

Adaptation of Ukrainian legislation on drug trafficking control to the European Union legislation (separate aspects)

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Abstract

Certain aspects of the adaptation of regulatory legal acts of Ukraine in the field of drug trafficking control to EU legislation were studied. The basis of this study uses an interdisciplinary approach using comparative legal, dialectical and systemic methods. Emphasis is placed on the fact that the world community does not have a unanimous opinion on legal issues and areas of the modern drug control regime that would meet the needs of the social and legal society and the current state of the drug situation in the countries of the world, and health problems. It was established that the adaptation of the regulatory legal acts of Ukraine in the field of drug trafficking control, the fight against their use and treatment of drug addiction of patients should be based on the implementation of public health programs. In its areas, should include the prevention of disease, prolonging life and improving the health and well-being of the entire population, including drug-addicted patients, for whom the state has an inherent responsibility. Ukraine participates in Council of Europe conventions which establish common standards for this organization and the European Union, it is important for the legal regulation of drug control in the health field, but some norms of national legislation require consistency with the norms of UN Conventions, and it is important to use positive legislative experience of selected countries of the European Union. It is proposed to amend the regulatory legal acts that will improve legal ways to protect people's rights to health protection.

Keywords: *adaptation of legislation, drug control, European Union, legal regulation, international law.*

JEL Classification: D86, K23, K33, K38

1. Introduction

As of 2018, approximately 31 million people who take drugs are suffering from drug abusing disorders, i.e. due to health damage they might require

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treatment⁵. Drug addiction of people is a recognized medical condition, and therefore the right to health applies in the same way as to any other health condition⁶. In the context of the legal implementation of drug control, drug use and drug addiction should be considered through a “public health approach”⁷. Public health means the prevention of disease, the prolongation of lifespan and the improvement of the health and well-being of the entire population for which the state is inherently responsible⁸.

In the current state of law and order in the state in the formation of the national system of control over the circulation of narcotic drugs, psychotropic substances and precursors, the main role is played by international law. An important component of the legal framework of cooperation between Ukraine and the EU are the binding norms of international treaties concluded between these entities. In Art. 9 of the Constitution of Ukraine, it is determined that existing international treaties, consent to be bound by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine⁹. Today, there is a well-developed system of international legal acts aimed at controlling the circulation of drugs, psychotropic substances and precursors, which serve as a basis for the development of national legislation of Ukraine. As for “... *acquis communautaire* (*acquis*)”, according to Section II of the Law “On the National Program for Adaptation of Ukrainian Legislation to the Legislation of the European Union” of March 18, 2004, this is the EU legal system, including legislative acts of this organization (but not limited to them), adopted within the European Community, the common foreign and security policy and cooperation in the field of justice and internal affairs. The same Law provides that the adaptation of Ukrainian legislation to EU legislation is a priority component of the process of Ukraine’s integration into the EU, which, in turn, is a priority for Ukrainian foreign policy. The purpose of such adaptation is to achieve conformity of the legal system of Ukraine with the *acquis communautaire*, taking into account the criteria set by this organization for states that intend to join it¹⁰.

⁵ World Drug Report 2018 // <https://reliefweb.int/report/world/unodc-world-drug-report-2018> (Accessed July 31, 2019).

⁶ Klingemann Justyna *The rights of drug treatment patients: Experience of addiction treatment in Poland from a human rights perspective*. “International Journal of Drug Policy”. 2017; 43: 67-73.

⁷ Joanne Csete *Seeing through the public health smoke-screen in drug policy*. “International Journal of Drug Policy”. 2017; 43: 91–95.

⁸ The World Health Report 1998 – World Health Organization. URL. https://www.who.int/whr/1998/en/whr98_en.pdf (Accessed July 31, 2019).

⁹ Конституція України: Закон України від 28.06.1996 р., № 254к/96-ВР (Law of Ukraine „Constitution of Ukraine”: dated 28.06.1996, №о. 254к/96-VR).

¹⁰ Про Загальнодержавну програму адаптації законодавства України до законодавства Європейського Союзу: Закон України від 18.03.2004 р., № 1629-IV (Law of Ukraine “ On the National Program of Adaptation of the Legislation of Ukraine to the Legislation of the European Union ”, dated 18.03.2004, № 1629-IV).

2. Material and methods

The basis of this study uses an interdisciplinary approach to the analysis of certain aspects of the adaptation of the legislation of Ukraine in the field of drug trafficking control to the legislation of the European Union using comparative legal, dialectic and systemic methods.

3. Results

In modern conditions, the legal basis of control in the world is the three conventions of the United Nations: the Single Convention on Narcotic Drugs of 1961¹¹, Convention on Psychotropic Substances of 1971¹², United Nations Convention against the Illicit Trafficking of Narcotic Drugs and Psychotropic Substances¹³, the first two conventions regulate the legal circulation of narcotic drugs and psychotropic substances, the latter one regulates measures to counter their illicit trafficking. For 2019, these conventions were ratified by more than 198 countries of the world, Ukraine also joined them. Today, there is a fully developed system of international legal acts aimed at controlling drug trafficking, including the field of health care. Also note that this legislation is being adapted to the legislation of the European Union¹⁴.

Ukraine participates in Council of Europe conventions which establish common standards for this organization and the EU, the importance of legal regulation of drug control is significant, but some norms of such national legislation require consistency with the norms of the UN Convention and some international documents. Unresolved is the question of interpretation the term “drugs”, which is not disclosed at the legislative level, despite the fact that it is included in the content of international legal and other regulatory documents, scientific and educational legal literature, which is used by scientists, human rights activists, the public, and is the subject to a number of dissertation research.

Drugs are chemicals of plant or synthetic origin that cause a change in a person’s mental state, the systematic use of which creates dependence on them;

¹¹ Единая конвенция о наркотических средствах 1961 года с поправками, внесенными в нее в соответствии с Протоколом 1972 года о поправках к Единой конвенции о наркотических средствах 1961 года: междунар. док. от 30.03.1961 г. (The Single Convention on Narcotic Drugs of 1961 as amended by the Protocol of 1972 amending the Single Convention on Narcotic Drugs of 1961: international document dated 03.30.1961).

¹² Конвенция о психотропных веществах: международный документ от 21.02.1971 (Convention on Psychotropic Substances: international document dated 21. 02.1971).

¹³ Конвенція Організації Об'єднаних Націй про боротьбу проти незаконного обігу наркотичних засобів і психотропних речовин: міжнародний документ від 20.12.1988 р. (Convention on Organizing the National Convention on Combating the Illicit Trafficking of Narcotic Drugs and Psychotropic Species: International Document dated 20.12.1988)

¹⁴ Про Загальнодержавну програму адаптації законодавства України до законодавства Європейського Союзу: Закон України від 18.03.2004 р., № 1629-IV (Law of Ukraine “On the National Program of Adaptation of the Legislation of Ukraine to the Legislation of the European Union”, dated 18.03.2004, № 1629-IV).

Drugs in a broad sense are narcotic drugs, psychotropic substances, their analogues and precursors, the circulation of which is regulated by law¹⁵. This term should be provided for in Art. 1 Law of Ukraine "On Narcotic Drugs, Psychotropic Substances and Precursors"¹⁶.

It is worth to note that according to Art. 1 of the Law of Ukraine "On measures to counter the illicit trafficking of narcotic drugs, psychotropic substances and precursors and their abuse" a drug addicted person is a person who suffers from a mental disorder, which is characterized by mental and (or) physical dependence on a narcotic drug or psychotropic substance, and whom according results of the medical examination conducted in accordance with this Law, the diagnosis of "addiction" is defined. The term "drug addiction" is defined as a mental disorder caused by a person's dependence on a narcotic drug or psychotropic substance as a result of the abuse of this drug or substance. Drug addicts have the right to treatment and receive replacement maintenance therapy¹⁷. To protect the rights to protect the health of people who have been diagnosed with "drug addiction" and in need of treatment, in Part 1 of Art. 14 of the Law of Ukraine "On measures to counter the illicit trafficking of narcotic drugs, psychotropic substances and precursors and their abuse", it is necessary to provide the text of the following content: "People suffering from drug addiction enjoy the rights of patients, provided for by the Law "Fundamentals of Ukrainian Legislation on Health Protection" when providing drug treatment to them".

In Art. 21 of the Law of Ukraine "On measures to combat illicit trafficking in narcotic drugs, psychotropic substances and precursors and their abuse":

1) does not comply with the requirements of international legal acts: With paragraph 4 of Art. 3 of the 1988 Convention. It states that "in certain cases, for minor offenses, the Parties may provide as an alternative to conviction or punishment such measures as re-education, rehabilitation or social reintegration, and also if the offender is a drug addict, his treatment and follow-up¹⁸;

2) Art. 14 of the Declaration of Drug Demand Reduction Guidelines: "In order to promote the social reintegration of drug abusers, where it is appropriate and consistent with national laws and policies of Member States, governments

¹⁵ Про схвалення Стратегії державної політики щодо наркотиків на період до 2020 року: розпорядж. КМ України від 28.08.2013 р., № 735-р (Disposition the Cabinet of Ministers of Ukraine "On approval of the State Drug Policy Strategy for the period until 2020", dated 08.28.2013, No. 735-р).

¹⁶ Про наркотичні засоби, психотропні речовини і прекурсори: Закон України від 15. 02. 1995 р., № 60/95 – ВР (The Law of Ukraine "On Narcotic Drugs, Psychotropic Substances and Precursors", dated 15. 02.1995, No. 60/95 – VR).

¹⁷ Про заходи протидії незаконному обігу наркотичних засобів, психотропних речовин і прекурсорів: Закон України від 15.02. 1995 р., № 62/95 – ВР (Law of Ukraine "On measures to combat illicit trafficking in narcotic drugs, psychotropic substances and precursors and their abuse", dated 15.02.1995 р., № 62/95 – ВР).

¹⁸ Конвенція Організації Об'єднаних Націй про боротьбу проти незаконного обігу наркотичних засобів і психотропних речовин: міжнародний документ від 20.12.1988 р. (Convention on Organizing the National Convention on Combating the Illicit Trafficking of Narcotic Drugs and Psychotropic Species: International Document dated 20.12.1988).

should consider of punishment, or in addition to punishment, to apply to drug abusers measures aimed at treatment, education, follow-up, rehabilitation and social rehabilitation. Integration¹⁹. In the case of treatment of drug addicts, it is advisable to provide for the preservation of their place of work or study during the period of compulsory treatment, if the person is treated for the first time.

3) Art.14 of the Law of Ukraine "On measures to counter the illicit trafficking of narcotic drugs, psychotropic substances and precursors and their abuse" does not comply with the requirements of Council Recommendation 2003/488/EC "On the prevention and reduction of harm associated with drug addiction" of June 18, 2003 about the provision of access for drug addicts in prisons to the same services outside such sites in a manner that does not undermine regular and general measures to prevent the flow of drugs into places of deprivation of liberty²⁰. In our opinion, it is necessary to add part 4 of Art. 14 of this Law as following: "Treatment of addiction to narcotic drugs or psychotropic substances of persons in prison is carried out in health care institutions that provide medical assistance to convicts."

In Art. 38 The Single Convention on Narcotic Drugs lists such measures to counter drug abuse as prevention, early detection, treatment, education, rehabilitation, social rehabilitation, and, if necessary, familiarization with the problems of anesthesia among the general population²¹.

Substitution maintenance therapy is evidence based and a pharmaceutical intervention recommended by the World Health Organization (WHO) and used as a highly effective treatment for chronic opioid dependence. For example, in Austria, at the level of the law, such a guiding principle was strengthened as "treatment instead of punishment" for minor offenses, as well as an increase in the number of treatment and rehabilitation measures, which contributed to a rapid increase in the number of alternatives to punishment. In 2007, this law was amended to ensure that medical treatment is provided in specialized units - both inpatient and outpatient ("The Austrian drug control law")²². In most EU countries, methadone is used for people with drug addiction during PTA.

In Ukraine, over than for 9 years of operation, the SMT program is being implemented through grants from the Global Fund to Fight AIDS, Tuberculosis

¹⁹ Декларація про керівні принципи скорочення попиту на наркотики: міжнародний документ від 10.06.1998 р.(Declaration on drug demand reduction guidelines Adopted by General Assembly resolution S-20/3: International document dated 10.06.1998).

²⁰ Про запобігання та зменшення шкоди здоров'ю, пов'язаної із наркотичною залежністю: Рекомендації Ради 2003/488/ЄС: міжнародний документ від 18.06.2003 р.,№ 2003/488/ЄС (Council Recommendation 2003/488/EC "On the prevention and reduction of harm to health, drug related ": International document dated 18.06. 2003).

²¹ Единая конвенция о наркотических средствах 1961 года с поправками, внесенными в нее в соответствии с Протоколом 1972 года о поправках к Единой конвенции о наркотических средствах 1961 года: междунар. док. от 30.03.1961 г. (The Single Convention on Narcotic Drugs of 1961 as amended by the Protocol of 1972 amending the Single Convention on Narcotic Drugs of 1961: international document dated 03.30.1961).

²² Trinklein Dorina, Frank Zobel, Eoghan Quigley, Brendan Hughes and Renate Hochwieser. *Drug policy profile: Austria/ Luxembourg*: Publications Office of the European Union. 2014; 19.

and Malaria. However, 2016 became a transition period for the SMT program on the way from donor support to provide patients with funds from the state and local budgets. It should be noted that during 2016, 2,850 patients started the substitution maintenance therapy (SMT program) and 1,778 patients discontinued. The main reasons for exclusion from the SMT program were: (1) completion of the SMT course - 108 people (6%); (2) on their own - 514 people (29%); (3) redirection to another medical and prophylactic institution (MPI) - 258 people (15%); (4) death - 337 people (17%); (5) administrative statement - 131 (7%); (6) imprisonment of the patient - 146 (8%)²³.

We draw attention to the fact that all states that signed the 1988 Convention exercise, in one way or another, take control over the production, distribution and use of methadone in order to reduce the risk associated with its use²⁴. In Denmark, in particular, in 1996, the law was accepted that strengthened control over the use of methadone. Responsibility for treatment was assigned to the county administrations, which introduced state treatment programs and limited the number of general practitioners authorized to use it, which led to an increase in the quality of treatment²⁵. The national legislation on drug trafficking provides for the control over the use of methadone and buprenorphine at the level of the order of the Ministry of Health of Ukraine dated March 27, 2012, No. 200, which regulates the control of the use of methadone by patients in the rooms of the OST, where such treatment is carried out by medical workers. The monitoring of the implementation of SMT programs in Ukraine, first of all, is carried out by the Ministry of Health of Ukraine and its relevant structures, as the main agents in the organization and implementation of this treatment system and the provision of assistance to drug addicts²⁶. From our point of view, control over the use of methadone and buprenorphine should be provided for in a separate article in the Law of Ukraine "On measures to combat illicit trafficking in narcotic drugs, psychotropic substances and precursors and their abuse".

²³ National report for 2017 on the narcotic situation in Ukraine (according to 2016) URL: <http://www.ummcda.org.ua/attachments> (Accessed July 31, 2019).

²⁴ Конвенція Організації Об'єднаних Націй про боротьбу проти незаконного обігу наркотичних засобів і психотропних речовин: міжнародний документ від 20.12.1988 р. (Convention on Organizing the National Convention on Combating the Illicit Trafficking of Narcotic Drugs and Psychotropic Species: International Document dated 20.12.1988).

²⁵ Должанская Н. А., Полубинская, С. В., Целинский Б. П. *Правовое регулирование в сфере оказания наркологической помощи, профилактики ВИЧ/ СПИД, противодействия незаконному обороту наркотиков: международный опыт* / Москва, Издательство Институт «Открытое общество». - 2002. - С.36. (Dolzhanska N. A., Polubinskaya, S. V., Tselinsky B. P. et al. *Legal regulation in the sphere of rendering narcological assistance, HIV/AIDS prevention, counteraction to illicit drug trafficking: international Experience*. Moscow, Open Society Institute Publishing House, 2002; 36).

²⁶ Про затвердження Порядку проведення замісної підтримувальної терапії хворих з опіоїдною залежністю: наказ МОЗ України від 27.03.2012 р., № 200 (On approval of the procedure for substitution maintenance therapy for patients with opioid dependence: Order of the Ministry of Health of Ukraine dated 27.03. 2012, No. 200).

4. Discussion

It is during a long period that in the scientific literature the question of distinguishing such concepts as "subject of management" and "subject of control" is discussed. Thus, some researchers interpret "the control of the subject" as a system endowed with a certain competence and state power authorities, enabling it to realize its will in the form of leadership commands or decisions which are mandatory for execution." The main feature of the subject of state administration is "the presence of his power authorities, which give to it the opportunity to embody his will in the form of decisions that are mandatory for execution"²⁷. Also, there is no single point of view among scientists what organs of the state are attributed as controlling entities. So, some researchers believe that the controlling entities in the public administration are recognized the respective supervisory entities (both state and non-state), departmental and specialized, which are responsible for carrying out control actions in relation to the object and subject of control in the public administration²⁸, the others consider as the subjects of state control in the field of executive power state entities, local self-government bodies, officials, public officers with state powers to perform control functions²⁹. Also, some scientists point out that the activities of the drug control authorities take place in the form of legally significant actions to monitor and verify compliance with the implementation and compliance by regulated entities of regulatory requirements in order to suppress the offenses by the relevant organizational and legal methods³⁰.

There is no single position regarding the system of state control entities in the legislation of Ukraine too. So, according the provisions of Art.31 of the Law of Ukraine "On Narcotic Drugs, Psychotropic Substances and Precursors" the control over the implementation of the provisions of this Law is carried out by the central executive entity, implementing the state policy in the field of the circulation of narcotic drugs, psychotropic substances, their counterparts and precursors, counteracting their illicit trafficking, the entities of the National Police of Ukraine, entities of incomes and charges, the central executive entity, implementing the state

²⁷ Малиновський В. Я. *Державне управління: навч. посіб.* / Луцьк : «Вежа» Волинського державного університету, 2000. С. 22 – 23. (Malinovsky V. Ya. *Public administration: textbook. allowance/Lutsk: "Tower", Volinsky state University, 2000. 22 - 23).*

²⁸ Гаращук В. М. Теоретико-правові проблеми контролю та нагляду у державному управлінні: дис. ... д-ра. юрид. наук Харків., 2003. – С.127 (Garaschuk V M *Theoretical and legal problems of control and supervision in public administration: dissertation Doctor of Law, Kharkiv, 2003; 127).*

²⁹ Андрійко О. Ф. Організаційно-правові проблеми державного контролю у сфері виконавчої влади: дис. ... д-ра юрид. наук. – Київ., 1999. – С.147 (Andriyko O. F. *Organizational-legal problems of state control in the sphere of executive power: dissertation Doctor of Law. Kyiv, 1999; 147).*

³⁰ Юдин В. Н. Правовые основы формирования и деятельности органов по контролю за оборотом наркотиков: теоретико-правовое исследование: дисс... канд. юрид. наук . Москва. 2011. С.124 (Yudin V. N. *Legal bases of formation and activity of organs for control over drug turnover: theoretical and legal research: dissertation candidate of Law. Moscow, 2011; 124).*

the policy in the field of health care, and other entities of executive power within the limits defined by the law of their powers.

In addition, we note that according to Part 2, Article 19 of the Constitution of Ukraine, entities of state power, local self-government entities and their officials are obliged to act only on the basis, within the limits of powers and in the manner prescribed by the Constitution and laws of Ukraine³¹. In Art.4 of the Law of Ukraine "On the Basic Principles of State Supervision (Control) in the Sphere of Economic Activity" is determined that the entities authorized to carry out state supervision (control) in the field of economic activity are established exclusively by laws. Also, Art. 1 of the Law of Ukraine "On the Basic Principles of State Supervision (Control) in the Sphere of Economic Activity", state control is determined through the functioning of its subjects as the activity of the central executive authorities, their territorial entities, state collegial entities, executive entities of the Autonomous Republic of Crimea, local entities authorized by the law within the limits of the powers provided for by law for the detection and prevention of violations of the requirements of the law by business entities as well as provision of interests of society and, in particular, appropriate qualities of products, works and services, of acceptable danger level for the population and environment. In addition, this Law provides interpretations of third sides - legal and physical (lawyers, auditors, members of public organizations, etc.) that are involved to state control by economic or controlling entities during its activities³².

In order to improve the effectiveness of the legal regulation of drug control in the healthcare field in Ukraine, it is extremely necessary to use a united, coordinated approach to the problem of creating a new system of control entities, and to delineate their powers in this area, which is responding to today's political, economic and social realities. The legislation of Ukraine practically does not regulate the activity of drug control authorities at the regional level and their interaction with local government entities and public organizations; there is neither unity of the normative and methodological base system, nor information space. In addition, the lack of a legally-established mechanism for the interaction of drug control authorities in Ukraine's healthcare field forces them to seek their own forms of interaction, for example, the conclusion of memorandums, which indicates that the control system is not formed.

5. Conclusion

The adaptation of Ukrainian legislation in the field of drug trafficking control to EU legislation is one of the priority components of the process of Ukraine's integration into the EU, which, in turn, is one of the directions of

³¹ Конституція України: Закон України від 28.06.1996 р., № 254к/96-ВР (Law of Ukraine "Constitution of Ukraine": dated 28.06.1996, №о. 254к/96-VR).

³² Про основні засади державного нагляду (контролю) у сфері господарської діяльності: Закон України від 05.04.2007 р., № 877-V (Law of Ukraine "On the Basic Principles of State Supervision (Control) in the Field of Economic Activity" dated 05.04. 2007, No. 877-V).

Ukrainian foreign policy. The legislation on the control of the circulation of narcotic drugs, psychotropic substances and precursors needs to be adapted to the EU legal system, including legislative acts of this organization adopted within the European Community, a common foreign and security policy and cooperation in the field of justice and internal affairs to control the circulation of such agents, psychotropic substances and precursors.

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