

Research Article

Administrative and Criminal Law Aspects of Preventing Offenses Committed by Minors in the Sphere of Illegal Circulation of Narcotic Drugs, Psychotropic Substances and Precursors

Tetiana Voloshanivska¹, Inna Pozihun², Serhii Losych³, Olha Merdova⁴, Yevhen Leheza^{5*}

¹*Department of Criminal Procedure and Criminalistics, Odessa State University of Internal Affairs, Ukraine*

²*Department of Police Administrative Activities, Odessa State University of Internal Affairs, Ukraine*

³*Department of State and Legal Disciplines, Donetsk State University of Internal Affairs, Ukraine*

⁴*Department of Law Sciences, Donetsk State University of Internal Affairs, Ukraine*

⁵*Department of Public and Private Law, University of Customs and Finance, Ukraine*

*Address Correspondence to: Yevhen Leheza, yevhenleheza@gmail.com

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Abstract

Background: The article highlights legal regulation of administrative and Criminal Law Aspects of Preventing Offenses Committed by Minors in the Sphere of Illegal Circulation of Narcotic Drugs, Psychotropic Substances and Precursors.

Methods: The methodological basis of the research is presented as comparative-legal and systematic analysis, formal-legal method, interpretation method, hermeneutic method as well as methods of analysis and synthesis. The following research methods were used in the process of performing the set tasks: Legal regulation of the specifics of preventing offenses committed by minors in the sphere of illegal circulation of narcotic drugs, psychotropic substances and precursors was studied using the formal-logical method; the system-structural method was used to identify and analyze legal regulation of the specifics of preventing offenses committed by minors in the sphere of illegal circulation of narcotic drugs, psychotropic substances and precursors; the comparative legal method was used to analyze prevention of offenses committed by minors in the sphere of illegal trafficking of narcotic drugs, psychotropic substances and precursors which deserves attention; appropriate proposals for the legislation of Ukraine were prepared with the help of the formal legal method.

Results: Carried out was an analysis of statistical data on the use of narcotic drugs by minors, the number of diseases associated with the injection method of drug administration and measures of influence on minors aged 16 to 18 years were applied. It was determined that today; units of the National Police of Ukraine are one of the main subjects in the sphere of combating drug addiction among children. Thus, specially authorized police officers are tasked to counteract illegal drug trafficking, detect, prevent the commission of, and solve relevant crimes, carry out investigative measures and preventive work with the population, including minors.

Conclusion: The tasks entrusted to the police units for implementation of measures in the sphere of prevention of and countermeasures against drug trafficking among minors have been disclosed. The main preventive measures carried out by territorial police bodies in the field of combating illegal drug trafficking are highlighted. Identified are gaps

and shortcomings in the legislation regarding activities to be performed by the units of the National Police of Ukraine in the sphere of preventing drug trafficking among minors, namely absence of a clear definition of powers entrusted directly to juvenile prevention units regarding preventive measures in the sphere of drug trafficking among minors, implementation of administrative supervision of children who used narcotic substances or were prosecuted.

Keywords: Police; Administrative and legal principles; Administrative legislation; Criminal and legal principles; Crime prevention; Countermeasures; Prophylaxis of crime; Offenses; Minors; Illegal circulation of narcotic drugs; Psychotropic substances and precursors

Introduction

Today, Ukraine is going through one of the most difficult stages of its formation-the struggle for independence and freedom. However, other urgent issues and problems in our society have not disappeared or perhaps they have become even more numerous. The matter will be about illegal circulation of narcotic substances and drug addiction, in particular among minors.

Use of drugs and psychoactive substances remains a social problem in most countries of the world and is a consequence of the emotional and physical development of a person, which is especially true about minors. Specialists and experts on this issue have long pointed to the connection between drug use and antisocial behavior which can be characterized as abusive behavior, including violation of children's rights. Thus, use of drugs leads minors to the world of crime and incites them to commit crimes. Such crimes include not only illegal use of drugs, but also sale and purchase of narcotic substances.

While noting the importance of studying the range of problems regarding administrative and legal prevention of illegal circulation of narcotic drugs, psychotropic substances and precursors among minors, in particular in the conditions of martial law, we emphasize the relevance of studying this issue.

The problem of drug addiction and spread of narcotic drugs, psychotropic substances and their analogues is currently one of the threats to the national security of Ukraine. At the same time, in recent years, spread of drug addiction and growth of crimes related to illegal trafficking of narcotic drugs, psychotropic substances, their analogues or precursors (hereinafter—drug trafficking) has been observed, in particular among minors; a large proportion of such criminal offenses are committed with the involvement of minors (juveniles). Such criminal offenses are becoming increasingly large and become a serious social factor that negatively affects people’s lives, health and well-being.

Methods

The methodological basis of the research is a set of methods and techniques of scientific knowledge. The main role in this system belongs to the general scientific dialectical method of cognition which makes it possible to investigate problems in the unity of their social content and legal form, to carry out a systematic analysis of legal regulation of the peculiarities typical for prevention of offenses committed by minors in the sphere of illegal circulation of narcotic drugs, psychotropic substances and precursors. With the help of the logical-semantic method, the conceptual apparatus was deepened, general principles of legal regulation of peculiarities typical for prevention of offenses in the sphere of legal turnover of narcotic drugs, psychotropic substances and precursors were determined. The systemic-structural and comparative-legal methods made it possible to investigate the concept and contents of peculiar features typical for prevention of offenses committed by minors in the sphere of illegal circulation of narcotic drugs, psychotropic substances and precursors, as well as problems regarding activities of entities ensuring counteraction to the illegal circulation of narcotic drugs and psychotropic substances. The historical-legal method was used to study the state and general nature of features typical for prevention of offenses committed by minors in the sphere of illegal circulation of narcotic drugs, psychotropic substances and precursors. With the help of the formal legal method, the content of legal norms providing for peculiar features typical for prevention of offenses committed by minors in the sphere of illegal circulation of narcotic drugs, psychotropic substances and precursors, was investigated.

Results and Discussion

Several well-known foreign scientists who researched the issue concerning prevention of offenses in the sphere of drug trafficking among children, such as: Richard Dembo—a professor of criminology and social work at the

University of Florida. He investigated the effectiveness of police drug addiction prevention among children and youths [1]. William J. Bukowski—a professor of Psychology at Concordia University in Montreal. He studied social and psychological factors that influence the risk of drug use among teenagers [2]. Denise Hallfors—she conducted a research concerning prevention of offenses in the sphere of drug trafficking among young people in the school context [3].

So, as we can see, many scientists, domestic ones and foreign ones, performed direct or indirect studies of the problem concerning prevention of offenses in the sphere of drug trafficking and illegal use of narcotic substances among children. At the same time, today’s challenges, circumstances and other accompanying factors have significantly changed conditions (changes in legislation, armed aggression of the Russian Federation, etc.) as well as the essence of the issues studied by the above-mentioned scientists and investigated by us. Therefore, the administrative and legal aspects regarding prevention of offenses committed by minors in the sphere of illegal drug trafficking have not been studied although being relevant in the current conditions. In addition, the current circumstances in Ukraine, such as the war, the liquidation of the Department for Combating Narcotic Crime, as well as lack of a clear state policy in this direction require proper thorough research and scientific development.

The consequence of drug circulation in society and drug use among children consists in development of drug addiction. Thus, according to the Law of Ukraine “On Measures to Counter the Illicit Trafficking of Narcotic Drugs, Narcotic Substances, Precursors and Abuse,” drug addiction is a mental disorder caused by dependence on a narcotic drug or psychotropic substance as a result of abuse of this drug or this substance [4].

Statistical data in Ukraine on the use of drugs by minors show that the share of teenagers who have used any narcotic substances at least once in their life is 18%. At the same time, 8.7% of teenagers used marijuana, and 9.2% of youths used inhalants, the share of all respondents who have used two or more narcotic substances was 4.2% [5].

Incurable diseases are another negative consequence of drug addiction. Thus, in Ukraine, the use of drugs belonging to the high-risk group is mainly related to the injection method of administering opiates manufactured in “home” conditions (solution of opium liquid extract (“shirka”)) and amphetamine-type stimulants. Intravenous administration of narcotic substances leads to the risk of HIV infection, hepatitis B and C, syphilis due to the use of one needle by several people. According to the official website of the State institution “Public Health Center of Ukraine,” as of 01 January, 2022, 15,366 (in 2020—15,659) new HIV-infected persons, 4,150 cases of AIDS and 1,925 deaths caused by AIDS were recorded in Ukraine among citizens of Ukraine and 35 cases of HIV infections were registered among

foreigners [5]. According to the report of the Ministry of Health of Ukraine, according to estimated data, at the end of 2021 the number of HIV-positive people in our country was 245,000. As of 01 October 1, 2022, the number of people living with HIV under medical supervision in health care facilities was 155,722 which are 376.0 per 100,000 of population [6].

In 2021, decisions were made in Ukraine regarding 94 persons (a total of 6,063 cases), namely, measures of influence were applied to minors at the age from 16 to 18, provided for in Article 24-1 of the Code of Ukraine on Administrative Offenses (obligation to publicly or in some other form apologize to the victim; warning; reprimand or severe reprimand; transfer of the respective minor to the supervision of parents or persons who replace parents, or to the supervision of a pedagogical or labor team with their consent, as well as individual citizens at their request) in cases of administrative offenses related to illegal production, acquisition, storage, transportation, forwarding of narcotic drugs or psychotropic substances without the purpose of sale in small quantities (art. 44 of the Code of Ukraine on Administrative Offenses) [6]. Although the decisions are not numerous, we understand that the number of latent cases is much greater.

Based on such disappointing statistics, drug trafficking among teenagers is the cause of such negative phenomena among young people as drug addiction, infections, administrative responsibility etc. Therefore, preventive measures and countermeasures are an important condition for preventing these negative manifestations in the environment.

As of today units of the National Police of Ukraine are one of the main subjects in the sphere of combating drug addiction among children. Specially authorized police officers are tasked to counteract illegal drug trafficking, detect, prevent the commission of, and solve relevant crimes, carry out investigative measures and preventive work with the population, including minors.

In his dissertation research “Administrative and Legal Principles of Activities Performed by the National Police of Ukraine Regarding Prevention and Counteraction of Drug Addiction at the Regional Level.” Halyuk (2019) determined the main preventive measures carried out by territorial police bodies in the sphere of combating illegal drug trafficking, namely:

1. Identification and determination of persons who use narcotic drugs and psychotropic substances for non-medical purposes, and provision of information about such persons to health care institutions for their mandatory examination and treatment;
2. Document verification;
3. Perfunctory checks and inspections;

4. Police care;
5. Preventive conversations with certain categories of the population regarding prevention of drug use and condemnation of facts of illegal drug use;
6. Monitoring of persons subject to administrative supervision based on a court decision to sentence a person to imprisonment for crimes related to illegal drug trafficking;
7. Checking drivers for drug intoxication;
8. Cancellation of permits for purchase, storage and carrying of weapons and ammunition issued to citizens who abuse narcotics for non-medical purposes;
9. Carrying out special operations to identify the reasons and conditions for spread of illegal drug trafficking, as well as identifying the persons involved in it [7].

Other authors who studied this issue note that administrative and preventive measures used for prevention of drug trafficking are divided into the following types: Measures of general effect; measures of individual effect. The main essence of administrative and legal measures of general effect includes implementation by police officers of a diverse set of measures against the general mass of the population and consists in mobilizing all members of the society to fight phenomena of objective reality which under certain conditions create a possibility for separate individuals to pass to anti-social positions [8]. Administrative and legal measures of individual action consist in implementation by police officers of various measures of an individual nature in the sphere of preventing illegal circulation of narcotic drugs, psychotropic substances and precursors. Such measures include individual preventive work of police officers with persons who may commit administrative offenses on the basis of their drug addiction. As a rule, police officers conduct preventive conversations with persons who permit non-medical use of narcotic drugs and psychotropic substances at an early stage when it has not yet turned into a disease [9] (Figure 1).

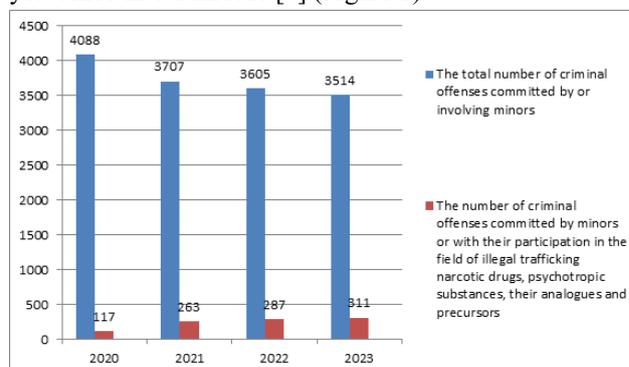


Figure 1: Committing criminal offenses by or with the participation of minors

However, despite such a positive trend, it should be noted

the increase in the activity of minors in the field of illegal trafficking of narcotic drugs, psychotropic substances, their analogues and precursors. If in 2020 minors committed 117 criminal offenses in the sphere of trafficking in narcotic drugs, psychotropic substances, their analogues and precursors, which is 4.4% of the total number of criminal offenses, then in 2021 minors committed 263 similar criminal offenses, but this is already 7.1% of the total number of criminal offenses, then in 2022 minors committed 287 similar criminal offenses, but this is already 7.4% of the total number of criminal offenses, then in 2023 minors committed 311 similar criminal offenses, but this is already 7.5% of the total number of criminal offenses (Figure 2).

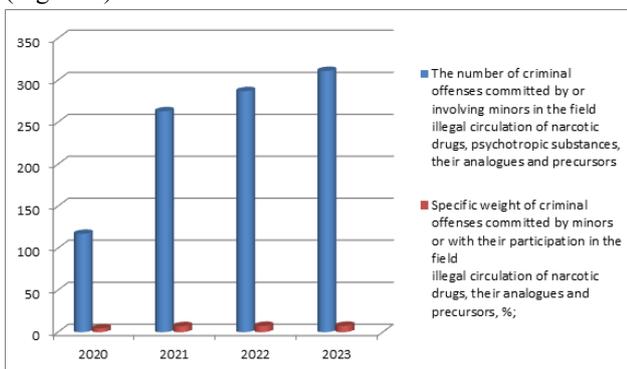


Figure 2: The specific weight of criminal offenses committed by minors or with their participation in the field of illegal drug trafficking, their analogues and precursors

The criminogenic activity of minors in the field of illegal drug trafficking primarily depends on the influence of adult offenders. The detection of the involvement of minors in illegal drug trafficking is particularly difficult. This leads to increased latency of these types of criminal offenses [10].

In criminology, the concept of “prevention” is defined in various ways. Some authors note that crime prevention is an activity of the state and society directed against crime with the aim of keeping it at a minimum level by means of eliminating or neutralizing the factors crimes are generated by. Others narrow down the notion of crime prevention to a system of means implemented by society in order to curb the growth of crime and, if possible, reduce its level by influencing causes and conditions that contribute to it, as well as by preventing and stopping specific crimes. There is also an opinion that crime prevention is a set of various types of state activities aimed at improving social relations and eliminating negative phenomena and processes that generate crime or contribute to its occurrence, as well as preventing completion of crimes at various stages of criminal behavior development [11].

Crime prevention means activities aimed at preventing the commission of crimes that are being prepared or planned. In other words, preventive work, based on a period of time, is carried out when a person receives and forms an idea about committing a criminal act and this idea begins to be

embodied in actions preparing a crime which corresponds to the criminal law stages of emergence of intent and preparation for a crime [12].

Termination of crimes is a set of activities aimed at stopping a started crime by developing and using special measures. Such actions ensure termination of initiated crimes at the stages of preparation and attempt, termination of ongoing crimes, which, having been started through a criminal act or inaction, are being committed continuously for a more or less long period of time, as well as termination of further criminal episodes in continuing and so-called serial crimes. Preventing the continuation of a crime that has already been started and bringing it to an end is carried out, in particular, by identifying persons who have entered upon the path of committing a crime, by applying measures to such persons, including criminal law measures, as well as by creating such a situation that excludes further continuation of criminal activity.

Among the terminological categories a prominent place is taken by “combating crime”. As for the direct combating illegal drug trafficking and drug addiction, it should be noted that this is a certain strategic direction, which consists in preventing organized forms of illegal drug trafficking [13].

While analyzing the opinions of scientists on this issue, we would like to note that according to some authors, the units of the National Police have enough tools for preventing use of drugs among minors; and according to other scientists such tools are not sufficient, and in addition to that, there are gaps in the legislation in the field of administrative and legal measures regarding combating drug trafficking among minors [14].

For example, there is no clear definition of powers regarding preventive measures in the sphere of drug trafficking among minors attributed directly to units of juvenile prevention, including powers of implementing administrative supervision of children who used narcotic substances or were prosecuted in this regard. Indirectly, these powers are indicated in Clause 1 of Section II, namely: --- “preventive activities aimed at preventing children from committing criminal and administrative offenses, identifying the causes and conditions that contribute to this, taking measures within their competence to eliminate them”, as well as “keeping preventive records of children prone to committing offenses and carrying out measures individual prevention with them;”. However, well-defined tasks could ensure expansion and deepening of tools for combating drug trafficking and drug addiction among minors [15].

So, Maksimova (2020) in her study notes that a significant range of work regarding combating drug addiction is carried out by district police officers. According to the orders of the Ministry of Internal Affairs of Ukraine “On the approval of the Instructions for organizing the activities of precinct police officers and community police officers” and “On the approval of the Instruction on the

organization of administrative supervision of persons released from places of deprivation of liberty” defined are the procedure and task of preventive measures concerning observation and control over behavior of persons released from places of deprivation of liberty who were convicted of crimes related to illegal drug trafficking, entrusted to be investigated by the specified units of the National Police. The procedure for organizing administrative supervision of such persons is defined in the Law of Ukraine “On Administrative Supervision of Persons Released from Places of Imprisonment,” which states that administrative supervision is established only for adults. The law does not provide for administrative supervision of minors who systematically use drugs. In our opinion, professional supervision for this category of children is necessary [16]. It would be appropriate to assign the function of monitoring minors who systematically use and distribute narcotic drugs or their analogues to the juvenile prevention units of the National Police of Ukraine [17].

Conclusion

Thus, the level of narcotization of minors is growing while as the overall number of criminal offenses in the sphere of illegal drug trafficking in the state is decreasing. Prevalence of criminal offenses in the sphere of illegal drug trafficking by and with the involvement of minors has been established. Introduction of special protection of minors against purposeful influence of adults regarding involvement of minors in the commission of criminal offenses in the sphere of illegal drug trafficking is considered necessary and justified, and minors should be considered not only as consumers, but also as active participants in criminal illegal activities.

Norms of the criminal law which establish enhanced criminal liability for commission of “narcotic” criminal offenses involving minors, meet the needs and interests of Ukrainian society, because children are the stratum of society that needs additional protection, including through criminal legal means.

It has been proven that the administrative and legal aspects of preventing offenses committed by minors in the sphere of illegal drug trafficking are measures of individual and general prevention, implementation of comprehensive measures performed by specially authorized police units regarding minors who are prone to commit administrative offenses as a result of drug addiction. Another important aspect of preventing drug addiction among minors consists in introduction of changes to the current legislation, for example, to the Instruction on the organization of the work performed by the juvenile prevention units of the National Police of Ukraine.

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Conflict of Interest

Authors have no conflict of interest to declare.

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