

Research Article

Administrative and Procedural Status of Officials of Anti-narcotic Offenses in Conditions of Digitalization

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Received: 28 June 2025; Manuscript No: JDAR-25-167425; **Editor assigned:** 01 July 2025; PreQC No: JDAR-25-167425 (PQ); Reviewed: 15 July 2025; QC No: JDAR-25-167425; **Revised:** 24 July 2025; Manuscript No: JDAR-25-167425 (R); **Published:** 31 July 2025; **DOI:** 10.4303/JDAR/236444

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Abstract

Purpose: In the above article, the author highlights a number of key provisions regarding the administrative legal status of participants in proceedings in cases of administrative offenses related to countering drug crimes.

Methods: The scientific article employs a system of scientific methods of cognition, specifically when determining the status of individuals who resist drug offenses, in accordance with the study's goals and purposes. The requirements for compliance with legislation on determining the status of persons who counteract drug offenses, as well as compliance with the rights and fundamental freedoms of civil servants who counteract drug offenses, are determined by means of the method of analysis and systematic study of legal norms, as well as generalization and synthesis.

Results: Administrative law researchers haven't reached a consensus on the legal standing of individuals involved in adjudicating administrative offense cases concerning drug-related crimes. The prevailing view suggests the definition of "subject of proceedings in cases of administrative offenses related to countering drug crimes" encompasses more individuals than just those categorized as "participants in proceedings."

Conclusion: The suggested approach places strong importance on differentiating between various groups of individuals involved in administrative corruption proceedings. This is accomplished through two key classification methods:

Firstly, categorization based on the individual's stake in the outcome of the administrative case: a) Those with a vested interest (e.g., the involved parties, third-party stakeholders and their legal representatives); b) Those without a direct interest in the case's resolution (e.g., witnesses, expert witnesses, specialists, translators).

Secondly, classification according to their function within the trial: a) Individuals directly participating in the proceedings (e.g., the parties involved, third parties and their respective legal representation); b) Individuals who assist in the court's considerations (e.g., witnesses, expert witnesses, specialists); c) Individuals providing essential support to the trial's operation (e.g., translators, the court secretary, court administrators).

Digitalization is changing all aspects of public life and the fight against drug offenses is no exception. The administrative and procedural status of

officials involved in this fight must be adapted to new realities, including the rapid development of information technologies. It is important to ensure a balance between the effective use of digital tools and respect for human rights, as well as proper control over the use of digital data.

Keywords: Drug offenses; Professional counselling; Investigative activities; Legal framework

Introduction

The digitalization of society has significantly changed the nature and methods of combating offenses, in particular drug crimes. In the context of the development of information technologies and the widespread implementation of digital tools, there is a need to adjust the administrative and procedural norms that regulate the activities of officials involved in the fight against drug offenses. This issue is important for an effective response to new challenges in the field of security and law enforcement.

A crucial element underpinning Ukraine's status as a legal, democratic nation and its administrative and legal reform endeavors lies in fostering an environment where citizens can effectively uphold their rights and freedoms, safeguarding their lawful interests [1]. A fundamental component in addressing these objectives involves proceedings related to administrative offenses, where defining the administrative and legal standing of the involved parties is of paramount importance.

Examination of administrative law, the contributions of administrative law scholars and real-world practice reveals a notable spectrum of challenges and deficiencies within the administrative and legal status of participants

in administrative offense proceedings. Addressing these shortcomings demands substantial improvements, which are especially vital considering administrative reform initiatives and aligning administrative legislation with the standards set forth by the Council of Europe.

Addressing the stated challenge necessitates a comprehensive investigation into the theoretical underpinnings, legal frameworks and real-world complexities surrounding the definition and evolution of the administrative and legal standing of those involved in proceedings concerning administrative infractions [2,3].

Successfully holding individuals accountable for administrative offenses hinges on the meticulous regulation of two key areas: The procedural stages within administrative offense cases involving corruption and the administrative-legal status of those participating in such processes [4]. Nonetheless, the very definition and constituent elements of the administrative-legal status of participants in proceedings focusing on administrative offenses tied to combating drug-related crime present a contentious and unresolved issue within our national administrative-legal scholarship [5-7]. This ongoing debate stems primarily from two issues: The lack of a universally accepted interpretation of the terms “participant in the proceedings” and “subject of the proceedings,” and the legislative’s inadequate specification of the specific authorities vested in each individual participating in proceedings related to administrative offenses connected to counteracting drug-related offenses [8].

Materials and Methods

The methodological foundation of the research was the provisions of the dialectical approach to cognition of social phenomena and processes and a systematic approach to examining the essence of their varieties and forms, theoretical developments of domestic and foreign academics: Lawyers on the problems of administrative, administrative-procedural, criminal and criminal-procedural law, as well as current laws and other regulatory instruments of Ukraine, the norms of which regulate legal relations in the studied area [9].

Employing the formal-dogmatic or special-legal method, the theoretical and legal content of proceedings, its role and functions in assuring an increase in the level of legality and combating administrative offenses were studied [10-12]. This method also made it possible to consider the concept of proceedings in its dialectical relationship and interaction, as an organic whole, appropriate to the object of research.

The dissertation utilized comparative legal and historical

legal methods, thanks to which the administrative and legal status of individual participants in the proceedings was investigated, specifically, the person against whom the proceedings are being conducted, the victim, the witness and the specialist [13]. The comprehensive use of these general scientific and legal and industry methods ensured the examination of the features of the administrative and legal status of participants in proceedings in cases of administrative offenses and the solution of the theoretical and practical tasks set by the author of the research [14].

Results and Discussion

To begin with the examination of how the procedural standing of those involved in administrative offense proceedings, specifically concerning drug-related cases, becomes normatively established, it’s essential to first acknowledge the lack of consensus among administrative law scholars on the very nature of individuals involved in such processes [15]. As V.V. Kolpakov correctly pointed out, the wording employed by the lawmakers has brought to the forefront the issue of how the terms “subjects of proceedings in cases of administrative offenses” and “participants of proceedings in cases of administrative offenses” relate to each other [16]. Consequently, there’s a justifiable divergence of views within the academic community on how these terms should be understood. Proponents of the first perspective utilize the term “participants in the proceedings” in a comprehensive manner, encompassing the complete roster (list, composition or framework) of all individuals involved in some way in the process’s execution [17]. The opposing view is held by supporters of a second perspective, who regard the concept of “participants in the proceedings” as a narrower concept than that of “subjects.” This viewpoint suggests that, along with the participants (defined in chapter 21 of the Code of Administrative Offenses), the subjects should also encompass the bodies with the authority to adjudicate administrative offense cases (the primary entities as established in Section III of the Code of Administrative Offenses) [18].

Administrative procedural status is the legal position of an entity in the field of administrative proceedings. It includes: The scope of powers defined by law; the rights and obligations arising during the investigation or recording of administrative offenses; liability for unlawful actions or inaction; procedural guarantees for the implementation of functions in the administrative process.

Individuals engaged in drug counteraction possess a unique profile. This role inherently integrates elements of administration, law enforcement and, where necessary, investigative surveillance practices (Figure 1) [19].

Subjects of administrative tort proceedings that combat drug offenses

- 1. The key players in administrative offense proceedings can be broadly categorized as those empowered to take official actions impacting the case's direction and outcome. This encompasses: individuals authorized to draft administrative offense reports; those with the authority to adjudicate such cases; entities influencing the case's path without adjudicative power (like prosecutors and their designees); and those responsible for implementing measures to secure the proceedings related to administrative offenses.
- 2. Individuals or entities possessing a vested interest in the outcome of the case constitute another category of involved parties.
- 3. Subjects who facilitate the ascertainment of objective truth by offering relevant information concerning the offense's circumstances to the appropriate authorities play a crucial role.
- 4. Professionals with specialized expertise, leveraging practical insights derived from the case's specifics, are also involved in the investigation.
- 5. Those individuals or entities who are involved in documenting crucial facts, actions, and related circumstances that contribute to the determination of objective truth form another category.
- 6. Finally, parties who contribute to the practical implementation of the final ruling on the case are also considered participants.

Figure 1: Powers of officials in the field of combating drug offenses

Powers of officials in the field of combating drug offenses

Within the framework of administrative proceedings, officials have the following main powers: Detection of facts of illegal storage, transportation, manufacture, use of narcotic drugs; drawing up protocols on administrative offenses (Articles 44, 44-1, 188-10 of the Code of Administrative Offenses, etc.); seizure of narcotic substances as material evidence; administrative detention of the offender; application to the court for the purpose of applying measures of influence; initiation of examinations, in particular chemical, psychiatric, etc.

The authority for this stems from the established framework of the Ukrainian Code on Administrative Offenses, complemented by the laws of Ukraine "On the National Police" and "On the Circulation of Narcotic Drugs, Psychotropic Substances and Precursors", along with associated secondary legislation. We view the approach to classifying administrative proceedings participants as practical and comprehensive [20]. This is largely due to I.B. Koliushko and R.O. Kuybida's proposed categorization, which divides participants into the following groupings:

1) Based on their vested interest in the administrative case's outcome:

- Interested parties (litigants, third parties and their legal representatives);

- Those with no vested interest (witnesses, experts, specialists, translators, etc.).

2) Based on their function in the judicial process:

- Those involved in the case itself (litigants, third parties and their respective legal representatives).
- Those assisting in the case's adjudication (witnesses, experts, specialists).
- Those supporting the administration of the trial (translators, court secretaries and court administrators).

A critical factor for separating participants in corruption-related administrative offense proceedings is the possession of authority. According to this principle, the participants are categorized as:

- Those with state authority.
- Those without state authority. The first category includes law enforcement entities (subjects of administrative jurisdiction).

These are the "primary actors" (the Ukrainian Constitution upholds equal legal standing for all entities), performing their functions to ensure a lawful and well-reasoned decision regarding the matter at hand [21-23]. Thus, the subjects of administrative jurisdiction are public administration entities, inclusive of their officials, that conduct administrative and jurisdictional activities for resolving a particular instance of administrative offense and issuing an applicable enforcement order.

A "party of interest" is any individual facing potential liability, the affected individual (victim) and their legally designated representatives (parents, adoptive parents, guardians, custodians or legal advisors). Unlike the earlier group, those within this category neither hold nor utilize formal authority. "Non-interested parties" encompass entities and individuals crucial to the advancement of the legal process, including legal professionals, witnesses, expert witnesses, specialists, interpreters and attesting witnesses, to name a few [24]. The initial group of proceeding participants should include: Judges, prosecutors, authorized personnel from the National Anti-Corruption Bureau of Ukraine, authorized representatives of the National Agency for Prevention of Corruption and state enforcement officers [25].

Participants devoid of state authority, further categorized by their personal investment in the case, involve: An individual administratively liable; their representative; legal counsel; witnesses; and expert witnesses.

Based on the stipulations outlined in Chapter 21 of the Code of Administrative Offenses, this specific type of proceeding lacks legal representatives, a direct victim and an interpreter. This absence stems from the distinct characteristics inherent in adjudicating cases of this nature.

Per Article 269 of the Code of Administrative Offenses, the victim is defined as one who has endured moral, physical or material harm resulting from an administrative offense. The legislator's stance specifies the victim can be a natural person. However, considering that administrative offenses

related to drug-related crime concern state interests, the state itself does not qualify as a participant in this particular administrative proceeding [26].

According to Article 274 of the Code of Administrative Offenses, the law provides no formal stipulations regarding the administrative and legal status of interpreters. Nevertheless, part 2 of this article stipulates that the interpreter must attend proceedings when summoned by the official or body and provide a complete and truthful translation as instructed. Since those involved in corruption offenses are citizens of Ukraine, the involvement of an interpreter is not relevant.

Among the pivotal figures in proceedings concerning drug-related offenses, the courts (judges) play a central role, ultimately determining culpability and assigning penalties. Two levels of courts may participate:

- The district court where the offense occurred.
- The Court of Appeal, in the event of an appeal against the district court's ruling.

An appeal to the Supreme Court as a cassation instance is permissible only in accordance with the procedures and reasons outlined in the Code of Administrative Procedure. Courts (judges) wield their authority directly throughout the administrative legal process [27]. Their administrative and jurisdictional activity signifies justice in administrative offense cases. This is because the court is not part of the state administration framework; it is, instead, a branch of the judicial power. A court's role in applying administrative sanctions should not be classified as executive or administrative in nature. The consideration of administrative offense cases in court and the resulting rulings are conducted under the pertinent regulations.

Under the provisions of Article 250 of the Code of Administrative Offenses, the prosecutor or their deputy, in their capacity of overseeing adherence to and correct application of, the law in administrative offense proceedings, possesses certain powers. These encompass the right to commence proceedings related to an administrative offense; the right to access and review case materials; the right to assess the legality of actions performed by relevant bodies or officials throughout the process; the right to participate in the adjudication of the case; the right to submit motions; the right to present conclusions on matters arising during the case's consideration; the right to evaluate the accuracy of the application of administrative penalties by pertinent bodies or officials; and the right to lodge submissions and appeals against resolutions and decisions concerning the administrative offense [28]. Furthermore, the prosecutor may execute any other actions prescribed by law for these types of proceedings. In instances where administrative offense cases are adjudicated within a court setting, the mandatory involvement of the prosecutor is stipulated. Notably, Article 250 underscores the power of the prosecutor and their deputy, in their oversight role, to initiate administrative offense proceedings including by preparing a protocol for such offenses and to appeal judicial

decisions when warranted.

The current Code of Ukraine on Administrative Offenses does not fully delineate the procedural status of other key figures involved in these proceedings, namely, employees of the National Anti-Corruption Bureau of Ukraine, the National Agency for Prevention of Corruption and the State Executive Service. Consequently, in their activities, these officials are, to a large extent, governed by their sectoral legislation and subordinate normative legal acts, alongside the Constitution of Ukraine. This includes, but is not limited to, the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine," the Law of Ukraine "On the National Agency for Prevention of Corruption," and "On Enforcement Proceedings." A significant participant in administrative offense proceedings concerning drug-related matters is the individual subject to administrative liability, whose procedural standing is established by Article 268 of the Code of Administrative Offenses. There has been repeated discussion within academic literature and among legal professionals regarding the limitations on the right to legal assistance [29]. Specifically, this view suggests that individuals facing administrative liability, including for corruption offenses, can only exercise their right to legal aid during the stage of case consideration and resolution, not during the case initiation or administrative investigation phases. We contend that this legislative approach is not ideal, given that it is during the initial protocol creation and investigation phases that the evidentiary foundation upon which a court's decision ultimately rests is formed. However, despite these opinions from both theorists and practitioners, the legislator has yet to act.

As per Article 271 of the Code of Administrative Offenses, a lawyer or another legal specialist who is legally entitled to provide legal aid, either individually or on behalf of a legal entity, can participate in the adjudication of an administrative offense case. These legal professionals have the right to examine the case materials; to file petitions; and, under the instruction of the individual they represent, to appeal decisions made by the body or official overseeing the case. They also possess other rights as determined by Ukrainian law [30]. A lawyer's authority to participate in these proceedings is established through a power of attorney verified by a notary or another official authorized to certify powers of attorney or an order or instruction from a body (institution) legally empowered to offer free legal assistance or through a contract for the provision of legal aid. A certified extract from the legal aid contract detailing the lawyer's authority or any restrictions on their activities within the defense is required to be attached to the order. This extract must bear the signatures of both parties to the contract.

Should an individual qualify for complimentary secondary legal assistance, an attorney assigned by the Center for the Provision of Free Secondary Legal Aid may engage in the review of an administrative offense matter. This legal representative is vested with the rights as outlined in the initial segment of this article and as prescribed by other

pertinent legislation.

The authority granted to an attorney, appointed by the Center for the Provision of Free Secondary Legal Aid, is substantiated through a power of attorney officially issued by the Center.

Article 272 within the Code of Administrative Offenses stipulates the procedural standing of a witness, who may be summoned by any individual if there's reason to believe they possess knowledge relevant to the case's circumstances. Upon being summoned by the body (or official) presiding over the case, the witness is obligated to attend at the scheduled time, provide accurate testimony, disclose all relevant information pertaining to the matter and respond to inquiries. In matters of administrative offenses involving the fight against drug-related crimes, the whistleblower is regarded as a witness. The whistleblower retains the prerogative to safeguard the privacy of their identifying information when providing explanations regarding the case [31].

The procedural status of an expert is detailed within Art. 273 of the Code of Administrative Offenses. An expert is appointed by the body (or official) managing the administrative offense case, particularly when specialized knowledge is necessary. This includes, but isn't limited to, determining the extent of property damage stemming from the administrative offense and calculating the amount of funds acquired through the offense, which are subject to forfeiture.

The expert is bound to appear when summoned by the body (or official) and must furnish an impartial conclusion addressing the questions posed. The expert is afforded the right to examine the case's materials pertinent to the subject of the examination, to submit a request for additional documentation vital for formulating an opinion; with the consent of the body (or official) handling the administrative offense case, to pose questions to the accused, the victim and witnesses related to the examination's focus; and to be present during the case's deliberation.

Conclusion

The administrative and procedural status of officials involved in the fight against drug offenses is systemic and multifaceted. It requires constant improvement in accordance with new social conditions, especially in the context of digitalization. The priority should be to ensure the legality, efficiency and legal certainty of their activities.

Elements of the administrative and procedural status of officials involved in the fight against drug offenses in the context of digitalization:

- General provisions of the administrative and procedural status of officials in the fight against drug offenses.

The administrative and procedural status of officials involved in the fight against drug offenses includes a set of rights, obligations and powers that determine the boundaries of their activities, as well as interaction with other subjects

of administrative and legal relations. These can be both representatives of law enforcement agencies (police, customs) and state bodies that supervise the implementation of legislation in the field of drugs, as well as state authorities related to the fight against drugs.

- Digitalization as a factor in changing the administrative and procedural status.

Digitalization significantly changes approaches to collecting and processing information, conducting investigations, as well as to interaction between various state authorities. For officials involved in the fight against drug offenses, digital technologies create both new opportunities and new challenges.

Among the main changes, the following can be highlighted:

Integration of information systems: Digitalization allows data to be combined from different databases, which helps to more effectively detect drug-related crimes and monitor the activities of offenders.

Internet resources and social networks: Drug abuse, like illegal drug trafficking, increasingly occurs *via* the Internet. Officials must be able to use new technologies to detect offenses in cyberspace.

Electronic evidence: Digital data is becoming an increasingly important evidence in drug-related criminal cases. This creates new requirements for officials to collect, store and analyze digital evidence.

- Legal status of officials in the context of digital technologies.

In the context of digitalization, an important aspect is the clarification of the legal status of officials. Among the main issues that arise:

Rights to access digital data: Officials should have clearly defined powers to access personal information contained in digital forms, as well as access to information systems. To do this, it is important to ensure proper control over the use of these rights.

Obligations to ensure confidentiality: With the increase in the volume of digital data, there is a need to protect information related to personal and confidential information of persons who may be involved in drug offense cases. Officials should comply with the requirements for maintaining the confidentiality of data.

Use of modern technologies in the evidentiary procedure: An important aspect is the correct use of digital technologies when conducting procedural actions, such as reviewing documents, storing evidence and preparing case materials.

- Prospects for the development of the administrative and procedural status of officials in the context of digitalization

Given the development of digital technologies, further changes in the administrative and procedural status of officials can be foreseen. This includes:

Improving the regulatory framework: The need to create new or update existing regulations governing the activities of officials in the fight against drug offenses in the context of digitalization.

Training and advanced training: Officials must constantly improve their knowledge of digital technologies and apply them in their practical activities. This applies to both technical and legal aspects.

International cooperation and integration into global digital platforms: The fight against drug offenses is global in nature and interaction between states through digital communication channels can significantly increase the effectiveness of law enforcement agencies.

Acknowledgement

None.

Conflict of Interest

Authors have no conflict of interest to declare.

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