down in the European Union for such violations as illegal manufacturing, purchase, storage, transportation, shipment of drugs without intent to sell in small sizes. In Art. 44 Code of Ukraine on Administrative Offenses provides for administrative responsibility for such violations [18]. And in France, for example, individual drug without a sales target of 1970 was classified as a criminal offense, although the responsibility of the provided [19, p. 16]. In Sweden, The Narcotic Drugs Punishment Act stipulates that the use, storage and possession is a criminal offense. The penalty for illegal possession may be low, normal or severe [1]. Regulations The Law on the Protection of Citizens’ Security in 2015 establishes liability for personal drug use in public places in the form of administrative sanctions (especially fines from 600 to 30 000 euro). In minor penalty may not be imposed if the offender voluntarily participate in treatment or rehabilitation [12]. In Italy the possession of drugs for personal consumption without intent to sell subject to administrative sanctions. Law 79 of 16 May 2014 determined that if a person unlawfully retains drugs for own consumption first, administrative sanctions do not apply, and the offender is cautioned by the prefect and a formal request to refrain from non-medical consumption. If his voluntary treatment or rehabilitation proceedings on the case will be terminated. Absence or non-completion of the treatment program could lead to sanctions [20]. Thus, the most common in Ukraine are illegal manufacturing, purchase, storage, transportation, shipment of drugs without intent to sell in small sizes (Art. 44 of the Code of Ukraine on Administrative Offenses). Such offenses prohibited practice, in most EU countries and subject to administrative penalties (Italy), in some countries (Sweden, France) are considered criminal offenses in some states responsibility for such misconduct does not occur (France). In most cases this is because the international legal obligations do not extend to the criminalization of the offense, as the content h. 1 t. 1 Single Convention 1961 non-medical use of drugs, their storage without a purpose of selling is not covered by the concept of “drug trafficking”.

It is important that legislation in most European countries in the application of penalties for violations in drug trafficking there are different systems of classification used in determining the sanctions against them. For example, in the UK The Misuse of Drugs Act 1971 Drugs are divided into three classes – A, B and C (p. 25) depending on the damage they cause to man or society when used inappropriately. This class “A” (heroin) is dangerous and responsible to it provided more stringent class “B” (hashish) provides a much softer punishment, but the most mild sanction applies to vehicles of class “C” (marijuana) [10]. This list is regularly updated, in some cases, individual legislators means translates from one class to another. For example, in 2014 Ketamine was charged with a Class C to Class B; and tramadol – to the class C [21]. In the Netherlands Opium Act established a formal distinction at last “heavy” and “light”. This division authorities consider the application of penalties for offenses related to them [15]. Other countries also differentiated responsibility for offenses related to narcotic drugs, psychotropic substances and precursors, depending on which tool or substance affected misdemeanor. In this regard, there is

a separate marijuana, act after receiving punished less severely in Italy and Spain. The legislation of Denmark, France and Germany there are no differences between the drugs [22]. The law of Ukraine on drug division of “heavy” and “light” does not apply, however, used in academic, journalistic and even scientific literature. Therefore, in order to more accurately understand these categories of this division also advisable to provide in national legislation.

The issue of drug treatment received considerable attention in the international regulations. In Art. 38 Single Convention 1961 lists the following measures to combat drug abuse as prevention, early detection, treatment, education, rehabilitation, social rehabilitation, if necessary familiarization with problems of drug addiction and more general population [7]. In Austria in law has been strengthened following guidelines as “treatment instead of punishment” for minor offenses and increasing the number of therapeutic activities that contributed to the rapid increase in the number of cases alternative penalties. In 2007 amendments were made to the law, which stipulates that the medical treatment provided in specialized units – both inpatient and outpatient (“The Austrian drug control law”) [23].

In the practice of European countries compulsory treatment is often used instead of punishment for possession of narcotic drugs or psychotropic substances, if it was proved that a small number of them intended for personal consumption. Compulsory treatment of drug addicts is recommended in cases of certain specialized vessels whose activities are introduced in many countries. Judicial management programs of these vessels allow you to quickly apply coercive measures that contribute to the successful treatment of the tasks [25, p. 52]. Narcotic operating in Norway, England, Scotland, and other countries. The activities and results of justify the use of the integrated approach when considering offenses related to narcotic drugs, psychotropic substances and precursors. This is confirmed by the fact that their number in some countries is increasing [26, p. 29]. Given the positive experience of the past on the activities of specialized courts to consider offenses related to drug trafficking, the introduction of such courts in Ukraine no doubt. After all, it will strengthen the rule of law in accordance with European standards and the right of every person to a fair trial.

Very positive is the norm Italian law to the effect that the persons who decide voluntarily treated for drug addiction, during the time of treatment persists workplace [19, p. 15]. This rule should include in the legislation of Ukraine in the sphere of control of drug trafficking, because, as defined cent. 21 of the Law of Ukraine “On measures against illicit traffic in narcotic drugs, psychotropic substances and precursors and their abuse” of February 15, 1995, Number 62/95 – “court order to send people, drug addicts, compulsory treatment is grounds for its dismissal from work or study discontinuation in accordance with law” [27]. In most EU countries for individuals suffering from drug addiction, during SMT used methadone. Note that all States that have signed the Convention in 1988, engaged in some extent control the production, distribution and use of methadone to reduce the risks associated with its use [9]. In of Denmark, particularly in 1996 adopted a law that tightened control over methadone. Responsibility for last treatment was given to the county administration which implemented the state program of treatment and limited number of general practitioners having permission to use, leading to better quality of treatment [19, p. 36].

National legislation on narcotic drugs, psychotropic substances and precursors provides control over the use of methadone and buprenorphine at MOH Ukraine of March 27, 2012, Number 200, which regulates control of methadone patients in the offices of substitution therapy where such therapy perform medical staff. Monitoring the implementation of substitution therapy in Ukraine, first of all, the Ministry of Health of Ukraine

and its related structures as the main subjects of the organization and of the system of treatment and assistance to drug addicts [28]. Needs also taking into account European experience to ensure effective protection of human health and drug addicts on their access to medical care. This activity of public authorities in the study area, in our opinion, should be a priority.

One of the most important problems in the world are increasing the number of new psychoactive substances. As for their counterparts among scientists there are different opinions on the order of reference of such drugs. In terms of new psychoactive substances, we note that the World Drug Report of the United Nations (2013) indicated that substances such as drugs sold “legal” and “design”, spread with unprecedented speed. Their number exceeded the total number of substances under international control [29]. The term “designer drug” means a substance obtained by minor changes in the chemical structure of drugs already known cannabinoid series [30, p. 43]. The documents of international organizations for the above matters the notion of “new psychoactive substance”, or abbreviated NPS, translated into Ukrainian as “new psychoactive substance” [31]. These substances represent a mixture of biologically active additives bath salts and others [32, p. 22]. In some countries they are banned to them and apply the concept of “new psychoactive substance” [33, p. 36]. In 2011 in Sweden amended the law that allow the confiscation and destruction of new psychoactive substances and are officially classified as drugs, but without the responsibility of the owner [1]. Also in Sweden, some governments have the right to impose a temporary ban on the circulation of substances that do not belong to the category of controlled, but for which there is reason to believe that they are inherent narcotic or psychotropic properties [26, p. 32].

In 2014 Italy adopted a National Action Plan on preventing the spread of new psychoactive substances on the Internet, which defines its 6 ways: a) early detection and prevention of their spread; b) diagnosis of the state, due to their use; c) the prevention and reduction of demand; d) reducing the supply of these substances; e) their research; f) cooperation, coordination and training on issues related to their circulation [20]. In legal scientific literature [26] used the category of “potentially dangerous new psychoactive substances”. We believe that this concept should provide in national law on narcotic drugs, psychotropic substances and precursors and establish controls them.

Conclusions. Thus, for the improvement of legislation of Ukraine in the field of control of narcotic drugs, psychotropic substances and precursors propose to consider the positive experience of its implementation in the European Union, namely to introduce in our country: the creation of a separate state agency with law enforcement functions; establishing interagency state body (in state government), which would include ministers or their representatives of ministries and departments involved in the trafficking of drugs, psychotropic substances and precursors, and local authorities; operation of specialized courts with cases of offenses related to trafficking of these drugs, substances and their precursors; job security or training for drug addicts face a period of compulsory treatment if it was held for the first time; appropriate to provide for the division of narcotics, psychotropic substances and precursors “heavy” and “light” and differentiated responsibility for the offense; the list of narcotic drugs, psychotropic substances and precursors provide in addition to the Law of Ukraine “On narcotic drugs, psychotropic substances and precursors”; potentially dangerous new psychoactive substances and introduce control over them.

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