

Research Article

Human Rights and Principles of Law During Control of the Circulation of Narcotic Drugs, Psychotropic Substances and Precursors: Legal Basis and Ways of Solving them

Viktor Yarosh^{1*}, Iryna Umrykhina², Viacheslav Barba³, Oleksii Svitlychnyi⁴, Svitlana Korohod⁵

¹Department of Criminal Law and Criminology, Odessa State University of Internal Affairs, Ukraine

²Department of Administrative and Legal Disciplines of the Faculty, Donetsk State University of Internal Affairs, Ukraine

³Department of Philosophy, Odessa State University of Internal Affairs, Ukraine

⁴Department of Public Law, Dnipro University of Technology, Ukraine

⁵Department of Criminal Law and Criminology, Dnipro State University of Internal Affairs, Ukraine

*Address Correspondence to Viktor Yarosh, E-mail: yarosh_viktor@ukr.net

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Abstract

Background: The purpose of this article is to develop mechanisms for the protection of human and civil rights in the field of circulation of narcotic drugs, psychotropic substances and precursors.

Methods: The article uses scientific methods: Abstract logical, analytical, synthetic, historical, comparative, induction, deduction, generalization, modeling, for driving a car while drunk (international norms, administrative criminal aspects). The main basis of the study is presented as a method of cognition, built on the laws, categories and principles of dialectics, its purpose, legal principles, features, the subject. Measures to combat the illicit trafficking of narcotic drugs and psychotropic substances must not violate human and civil rights, which are enshrined in regulatory legal acts.

Results: A mechanism for protecting human and citizen rights in the sphere of circulation of narcotic drugs, psychotropic substances and precursors has been formed, which consists of 2 mandatory elements of legal regulation (legal basis) and practical direction (mechanism of implementation in the activities of public administration bodies). The specified mechanism was created on the basis of international legal standards (Conventions, international agreements) and the legislation of countries. Attention is emphasized that today there are numerous violations of human rights by public administration bodies. Under such conditions, it is worth paying attention to strengthening the responsibility of authorized subjects for actions that go against the powers. An important and negative aspect is the presence in the legislation that determines the legal status of those authorized to protect human and citizen rights in the sphere of circulation of narcotic drugs, psychotropic substances and precursors of discretionary powers that allow them to use their discretion, contrary to constitutional provisions.

Conclusion: Ensuring the rights and freedoms of a person and a citizen is a key feature of a legal state. Even in wartime in a democratic state, it is impossible to abandon the duty to ensure human rights. Therefore, martial law cannot be used to waive the obligation to ensure human rights. The Constitution of Ukraine also contains provisions that determine the specifics of the implementation of individual human rights in the

conditions of martial law. These and other problematic issues of the functioning of the mechanism for the protection of human and citizen rights lie in the sphere of law-making activity. Therefore, an actual means of improving the mechanism of protection of human and citizen rights in the sphere of circulation of narcotic drugs, psychotropic substances and precursors in the current conditions will be the legal monitoring of normative legal acts, which fix both the mechanism of legal regulation of this sphere and the mechanism of its implementation, and hence the legal reform of national institutions, which are called to protect human and citizen rights in the sphere of circulation of narcotic drugs, psychotropic substances and precursors.

Keywords: State control; Illegal circulation; Narcotic drugs; Legal regulation; Principles; Human rights; Principles of law; Legal ideas; Psychotropic substances; Mechanism

Introduction

The State of Ukraine, like the majority of modern states, has established human and citizen rights, the mechanisms of their protection at the constitutional level, in legislative acts, laid the basis for the exercise of powers by state authorities and local self-government bodies, which must protect and protect the basic rights and freedoms of citizens in the sphere of circulation of narcotic drugs, psychotropic substances and precursors.

Violation of human rights is becoming the norm for the modern legal genesis of Ukraine, the negative consequences of such a trend are increasingly affecting the life of every person, which, in turn, has a destructive impact on the relationship between individuals and legal entities with the authorities. The problem of violation of human rights is particularly acute within the framework of the implementation of criminal procedural legal relations.

Such a negative trend directly indicates the presence of theoretical and praxeological problems in the field of protection and safeguarding of inalienable human rights in general in Ukraine and during criminal proceedings in particular [1].

To a large extent, the root cause of human rights violations within criminal proceedings are significant gaps and conflicts in domestic criminal procedural legislation [2]. However, a prerequisite for effective regulatory reform should be a scientific and analytical conceptual study of the general understanding of the institution of human rights, which will make it possible to develop effective ways to reform the regulatory consolidation of the mechanism for the implementation and protection of human rights in criminal proceedings. It is worth noting that the interpretation of human rights has always been carried out by scientists depending on the prevailing social and legal conditions of human existence. At the same time, we believe that the interpretation of the concept of "human rights", which is currently used in the legislation of independent Ukraine, does not meet the needs of a modern legal state. That is why it is necessary to conduct a new scientific study of the institution of human rights, in particular the concept of "human rights" itself, and to develop such an interpretation of human rights, which will meet the challenges of a modern legal state and can be effectively used in the legal reform of the institution of human rights in Ukraine [3].

Given the universal character of human and citizen rights, it is considered within the framework of the general theory of the state and law, as well as other branches of science, each of which defines a certain sphere of human activity. In particular, V. Kotkovsky and M. Bogatyrev noted the judicial mechanism for the protection of human and civil rights and freedoms, V. Knysh conducted a comparative analysis of the protection mechanisms of Poland and Ukraine, S. Shylo studied the mechanism of protection of human and civil rights and freedoms as a guarantee of legality and discipline in the activities of internal affairs bodies. Also devoted his work to the actual issues of the human rights protection mechanism [4].

The aforementioned works and other works used in the works do not mediate various aspects and reflect the complex nature of mechanisms for the protection of human and civil rights, and therefore do not reflect their effectiveness. The issue of improving the human rights protection mechanism in Ukraine is particularly important and relevant.

Methods

Generations of human rights in the field of drug trafficking are quite diverse, as they reflect the multifaceted nature of the human person, in which natural, social and spiritual origins are combined. Man is a thinking being that creates, destroys, and experiences. A person is a citizen, a public figure, a family member, and a worker. In a specific individual, these features are combined in a proportion that is unique to this individual and gives it originality, uniqueness

and originality. Human rights are a vital necessity for self-expression of a person. Only the possession of rights and basic freedoms creates the proper conditions for the free self-development and self-governance of an individual.

The analysis of modern scientific literature shows the interest of scientific circles in methodological aspects of human rights in the field of drug trafficking in modern society and the state. This is understandable, because, as D.L. Kerimov writes, the socialization of a person, his transformation into a personality occurs due to active participation in public and state life, useful work, comprehensive education, communication and interaction with other people. All the values of both society and the state are created by the hands, mind and creativity of a person.

Human rights methodology is an integral part of philosophical anthropology, the most important task of which is the study of human nature, which is the source of his inherent rights and freedoms. The main research questions are phenomenology and ontology, which reveal human rights as their attributive property, which is formed in the context of social existence. Academician V.S. Nersesianz wrote that unlike most political philosophies, which have an imperative character, the ideology of human rights is inherently pluralistic. The methodological aspects of the theory of human rights in the field of drug trafficking are very complex and multifaceted. That is why it is necessary to highlight and analyze the various methods of this theory as a new direction of legal science, that is, the entire set of techniques, methods and means of studying the relevant norms of law and human rights activities of various subjects in society.

We believe that the methods of human rights theory in the field of drug trafficking can be divided into: In general, that is, those that apply in all directions of all legal science and the theory of human rights itself. Private is used to study different aspects and aspects of the law on human and civil rights and freedoms, as well as modern theories of human rights in general. The main place among the general methods of studying human rights issues in the field of drug trafficking belongs to historical methods, system approaches, system analysis and synthesis.

This is confirmed by the fact that: The historical method involves a concrete-historical and historical-empirical analysis of the problems of generations of human rights, including the study of how this or that generation of human rights arose in the field of drug trafficking, what are the main stages in its development, what did it do what it has become now and what are its historical prospects; the systemic approach allows considering all norms containing human rights as a system, as a single whole in close connection and interaction with other legal norms and institutions, to follow the human rights activities of various subjects from a systemic perspective; systematic analysis allows to distribute the entire set of human rights in the field of drug trafficking to certain generations, to give their characteristics, to show the most effective ones; with the help of synthesis, we can combine certain researched

components, properties and relations that were highlighted in the process of system analysis into a single whole [1].

First of all, the private methods should include: The permission method (presupposes the nature of the human rights activity of subjects, in which they are given freedom in the implementation of their goals and tasks, i.e., the person implements them at his own discretion). At the same time, in the process of implementing this method, other methods and techniques can be used-delegating (transfer of powers), recommendatory (assumes the issuance of recommendations), sanctioning (permitting); restrictively prohibitive method (consists in the regulation and establishment of certain prohibitive measures for these subjects, which should be implemented in practice).

Results and Discussion

From the standpoint of public administration, examines the essence of the mechanism. Radchenko, defining it as a systemic set of institutions, structures, successive actions, forms, states and processes in the state as a product of organized human activity, which aims to realize the interests and needs of people and solve urgent socio-political problems at the expense of state influence and regulation of social life on the basis of established social values, norms and rules; is a form of implementation of the functions of the state and has as a subject the bodies of state administration" [2].

Y. Shemshuchenko interprets human rights as the defining principles of legal status that belong to a person from birth, and therefore are natural and inalienable. Without these rights, a person cannot exist as a full-fledged social being. Human rights are a necessary element of civil society and the rule of law [3].

The content of the human rights protection mechanism is revealed by I. Senchuk through procedural activities, international mechanisms for ensuring and protecting human rights, national mechanisms for ensuring and protecting human rights. The author claims that it is the combination of these components that will pave the way for the development of a new stage of the mechanism for ensuring and protecting human rights; will give an answer regarding the effectiveness of modern ways of protecting individual rights, its positive features or shortcomings, since thanks to this method, a comparison of various mechanisms for the protection of human rights will be carried out with the aim of its improvement [4].

Some authors distinguish between them, taking into account the content of the activity: Protection, for the most part, is associated with the restoration of a violated subjective right, and protection-with prevention, although the lexical meaning of these terms boils down to the following understanding: Protection-protection of someone/something, guarding, guarding; protection-intercession, protection, support; protection-protection, provision; protection-provision, protection [5-7]. As for the term "mechanism", its understanding is reduced to the following meaning: Internal structure, system of something; a set of

states and processes that make up a certain phenomenon [8]. Therefore, the mechanism of protection of human and citizen rights is a system of means aimed at achieving the goal.

In spite of everything, as rightly noted by N. Hetmantseva and G. Mytrytska, the main characteristic of the mechanism of legal regulation is its ability to regulate social relations, which makes a set of legal means a whole, and not just a mechanical set of certain elements. But legal regulation cannot provide any of the elements of the mechanism independently, it is carried out simultaneously by all its components in their organic interconnection and thanks to these connections. On the other hand, although the mechanism of legal regulation is formed by elements that are united by various relationships, they are at the same time separated from each other, at least by conditional boundaries, until the appropriate circumstances, one might say, life circumstances-conditions, surrounding factors that provoke subjects to appropriate regulatory action by legal means [9].

All this shows that the essence of the mechanism of protection of human and citizen rights is the mechanism of legal regulation and the mechanism of the realization of rights in this area. Its content is the interaction of these institutions.

The mechanism for the protection of human and citizen rights is based on normative acts that mediate the system of state and municipal authorities by determining their legal status, granting them appropriate competence, and outlining the procedural and procedural order for their implementation to achieve the goal of protecting human rights. and a citizen. And also the opportunity for citizens to take certain actions to protect their rights.

The constitutional provisions state that the current international treaties, the binding consent of which has been given by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine. It is common knowledge that human rights are enshrined in numerous international documents to which Ukraine is a signatory.

First of all, a comparative analysis of the provisions of the constitutional legislation of Poland and Ukraine shows that in Poland there is a closer interaction of state bodies with institutions of civil society in the sphere of ensuring and protecting human rights than in Ukraine. Secondly, in Poland there are a number of state bodies that play a decisive role in ensuring and protecting human rights, in particular the State Tribunal, the Supreme Chamber of Control, which have no analogues in Ukraine [10].

Unfortunately, punitive approaches have prevailed in legislation, practice and financing measures in response to drug use and drug addiction around the world. The application of criminal law norms, disproportionate punishments and methods of work of law enforcement agencies led to negative results from the point of view of health care and affected a wide range of other human rights.

The protection of human and citizen rights during the period

of a special legal regime, in particular martial law, also becomes important. Currently, the issue of the restriction of human rights under the conditions of the legal regime of martial law has been settled. Thus, for the period of its validity, some constitutional rights and freedoms of a person and a citizen may be limited, in particular those provided for in Articles 30-34, 38, 39, 41-44, 53 of the Constitution of Ukraine, in addition to the right to the protection of a person during war. In spite of everything, the constitutional provisions of Art. 64 establish an exhaustive list of rights and freedoms that cannot be limited, which is standard for world practice [11].

Violations of the laws and customs of war are considered as war crimes characterized by double illegality, prohibited by the norms of both national and international criminal law [12]. And here one should agree with some statements that the study of the peculiarities of legal consolidation and protection of human rights, both at the general international legal level and at the level of each individual national legal system, does not give a complete answer about the effectiveness of modern methods of protecting individual rights, its positive features or shortcomings, since the interstate (or intermediate) level of their provision, which can be investigated using the comparative legal method, is not taken into account. Nevertheless, the general international legal level should be considered through the prism of such a scientific and philosophical category as general; the interstate level of ensuring and protecting human rights is partial, and the level of the national legal system of ensuring human rights is single. In this relationship, the leading role belongs to the interstate (intermediate) level of ensuring and protecting human rights, which is a connecting link between national (single) and international (general) human rights protection mechanisms [13]. It is thanks to the interstate (intermediate) level that national and general international mechanisms for ensuring and protecting human rights converge, that is, globalization in this area, unification and increasing the efficiency of guarantees of the legal status of a person [14].

At the same time, the effectiveness of international mechanisms for the protection of human and citizen rights was demonstrated for the majority of the world community and for Ukrainian citizens separately, when it became obvious that almost all international organizations and institutions that had to warn, prevent or stop the military aggression of one country against another, and close to it are not adapted or simply not capable [15]. Of course, we are primarily talking about the United Nations, which turned out to be practically helpless in the situation with aggressive Russia. This is because most of the global organizations and institutions whose functions include the protection of human rights and have at least some influence on the government operate under the auspices of the United Nations, the World's leading International Organization. In addition, the very grounds, rules, international political and legal norms and principles that formed the basis for the activities of these subjects were also discredited, as well as the subjects of world mechanisms that were given specific

functions for the protection of human rights [16] (Figure 1).

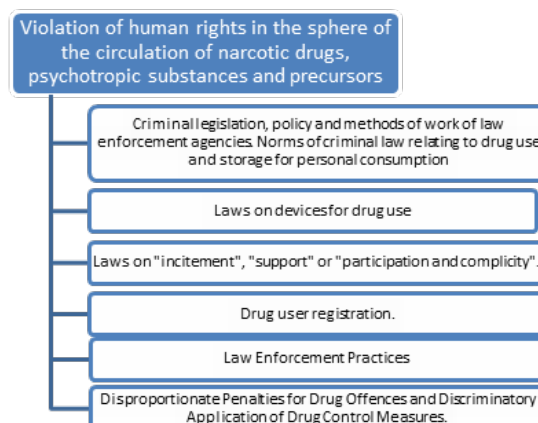


Figure 1: Violation of human rights in the sphere of the circulation of narcotic drugs, psychotropic substances and precursors

Criminal legislation, policy and methods of work of law enforcement agencies Norms of criminal law relating to drug use and storage for personal consumption: In almost all countries of the world, possession of drugs for personal consumption is a crime. The consequences of such an approach are especially severe for people suffering from addiction—a chronic relapse condition [17]. Everyone has the right to receive life-saving medical services without fear of punishment or discrimination. But in some countries, many people who use drugs by injection do not carry sterile syringes or other injecting equipment, even if this is allowed by law, because possession of such equipment can indicate that a person uses drugs, and such a person may be punished on the second basis [18]. Many do not go to doctors and do not use the services of harm reduction programs, again for fear of being arrested and convicted. In addition to the obvious harm associated with detention (see Information Article No. 3), the presence of a criminal record entails serious consequences and can negatively affect the possibility of employment, education, and even social services, such as housing. Criminal status also makes people who use drugs open to abuse by the police, including beatings, extortion, and even torture.

Laws on devices for drug use

In many countries, it is illegal to carry drug paraphernalia, such as needles and syringes, pipes for smoking crack, and foil for smoking heroin. This may deter more safe ways of drug use, as people who use drugs are afraid of attracting the attention of the police. This may also hinder the provision of harm reduction services, as providers of such services are afraid of the legal consequences of their actions to provide drug users with clean tools [19].

Laws on “incitement”, “support” or “participation and complicity”

In many countries, there are laws that provide criminal penalties for inciting drug use or facilitating/supporting drug use. Such laws are rarely based on the real situation of drug use and they misunderstand the reasons why people start using drugs (which often happens among peers,

siblings or friends who also use drugs). These laws can act as a deterrent to the provision of harm reduction services. Harm reduction service providers are often accused of promoting drug use [20].

Drug user registration

In many countries, drug users who once come to the attention of health services are placed on a “registration”, i.e. they are entered into lists through which their status as drug users may become known to others. Drug user registration is a form of government control over people with drug addiction and imposes restrictions on their rights. Registration labels people as drug users for years, sometimes indefinitely, without regard for whether they may have stopped using drugs [21]. In China, for example, patients receiving methadone treatment are placed on government lists that are linked to their identification documents and are accessible to the police. In Thailand, once registered, drug users are under surveillance by the police and drug enforcement agencies, and information about the patient’s drug use is available to many people [22]. Fear of being registered deters people from seeking help, even if it is provided free of charge. Being registered can result in losing a job, home, and even custody of one’s own child. Knowing the potential consequences, many people do not consider state-run drug treatment programs an acceptable option [23].

Law enforcement practices

Adequate, human rights-compliant law enforcement practices are essential to effective drug policy and positive treatment outcomes for drug users. Unfortunately, in most countries the experience is often the opposite, partly due to inadequate laws and partly due to law enforcement practices. In many countries, drug users and harm reduction services are targeted by police, who see them as easy targets for detention, intimidation, and extortion.

The presence of police in or near harm reduction programs deters people from seeking services for fear of arrest or other punishment. In Ukraine, for example, drug users have reported being detained many times near legal needle and syringe exchange sites. They were brutally beaten for being found with syringes at or near needle and syringe exchanges. In Georgia, a crackdown on drugs in 2023 resulted in 4% of the country’s male population being tested for drugs, many under duress. Of these, 35% were sent to prison on drug-related charges. In Thailand, the 2023 “war on drugs,” which resulted in over 2,800 extrajudicial executions, had a lasting impact on drug users’ access to essential health services [24]. Research shows that the “war on drugs” significantly reduced the number of people seeking treatment for drug addiction, and drove a significant number of people who had previously attended drug treatment centres underground. Several years later, many people who use drugs still avoid treatment in public hospitals for fear that their drug use (past or present) will be reported to the police. This fear is not unfounded. Public hospitals and drug treatment centres collect information on

drug users and report this information to law enforcement agencies, both as a matter of policy and practice [25].

Amnesty International has documented an increase in complaints of extrajudicial killings as counter-narcotics operations in Mexico have intensified.

Disproportionate penalties for drug offences and discriminatory application of drug control measures

In many countries, the penalties for possession of drugs for personal use or with intent to distribute are severe, ranging from long prison terms to the death penalty. In the United States, the use of three-strikes laws in some states can result in life sentences for minor, non-violent drug offenses. In many countries, people are sentenced to death and executed for drug offenses, sometimes for possession of relatively small amounts of illegal drugs [26].

Drugs and fair trial standards

In many cases, fair trial standards are not respected for drug-related offences. In Iran, for example, many drug smuggling cases are tried in revolutionary courts. The Special Rapporteur on torture found similar cases during his visit to Indonesia in 2023, many of which were for drug-related offences [16]. Drugs and detention without trial. In some countries, drug suspects are detained without trial and with very few due process guarantees. In Malaysia, for example, under the Dangerous Drugs Act, authorities have the power to detain drug suspects without a warrant or court order for up to 60 days. The Home Ministry can then issue a detention order, which gives the detainee the right to appear before a court to argue for release [23]. However, if the court refuses to release the suspect, he or she can be detained for two consecutive two-year terms. An advisory board reviews the legality of the suspect’s detention, but the procedure is largely free of the due process rights that are afforded in court hearings. There have been reports of police holding people in detention under the Act after the courts have acquitted them. In 2023, 798 people were arrested and detained under this Act, and 805 people in the first 8 months of 2024 [27-30].

Conclusion

All this proves the formation of mechanisms for the protection of human and civil rights in the sphere of circulation of narcotic drugs, psychotropic substances and precursors, the essence of which is mediated by the mechanisms of legal regulation and implementation. This structure was formed under the influence of a number of international standards in the field of human rights in the field of circulation of narcotic drugs, psychotropic substances and precursors, received confirmation at the constitutional level and was specified in the laws and bylaws. At the same time, even a rough review of its effectiveness revealed a large gap in its formation. Despite the fact that the current domestic law contains many important guarantees for the protection of human rights and the rights of citizens, such as the prohibition of mandatory exhaustiveness and restriction of certain rights lists, the prohibition of interference by public authorities

and infringement of rights. In practice, systematic signs of violations of human and civil rights in the field of circulation of narcotic drugs, psychotropic substances and precursors by the bodies responsible for their protection are observed. Under such circumstances, it is worth paying attention to strengthening the responsibility of the competent subject for actions contrary to the authority. An important and negative aspect is the existence of laws that, contrary to constitutional provisions, determine the legal status of persons authorized to protect human rights and the rights of citizens, the discretionary powers that allow them to exercise their discretion.

The issue of these and other issues of the functioning of the mechanism for the protection of human and civil rights in the field of circulation of narcotic drugs, psychotropic substances and precursors, the law, therefore, the actual means of improving the mechanism of the protection of human and civil rights in the field of circulation of narcotic drugs, psychotropic substances and precursors in the current situation is the mechanism of legal regulation of this area and the mechanism of its implementation. Legal monitoring of normative legal acts, thus, is the revision of the law of state bodies, which are called to protect the rights of humans and citizens in the sphere of circulation of narcotic drugs, psychotropic substances and precursors.

Since the International mechanisms for the protection of human rights require appropriate revisions, the point of view of the study can be seen in the study of the Legal World Order, which is aimed at identifying shortcomings in accordance with today's requirements and developing proposals for their improvement.

Conflict of Interest

The authors declare that they have no conflict of interest.

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