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SEPARATE METHODS OF IMPLEMENTATION OF STATE CONTROL OF THE LEGITIMATE TRAFFICKING OF DRUGS

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SUMMARY

It is established that the methods of state control over the legal turnover of narcotic drugs, psychotropic substances and precursors in Ukraine include: information analytical, statistical, sociological, laboratory, documentary, monitoring, examination, and methods of coercion and persuasion. It is noted that the compulsory treatment of persons who are addicted to drug addiction is carried out on the basis of a court decision on a patient evading voluntary treatment or continues to use narcotic drugs without prescribing a doctor, violating the rights of others. The order of such treatment is considered. The monitoring of the state of the narcotics situation is suggested – constant monitoring of the distribution of narcotic drugs, psychotropic substances and precursors with the purpose of their evaluation and forecasting, and it is established that it consists of 3 blocks – information, analytical and organizational. Proposed under the expertise of narcotic drugs, psychotropic substances and precursors should be understood – study, verification, analytical study, quantitative or qualitative assessment by a highly qualified specialist or institution of such a device, substance or precursor that requires special knowledge. Types of such examinations are characterized: forensic pharmacological, agrotechnical, judicial biological, chemical-technological, medico-narcological, forensic psychiatric.

Key words: state control, legal turnover of narcotic drugs, psychotropic substances and precursors, methods of state control: information-analytical, statistical, sociological, laboratory, documentary, monitoring, expertise, methods of coercion and persuasion, types of methods of state control over the legal turnover of narcotic drugs, psychotropic substances and precursors.

ОКРЕМІ МЕТОДИ ЗДІЙСНЕННЯ ДЕРЖАВНОГО КОНТРОЛЮ ЗА ЗАКОННИМ ОБІГОМ НАРКОТИКІВ

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АНОТАЦІЯ

Встановлено, що до методів державного контролю за законним обігом наркотичних засобів, психотропних речовин і прекурсорів в Україні віднесені: інформаційно-аналітичний, статистичний, соціологічний, лабораторний, документальний, моніторинг, експертизи, а також методи примусу і переконання. Відзначається, що примусове лікування осіб, хворих на наркоманію, проводиться на підставі судового рішення, щодо хворих, які ухиляються від добровільного лікування або продовжують вживати наркотичні засоби без призначення лікаря, або порушують права інших осіб. Розглянуто порядок примусового лікування осіб, хворих на наркоманію в Україні. Запропоновано моніторинг стану наркоситуації як постійне спостереження за поширенням наркотичних засобів, психотропних речовин і прекурсорів з метою їх оцінки та прогнозування і встановлено, що він складається з 3-х блоків – інформаційного, аналітичного та організаційного. Запропоновано під експертизою наркотичних засобів, психотропних речовин і прекурсорів розуміти вивчення, перевірку, аналітичне дослідження, кількісне або якісне оцінювання висококваліфікованим фахівцем або установою такого засобу, речовини або прекурсорів, яке вимагає наявності спеціальних знань. Охарактеризовані різновиди таких експертиз: судово-фармакологічна, агротехнічна, судово-біологічна, хіміко-технологічна, медико-наркологічна, судово-психіатрична.

Ключові слова: державний контроль, законний обіг наркотичних засобів, психотропних речовин і прекурсорів, методи державного контролю: інформаційно-аналітичний, статистичний, соціологічний, лабораторний, документальний, моніторинг, експертизи, методи примусу і переконання, види методів державного контролю за законним обігом наркотичних засобів, психотропних речовин і прекурсорів.

REZUMAT

Sa constatat că metodele de control ale statului asupra mișcării licite a substanțelor narcotice, psihotrope și precursori clasificate în Ucraina: informațional-analitice, statistice, sociologice, de laborator, documentare, monitorizare și evaluare, precum și metodele de constrângere și convingere. Se observă că tratamentul obligatoriu al persoanelor dependente de droguri, efectuate pe baza unei hotărâri judecătorești cu privire la pacienți, tratamentul se sustrage voluntar sau să continue să folosească medicamente fără prescripție medicală, sau încalcă drepturile altor persoane. Se ia în considerare ordinea tratamentului obligatoriu al persoanelor dependente de droguri în Ucraina. monitorizarea situației drogurilor propuse – ca monitorizarea constantă a distribuției de stupefiante și substanțe psihotrope și precursori în scopul estimării și predicției a acestora, și a constatat că acesta este format din 3 blocuri – informații, analitice și instituționale. Propuse în cadrul stupefiante examinare, substanțe psihotrope și precursori trebuie înțelese – studiul, verificarea, un studiu analitic, evaluarea cantitativă sau calitativă a acestor mijloace de înaltă calificare sau instituție, substanța sau precursor care necesită cunoștințe speciale. Caracterizat prin varietatea de expertiză: farmaceutice medico-legală, agrotehnice, medico-legale, biologice, chimice, tehnologice, medicale și Dependentei, psihiatrie medico-legală.

Cuvinte cheie: control de stat, cifra de afaceri legală a drogurilor, substanțelor psihotrope și precursori, metodele de control de stat: informații analitice, statistice, sociologice, de laborator, documentare, monitorizare, evaluare, metode de constrângere și convingere, tipurile de metode de control al statului asupra circulației legale a substanțelor narcotice, substanțe psihotrope și precursori.

Formulation of the problem. In modern legal science there are various points of view regarding the understanding of the list and types of methods of state control, characterized, as a rule, by the specific nature of the directions of scientific research. In their research, researchers bring different forms of control, identifying them with methods, directions, means, measures and types of control. The current legislation of Ukraine also identifies forms and methods of control [1]. The methods of state control may be different, depending on the subject, the object, the purpose, the means of state control applied.

Relevance of the research topic. The state control should be carried out on the basis of the current legislation by authorized bodies, officials, civil servants. He follows, in particular, Art. 19 of the Constitution of Ukraine, according to which the state authorities, local self-government bodies and their officials are obliged to act only on the basis, within the powers and in the manner provided for by the Constitution and laws of Ukraine [2]. Compliance with this provision is decisive regarding the legitimacy of the application of methods of state control over the legal circulation of narcotic drugs, psychotropic substances and precursors in Ukraine.

State of the research. A separate issue of studying the methods of state control was paid attention to by Ukrainian and foreign scientists: V.B. Averyanov, O.F. Andriyko, Yu. P. Bityak, V.M. Garashchuk, V.M. Gorshenev, M.S. Studenikin, I B. Shakhov and others. We have already drawn attention to the notion of the legal design of „methods of state control over the circulation of narcotic drugs and psychotropic substances”, and considered their classification [3], but we did not consider the specifics of the implementation of the methods of state control over drug trafficking in Ukraine, and others did not. In modern conditions, they studied this issue.

The purpose and purpose of the article is the specificity of methods for exercising state control over the legal circulation of narcotic drugs, psychotropic substances and precursors in Ukraine.

Statement of the main material. First, we note that „the legal turnover of narcotic drugs, psychotropic substances and precursors” are activities for the cultivation of plants included in the List of Narcotic Drugs, Psychotropic Substances and Precursors, as well as activities related to trafficking in narcotic drugs, psychotropic substances and precursors included in the said List, which are resolved and controlled by the legislation in the sphere under consideration on the basis of licensing. It is carried out with the purpose of using these means, substances and precursors for the needs of their own production, in medical practice for the treatment of patients, in veterinary medicine, in research, in expert and operational-search activities, for scientific and educational purposes [4, p. 10, 11].

In order to establish the design of „methods of state control over the legal circulation of narcotic drugs, psychotropic substances and precursors”, as well as for the possible elimination of disagreements, not only in terminology, but also in approaches to the classification of these methods, first of all, the content of the term „method”. This category of "methods of state control over the legal circulation of narcotic drugs, psychotropic substances and precursors" does not contain current legislation of Ukraine. The method (from the Greek *Methodos* – literally „the path to something”) in the most general sense is the way to achieve the goal, a certain orderly activity [5, p. 258].

D.N. Bakhrakh interprets this term as a means, means, a method for achieving a certain goal, accomplishing the tasks set. The methods of activity are the means of achieving goals, the methods of management – by means, methods, methods of purposeful influence on the managed social system. „The concept of a method is primarily related to activity, to the process. However, with any activity, but with a purposeful. Such activity acts as a set of methods, ways to achieve the desired result”

[6, p. 74,75]. A.D. Ershov believes that this is a set of methods and methods of influencing a managed object to achieve the organization's goals [7, p. 85]. V. K. Kolpakov under the method of any activity understands the methods, techniques, means used to achieve the goal, which constitute the content of this activity [8, p. 182].

E. V. Shorina notes that the methods of exercising control are „tactical techniques that are developed and applied by the control bodies to achieve the goal, to exercise the necessary influence on the controlled entity” [9, p. 258]. O. Andriyenko understands this concept as the means by which the controlling bodies exercise control in order to perform their tasks most effectively. The application of appropriate control methods depends on the body exercising control, on its tasks and powers, the place that the monitoring function takes in its loyalty. The methods of activity, in turn, affect the subject of control [10, p. 196]. In this case, one should proceed from the most stable interpretation of the relevant terms: form (Latin *forma* – type, species, device, type, type) – is the structure of the corresponding processes, as well as the order of something; method – a way to achieve any goal, solve a specific problem or a set of methods for mastering reality [11, p. 196]. So, most scientists define the method in their publications as a set of methods, methods of control bodies with the purpose of achieving the set goal, providing the necessary impact on the controlled object [3, p. 76]. The methods of state control over the legal turnover of narcotic drugs, psychotropic substances and precursors are, in our opinion, a combination of means, methods, methods by which state control subjects can purposefully influence the controlled objects in this sphere with a view to the most effective implementation of the tasks assigned to them tasks.

Among the administrative scientists there is no unambiguous opinion on the list of methods of state control. So, E.V. Shorina refers to them coercion and persuasion, methods of coordination and collegiality, administrative and economic. Serious attitudes-administrativistiv not a single-valued thought in the overhaul of methods in state control [9, p. 242]. V.V. Murza proposes to divide them into groups [12, p.114]: (1) general methods that are widely used in the implementation of all functions of the state, (2) special, possessing only control and supervisory functions – methods of checking, identifying shortcomings and response.

S.S. Vitvitsky shares the methods of state control in the sphere of licensing activity to indirect and direct (conviction, coercion, coordination, collegiality), combining them into 2 groups [13, p. 135]: (1) methods for carrying out control actions to which refer to the means and techniques used in the implementation of the control itself (2) methods, which include measures used by state control bodies in the implementation of the results of the control function. A.I. Ryabko distinguishes three groups of methods of control [14, p. p. 89]: (1) information-analytical, (2) corrective, (3) integrated, combining the previous ones. To the first group, he includes methods of obtaining control information, its analysis and processing (method of accounting, statistics, reporting), to the second – ways and means of expressing the requirements for eliminating identified errors, violations (appeal, complaint, presentation, communication of information to the competent subject [14, p. 91].

As can be seen from the foregoing, there is clearly no consensus on the classification of methods of state control in legal literature. In most cases, scientists bring the methods of state control depending on the scope of research of control types. It should be noted that A.F. Andriyenko distinguishes between general and special methods of state control in the sphere of executive power. The bodies exercising general control mainly use information analytical, statistical, sociological and direct examination methods. Special control bodies use special methods, which include documentary analysis, various kinds of

examinations, laboratory data, and the like. When analyzing the methods of state control over the quality of products, organoleptic and laboratory methods are distinguished. The practice of state control increasingly includes methods of mathematical, statistical, system and functional analysis, forecasting, etc. [10, p. 206–208]. From our point of view, information-analytical, statistical, sociological, state coercion, documentary analysis, monitoring, expertise, laboratory methods can be referred to methods of state control over the legal turnover of narcotic drugs, psychotropic substances and precursors.

We consider it worthwhile to dwell on the main varieties of these methods, in particular, on letters and appeals on the issues of trafficking in narcotic drugs, psychotropic substances and precursors, as well as the analysis of information materials in this sphere as methods of state control. In the legislation, the term „citizens' appeals” refers to the suggestions (comments) stated in written or oral form, statements (petitions) and complaints [15]. For example, the State Service of Ukraine for Drugs and Drug Control in 2014 provided answers to explanations of the legislation of Ukraine on the legal turnover of narcotic drugs, psychotropic substances and precursors 22 – to law enforcement agencies and 11 – to legal entities and individuals [16, p. 169]. Over the same year, the State Service of Ukraine for Drugs and Drug Control processed more than 3 thousand Quarterly and annual reports that are submitted solely on paper, and the analysis of which shows insufficient knowledge and unsatisfactory fulfillment by licensees of the requirements of the current legislation of Ukraine [16, p. 171], namely: (1) failure to submit in due time documents of mandatory reporting without justifiable reasons, as well as written explanations of the reasons that prevented the establishment of such documents (Chernihiv, Sumy, Poltava, Dnipropetrovsk, Volyn, Ivano-Frankivsk, Kiev, Odessa, Rivne regions); (2) the submission of reports not in accordance with the form prescribed by law or quarterly inventory information that does not contain complete information (a higher percentage falls on health facilities); (3) failure to submit reports of pharmacy establishments in which medicinal psychotropic drugs are manufactured. Accounting is the process of collecting and fixing data of interest (expressed, as a rule, by quantitative indicators), which can then be used in the following management cycles, including monitoring [17, p. 539].

All operations carried out in the course of activities related to the circulation of narcotic drugs, psychotropic substances and precursors are subject to registration by the person responsible for this in special journals of legal entities [18]. Thus, in the health care institutions of Ukraine, these forms of primary records are approved: (1) No. 129-6 / o „Journal of Drug, Narcotic Drugs and Precursors in the Departments and Offices of Treatment and Prevention Institutions of Health Care” and instructions for its completion; (2) No. 129-7 / o „Journal of the Registration of Preparations of Narcotic Drugs, Psychotropic Substances and Precursors at the Departments of Health Care Facilities” and the Instruction for its completion; (3) No. 129-8/o „Journal of the Registration of Preparations of Narcotic Drugs, Psychotropic Substances and Precursors in Pharmaceutical (Pharmacy) Institutions” and Instruction for its completion; (4) No. 129-9/o „Journal of the Registration of Preparations of Narcotic Drugs, Psychotropic Substances and Precursors in Health Care Institutions for the Performance of Doctor's Appointments in Inpatient Conditions” and Instruction for filling it out; (4) No. 129-10/o „Journal of Accounting of Drugs of Drugs, Psychotropic Substances and Precursors Returned from Hospitals Established”, and Instruction for filling it out.

The same institutions approve: (1) an information letter for the patient or person caring for him (a family member, guardian or curator), on the rules for handling narcotic drugs, psychotropic substances and precursors and on preventing their use

for a non-medical purpose; (2) a leaflet for prescribing these drugs to patients receiving treatment in inpatient or outpatient settings and fulfilling these prescriptions; (3) the norms for calculating the storage volumes of narcotic drugs, psychotropic substances and precursors as a whole in the health care facility, as well as in its departments, offices and posts. [18] Business entities engaged in the turnover of narcotic drugs, psychotropic substances and precursors are obliged to carry out their inventory on a quarterly basis and draw up an appropriate balance of inventory items. In the event of a discrepancy or inconsistency of the indicators, information is provided within the territory of Ukraine – the National Police of Ukraine, and for export-import operations – to the National Police of Ukraine and the Security Service of Ukraine [18].

What is the specificity of the procedure for the use of compulsory treatment of people with drug addiction? The Law of Ukraine „On Measures to Counteract Illicit Trafficking in Narcotic Drugs, Psychotropic Substances and Precursors and their Abuse” of February 15, 1995, No. 62/95-BP contains a list of grounds for compulsory treatment of these persons (Article 16). Article 1 of this Law treats the latter as treatment on the basis of a court decision on a patient with drug addiction, which evades voluntary treatment or continues to use narcotic drugs without prescribing a doctor, or violates the rights of others. [19] A person who is recognized as a drug addict but who shies away from voluntary treatment or continues after treatment to use narcotic drugs without prescribing a doctor and whose close relatives or other persons have applied to the bodies of the National Police of Ukraine or the prosecutor's office because of her dangerous behavior, is aimed at treatment from drug addiction to a specialized medical institution of the health authorities, and minors who have reached the age of sixteen – in specialized lech BNO-Boc these institutions for up to 1 year. Persons, in relation to whom a request for referral to compulsory treatment was initiated, in case of evasion from appearance in court are subject to the authority of the National Police of Ukraine [19].

Next, we will examine the monitoring of the drug situation as a method of state control over the circulation of narcotic drugs, psychotropic substances and precursors. In the legal literature, much attention has recently been paid to research on the monitoring of the state of the drug situation [20; 21; 22; 23], but in most cases by foreign scientists. Drug situation is a combination of conditions and circumstances that reflect the state and level of legal and illegal drug trafficking, on the basis of which a set of treatment, prevention, social rehabilitation and law enforcement measures is defined [24]. In practical terms, the monitoring of the drug situation is relevant both for the current and for strategic planning of the actions of the authorities. Therefore, now, monitoring and evaluation of the drug situation are increasingly seen as an effective method of information support for management activities [20, p. 5].

Monitoring the state of the drug situation has an active nature, since it is focused on creating an information basis for influencing its state and dynamics. In the process of its implementation, it becomes possible, on the basis of generalization of information, to obtain an adequate representation, vectors and dynamics of the development of the drug situation and its determinant, and on this basis to develop management decisions, the implementation of which will limit its negative impact or completely prevent it, as well as strengthen the effect of favorable factors and conditions [23, p. 48].

In Ukraine, there is only one such document – the Concept for the establishment of a monitoring system in the sphere of combating illicit trafficking in narcotic drugs, psychotropic substances and precursors, approved by the Cabinet of Ministers of Ukraine from October 17, 2011 to No. 1193-p. Monitoring of the drug situation provides for constant monitoring of the characteristics of the distribution of narcotic drugs, psycho-

tropic substances and precursors with the aim of assessing and predicting them. The study of this situation makes it possible to choose the necessary preventive measures reasonably and to develop a plan for preventive work [24].

In this Concept, it is determined that the main reasons for the absence in Ukraine of a unified system for monitoring the situation in this area are: (1) the lack of objective data on the number of persons admitting the use of narcotic drugs and psychotropic substances for medical purposes, their regional division and socio-demographic characteristics; (2) lack of information on the volume of cultivation of plants included in the List; (3) a low level of control over business entities that carry out their production, production, storage, sale (release), accounting and transportation; (4) the availability of these means, substances and precursors for their medical use, etc.

Monitoring of the situation in the study area is carried out with the aim of [24]: (1) establishing the actual volume and scope of trafficking in narcotic drugs, psychotropic substances and precursors and their illegal distribution; (2) identification of social groups of persons who allow their use not for medical purposes and on which preventive measures should be directed; (3) elucidation of the reasons for the distribution of narcotic drugs, psychotropic substances and precursors among various social groups of the population, as well as ways to eliminate such causes. In the classical version, the monitoring of the state of drug situations provides for a comprehensive study of 3 types of information [23, p. 48], namely: (a) statistical information; (b) expert assessments of specialized agencies and organizations; and (c) sociological research results. Taking as a basis for this position, we can state that such monitoring in the sphere of control over the circulation of narcotic drugs, psychotropic substances and precursors should consist of 3 blocks – information, analytical and organizational.

One of the methods (subspecies) of state control over the legal turnover of narcotic drugs, psychotropic substances and precursors is the examination of these substances and substances (Section 1.2) [25]. To clarify the essence of the term „examination”, we present the points of view of a number of scientists. „Expertise is the consideration of any issue by experts to give an opinion” [26, p. 904]. VG Draganova points out that examination is a special type of scientific and practical research conducted by experts with the aim of obtaining a reliable, qualified and independent conclusion necessary for making a motivated decision on problematic or controversial issues arising in various spheres of human activity [27, p. 229].

From our point of view, the definition of E.V. Dodin is quite accurate: examination is a study, a check, an analytical study, a quantitative or qualitative assessment by a highly qualified specialist, institution or organization of a certain subject, requires special knowledge in the relevant sphere of public activity, the results of which are formalized in the form of an expert opinion [28, p. 3]. We tend more to the last scientific position, understanding under the expertise of narcotics, psychotropic substances, their analogs and precursors of study, verification, analytical research, quantitative or qualitative evaluation by a highly qualified specialist, institution or organization of narcotic drugs, psychotropic substances, their analogs and precursors, require availability of special knowledge and formalization of the results of these actions in the form of an expert opinion. According to the procedural legislation of Ukraine, experts perform primary, additional, repeated, commission and complex examinations (paragraph 1.2.11). Expertises and studies are conducted by expert institutions in accordance with the List of Regional Service Zones by forensic science research institutions of the Ministry of Justice of Ukraine. [25]. If there are grounds, different types of expertise of such drugs, substances, their analogs and precursors – forensic pharmacological, agrotechnical, judicial biological, chemical-technological,

medico-narcological, forensic psychiatric, etc., can be appointed [29, p.166; 30, p.499,500]. Let us dwell on their detailed characteristics. Forensic chemical and technological expertise is appointed if necessary to address such issues [30, p. 499]: (1) have a special chemical-technological design for the research, if so, which one; (2) such objects may be used for extraction or other actions resulting in their transformation into ready-to-use forms; (3) whether there are traces (remnants, stratifications) of these means and substances on such objects, if so, which ones and what is their weight. Forensic and narcological examination is appointed to find out: (1) the person is in a state of drug intoxication; (2) signs of a recent use or psychotropic substance, and which is the prescription of this process; (3) a narcotic or psychotropic substance was taken [30, p. 499].

Forensic-botanical expertise is appointed when it is necessary to address such issues [30, p. 500]: (1) is the plant in question narcotic, if so, to which species it belongs; (2) or similar plants to the samples of plants seized from the seeding site; (3) where the growth zone of this plant is located. The complex medical-psychiatric examination is appointed for clarification [30, p. 500]: (1) the person has signs of a recent use of a narcotic drug or psychotropic substance, if so, which one; (2) how long a drug addiction has developed in this person; (3) or she was at the time of the offense in a deranged state (acute narcosis psychosis).

Forensic pharmacological examination is appointed to resolve issues: (1) whether the substance in question is medical, if so, which one; (2) whether there are remnants of medicines on the object under consideration, if so, which ones; (3) are any impurities present in the medicinal products provided, if so, which ones and in what quantities; (4) whether these drugs can be used without prescribing a doctor; (5) if the substance in question is a medicinal product, then what is the order of its release; (6) whether it can be issued by pharmacies without a prescription, in what forms and the amount of leave for a single prescription. Forensic-agricultural expertise is appointed in order to obtain an answer to such questions: (1) have a culture of drug or psychotropic cultures of a wild or cultural nature; (2) which is approximately the expected yield of these crops [30, p. 500]. The main methods of conducting forensic examinations in the study of narcotic drugs, psychotropic substances, their analogs and precursors are: (1) to identify and investigate medicinal products containing the above substances; (2) studies of hypnotic and narcotic drugs of barbituric acid (3) determination of chromatographic parameters of the main components of herbal substances; (4) expert study of barbiturates; (5) use of flame photometry to determine the quantitative content of sodium salts of barbiturates in dosage forms; (6) interaction of alkaloids with dyes; (7) photocolometric studies of small doses of certain alkaloids [31].

The basis for conducting expert examinations in accordance with the current legislation is a procedural document (decision, determination) on its appointment prepared by the authorized person (body) or written appeal of the victim or the party of protection of administrative proceedings, which necessarily indicates the requisites, a list of questions posed expert, as well as a list of objects to be investigated. The basis for the expert examination is a written application (letter) of the customer (legal or natural person) with a mandatory indication of its details, with a list of issues to be addressed, as well as the objects provided [25].

Conclusions. Methods of state control over the legal turnover of narcotic drugs, psychotropic substances and precursors are a combination of means, methods, techniques by which controlling entities can influence controlled entities and objects in the sphere of trafficking in narcotic drugs, psychotropic substances and precursors in order to most effectively fulfill the assigned on them functions. The main methods of state

control over the legal turnover of narcotic drugs, psychotropic substances and precursors include the following varieties: sociological, laboratory, information-analytical, statistical, documentary analysis, methods of state coercion and persuasion, and monitoring and examination.

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