

Research Article

Comparative Legal Analysis of Foreign Experience in Combating the Illegal Transportation of Narcotic Drugs, Precursors and their Analogues Across the Border: Administrative and Criminal Mechanisms

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Abstract

Aim: The purpose of the article is to identify effective administrative and criminal legal mechanisms for combating drug smuggling based on an analysis of the legislation and practice of the European Union, the USA, and individual Asian countries, as well as to formulate proposals for improving the national legal system of Ukraine.

Methods: The research used comparative legal, systemic-structural, formal-legal and analytical methods, which allowed for a comprehensive assessment of institutional models, customs control tools, mechanisms of interagency interaction and features of the criminalization of relevant offenses.

Results: It is established that in the EU countries a preventive-oriented model is dominant, based on risk management, digitalization of customs procedures (in particular, the use of pre-declaration systems) and close coordination between supranational and national authorities. The American model is characterized by a combination of preventive measures with a tough criminal policy, active use of data analytics and broad powers of law enforcement agencies. Asian countries demonstrate a high level of regulatory strictness and control efficiency, combined with technological modernization of border infrastructure.

Conclusion: It is substantiated that the effectiveness of countering drug smuggling is achieved under the conditions of integration of administrative and criminal law instruments, introduction of modern information technologies, development of international cooperation and unification of legal standards. Directions for improving Ukrainian legislation are proposed, in particular, the implementation of risk-based approaches, the expansion of digital control tools, increased responsibility for the illicit trafficking of precursors, and deepening cooperation with international institutions. The practical significance of the results lies in the possibility of their use in lawmaking, improving the law enforcement practice of customs and law enforcement agencies, as well as in the educational process in the training of specialists in the field of law and public administration.

Keywords: Drugs; Precursors; Smuggling; Customs control; Administrative liability; Criminal liability; Comparative legal analysis, International cooperation; Digitalization

Introduction

In the current conditions of globalization and intensive development of international trade, the problem of illegal movement across state borders of narcotic drugs, psychotropic substances, precursors and their analogues is becoming particularly acute. The transnational nature of drug crime, the growth of the illegal market, the diversification of supply channels and the use of new technologies (in particular, digital platforms, the darknet and cryptocurrencies) significantly complicate the activities of states to effectively combat such offenses.

Illicit drug trafficking poses a threat not only to public health, but also to economic stability, national security and law and order. It is closely related to organized crime, money laundering, illegal migration and financing of other illegal activities. In this regard, countering drug smuggling requires a comprehensive approach that combines administrative-legal, criminal-legal, institutional and technological tools.

Comparative legal analysis of foreign experience is of particular importance, since different legal systems have developed effective models of response to the above challenges. The countries of the European Union focus

on preventive mechanisms and harmonization of legal regulation, the United States of America uses a combination of tough criminal policy and analytical tools, while Asian countries demonstrate a high level of regulatory rigor and technological control.

At the same time, for Ukraine, the problem of countering the illegal movement of drugs across the customs border is extremely relevant given its geopolitical position, transit potential and integration processes with the European Union. The existing mechanisms require further improvement, in particular in terms of harmonization of legislation, increasing the efficiency of customs control, developing interdepartmental cooperation and introducing modern information technologies [1].

The purpose of the article is to conduct a comprehensive comparative legal analysis of administrative and criminal law mechanisms for combating the illegal cross-border transportation of narcotic drugs, precursors and their analogues in foreign countries, as well as to identify areas for improving the national legislation of Ukraine.

To achieve this goal, the following tasks have been identified: To analyze international legal standards in the field of control over the circulation of narcotic drugs; to investigate administrative mechanisms for combating them in the EU, the USA and Asia; to characterize criminal law approaches to liability for drug smuggling; to conduct a comparative analysis of the effectiveness of relevant models; to formulate proposals for improving the national legal system [2].

The scientific novelty of the study lies in the systematic generalization of modern foreign approaches to combating drug smuggling with an emphasis on the combination of administrative and criminal law instruments, as well as in identifying priority areas for implementing international experience in the context of digitalization and European integration processes of Ukraine.

The practical significance of the results obtained lies in the possibility of their use in law-making activities, improving the practice of customs and law enforcement agencies, as well as in the scientific and educational sphere [3].

Materials and Methods

The methodological basis of the study is a system of general scientific and special legal methods of cognition, among which the comparative legal method occupies a key place, which allows identifying common and distinctive features of legal regulation and law enforcement practice in the field of countering the illegal movement across the state border of narcotic drugs, psychotropic substances, precursors and their analogues.

The use of the comparative legal method provided the possibility of a systematic analysis of models of administrative and criminal law regulation in different legal systems (continental, Anglo-Saxon and mixed legal families), and also allowed them to be typified according to the criteria of institutional structure, the level of severity of

sanctions, the degree of digitalization of control procedures and the effectiveness of interdepartmental coordination.

Within the framework of the study, the comparative legal method was used both in the synchronous dimension (comparison of modern models of the European Union, the USA and Asian countries) and in the diachronic aspect (analysis of the evolution of approaches to countering drug smuggling). This made it possible to establish trends in the transformation of legal mechanisms from predominantly punitive to preventive-analytical.

Additionally, the system-structural method was used to study the relationships between administrative and criminal law instruments, the formal-legal method was used to analyze the content of regulatory legal acts, and the statistical method was used to summarize data on the effectiveness of measures applied in foreign countries.

Particular attention was paid to the institutional-functional approach, which allowed assessing the role of customs authorities, law enforcement agencies and international organizations in ensuring control over the illegal circulation of narcotic drugs.

Thus, the combination of these methods ensured the comprehensiveness and objectivity of the scientific analysis, and also made it possible to formulate substantiated conclusions regarding the possibilities of implementing foreign experience into the national legal system of Ukraine.

Results and Discussion

Administrative and legal mechanisms for combating the illegal transportation of narcotic drugs, precursors and their analogues across the state border in foreign legal systems constitute a complex of interrelated legal and organizational means aimed primarily at preventing and early detection of such offenses. Their key feature is the preventive nature of regulation, when the main emphasis is not on punishment, but on preventing the illegal movement of prohibited substances.

One of the central elements of such mechanisms is the implementation of a risk-based approach to customs control. In the countries of the European Union, the USA, Canada and Australia, customs services have abandoned a continuous inspection of all cargo and switched to a selective inspection based on an analytical risk assessment. This means that information about cargo, senders, movement routes and the nature of the goods is processed by automated systems that determine the degree of potential threat. This approach allows resources to be focused on the most suspicious movements, in particular those that may be related to drug or precursor smuggling.

Administrative control over the circulation of precursors plays an important role. Most states have introduced licensing systems for entities working with such substances, as well as mandatory registration of all transactions with them. This is accompanied by the maintenance of electronic registers, regular reporting and the possibility of

conducting unscheduled inspections. Such measures allow the state to track the movement of potentially dangerous chemicals and minimize the risks of their use for the illegal production of drugs [4].

The administrative powers of customs authorities play a significant role. They include the right to carry out customs inspection of goods, vehicles and luggage, to apply technical means of control, to temporarily detain cargoes until the circumstances are clarified, and to draw up materials on administrative offenses. In a number of countries, customs authorities can also impose administrative sanctions, including fines and confiscation of goods, which is an important element of operational response.

It is worth noting the active use of digital technologies in the administrative control system. Electronic declaration of goods, automated data analysis systems, the use of artificial intelligence to detect suspicious transactions, as well as integrated international databases significantly increase the efficiency of detecting offenses. Digitalization allows you to minimize the human factor and ensure rapid processing of large volumes of information [5].

An equally important element is international administrative cooperation. Customs and law enforcement agencies of different states actively exchange information on suspicious cargo, use common databases and conduct coordination operations. Such mechanisms are implemented through the World Customs Organization, Europol, Interpol and other international structures, which ensures the cross-border nature of combating drug crime [6].

The final element of administrative and legal influence is the system of administrative liability. It is applied for violation of customs regulations, failure to declare goods, violation of the procedure for the movement of controlled substances or failure to comply with licensing requirements. Administrative sanctions, as a rule, are of a property nature and include fines and confiscation of objects of offense, which performs not only a punitive but also a preventive function [7].

Thus, administrative and legal mechanisms for combating the illegal movement of narcotic drugs across the border in foreign experience form a multi-level system of preventive control, which combines risk-oriented technologies, strict regulation of the circulation of precursors, expanded powers of customs authorities, digital tools and international coordination. It is their comprehensive application that ensures effective early detection of threats and significantly reduces the level of cross-border drug crime [8].

Criminal law mechanisms to combat the illegal transportation of narcotic drugs, precursors and their analogues across the state border in foreign legal systems are the second, more stringent level of legal response, which is applied in cases of increased public danger of the act. Unlike administrative measures, they are aimed not at prevention, but at establishing criminal liability, punishing guilty persons and neutralizing organized forms of drug crime [9].

In most states, criminal legislation provides for special categories of crimes related to the smuggling of narcotic drugs, the illegal movement of precursors across the border, as well as participation in their production, transportation and distribution. Such acts, as a rule, are classified as serious or especially serious crimes, which entails the application of severe sanctions, including long terms of imprisonment, large fines and confiscation of property [10].

In the criminal law systems of the European Union countries, there is a tendency to harmonise the rules on combating drug trafficking. The provisions of the EU framework decisions and directives are of key importance, which oblige Member States to criminalise the illicit trafficking of drugs, especially in cases of cross-border nature of the crime or the involvement of organised criminal groups. At the same time, sanctions vary depending on the type of drug, its quantity and the degree of involvement of the person in criminal activity [11].

In the United States of America, the criminal law mechanism is characterized by the most stringent approach. Federal legislation provides for long terms of imprisonment, up to life imprisonment in cases of large-scale drug trafficking, as well as mandatory confiscation of proceeds and property obtained through criminal means. Particular attention is paid to the fight against international drug cartels, which leads to the active use of extraterritorial prosecution mechanisms [12].

In many Latin American countries, where the problem of drug trafficking is systemic in nature, criminal law mechanisms are also extremely stringent. The legislation provides for increased liability for participation in transnational criminal organizations, as well as special prosecution regimes for persons who provide logistical support for the illegal transportation of drugs across the border [13].

An important element of criminal law mechanisms is the institution of differentiation of liability. In most legal systems, the degree of punishment depends on a number of qualifying characteristics, including: the amount and type of narcotic substance, the method of its movement (in particular, the use of international routes or covert channels), the participation of organized criminal groups, and the use of official position. This approach allows for individualizing criminal liability and increasing its effectiveness [14].

A separate role is played by the institution of criminal liability of legal entities, which is actively being implemented in the EU countries and some other states. It allows for holding companies liable that knowingly or through negligence contributed to the illegal movement of narcotic drugs, for example, by concealing cargo or violating the rules for the transportation of controlled substances [15].

An essential element is also the criminal procedural instruments that accompany substantive criminal law. These include special investigative actions (controlled delivery, operational implementation, covert surveillance),

international legal assistance in criminal cases, extradition, as well as joint investigation teams. These instruments ensure the effective investigation of cross-border crimes that cannot be solved by the forces of one state [16].

An important trend in the modern development of criminal law mechanisms is the strengthening of international coordination. Through Interpol, Europol and bilateral agreements, states exchange operational information, coordinate investigations and agree on approaches to the qualification of crimes related to drug trafficking.

This allows for the formation of a single legal space for combating transnational drug crime [17].

Thus, criminal law mechanisms for combating illegal drug trafficking across the border in foreign experience are characterized by a strict punitive focus, a high level of differentiation of responsibility, active use of procedural tools and close international cooperation. Their effectiveness largely depends on the combination of national criminal law with international standards for combating transnational drug crime (Table 1) [18].

Table 1: Administrative and legal mechanisms for combating the illegal movement of narcotics across the border (foreign experience)

Mechanism element	Content of administrative regulation	Practice of foreign countries	Legal effect
Risk-based customs control	Selective control based on risk analysis, profiling of cargo and individuals	EU, USA, Canada, Australia	Increasing the efficiency of smuggling detection, optimizing resources
Electronic declaration	Mandatory submission of customs declarations in digital form	EU, Singapore, South Korea	Minimizing falsifications, accelerating control
Control over precursors	Licensing, accounting, reporting, monitoring of chemical circulation	Germany, France, Japan	Preventing illegal drug manufacturing
Customs inspection and technical means	Use of scanners, X-rays, service dogs	USA, UK, Netherlands	Detecting hidden drugs in cargo
Administrative sanctions	Fines, confiscation of goods, temporary restriction of activities	All EU countries, USA	Rapid response without criminal proceedings
International exchange of information	Data transfer <i>via</i> WCO, EUROPOL, INTERPOL	Global practice	Coordination of actions, preventing transit schemes
Pre-arrival analysis of cargoes (pre-arrival data)	Provision of information before the arrival of goods	USA, Canada, EU	Early identification of risks
Administrative control of foreign economic operators	Company inspections, audit, certification	Germany, Poland	Preventing the use of fictitious companies
Digital control systems (AI, big data)	Automated analysis of suspicious transactions	Singapore, USA, UAE	Detecting complex smuggling schemes

A comparative analysis of foreign experience shows that administrative and legal mechanisms for countering the illegal movement of narcotics across the border form a multi-level system of preventive control, which functions as the first line of defense against transnational drug crime [19].

The most characteristic trend is the reorientation of customs control from a solid to a risk-based approach. This allows states to significantly increase the efficiency of detecting illegal cargo without excessive burdening the customs system. The use of risk profiling, route analysis and digital databases provides a more targeted response to potential threats [20].

The second key element is the total digitalization of administrative procedures. Electronic declaration, advance transfer of information about cargo and the use of large data sets (big data) significantly reduce the possibilities for concealing narcotics in legal cargo. In this context, administrative control is gradually taking on the character of “digital surveillance” of foreign economic operations [21].

An important role is played by strict administrative regulation of the circulation of precursors, which in developed countries is one of the most effective tools for

preventing the illegal manufacture of drugs. Licensing, reporting and mandatory accounting allow you to track the movement of potentially dangerous substances before they enter the illegal circulation [22].

It is worth noting the importance of administrative sanctions, which in foreign practice perform not only a punitive but also a preventive function [23]. Fines, confiscation of goods and temporary restrictions on the activities of foreign economic entities allow you to respond promptly to violations without the need to initiate criminal proceedings [24].

An essential factor in efficiency is international coordination of administrative bodies. Information exchange through international organizations, joint customs operations and integrated databases allow you to identify transit schemes for the movement of drugs that cover several states [25].

Thus, administrative and legal mechanisms in foreign experience constitute a comprehensive system of preventive influence, based on a combination of risk-based control, digital technologies, strict regulation of precursors and international cooperation. Their effectiveness is determined precisely by their integration and ability to act at the early stages of the illegal movement of drugs across the border (Table 2) [26].

Table 2: Criminal legal mechanisms for combating drug trafficking (foreign experience)

Country/Model	Main criminal law instruments	Features of liability	Additional mechanisms
USA (Federal Model)	Criminalization of drug smuggling, participation in cartels, conspiracy; controlled deliveries	Very severe sanctions: Long terms of imprisonment, up to life; mandatory minimum sentences	Mass asset forfeiture, extraterritorial jurisdiction
Canada	Criminalization of illicit trafficking and import of drugs (Controlled Drugs and Substances Act)	Differentiation of punishments depending on the type of substance and the role of the person	Programs of cooperation with the investigation, plea agreements
Germany (EU)	Criminalization of illicit trafficking of drugs (BtMG-Narcotics Act)	Graduation of crimes: "less serious" and "especially serious" cases	Special investigative measures, controlled delivery
France	Criminalization of drug trafficking and participation in criminal groups	Increased liability for organized forms of crime	Extended powers of the prosecutor's office, international cooperation
Netherlands	Criminalization of drug production and transit	Severe sanctions for international drug trafficking	Balance between repressive and preventive measures
Poland	Criminalization of import, export and transit of drugs	Significant terms of imprisonment for smuggling	Active use of international legal assistance
Latin America (Colombia, Mexico)	Criminalization of participation in drug cartels, transit	High sanctions for organized crime	Special anti-cartel laws, military-police operations
Australia	Federal drug importation offences	Severe liability for drug import	Use of intelligence and international information exchange

A comparative analysis of criminal law mechanisms to combat the illegal transportation of drugs across borders in foreign legal systems indicates the formation of a general trend towards increased criminal law repression of transnational drug trafficking. In most states, such acts are considered particularly dangerous crimes that directly threaten national security, public health and the stability of financial and economic systems [27].

First of all, there is a significant difference in the level of severity of punishment. The most severe model is inherent in the United States of America, where the legislation provides for long terms of imprisonment, including life imprisonment, as well as mandatory minimum sanctions for certain types of drug crimes [28]. In addition, confiscation of property and proceeds obtained by criminal means is widely used, which actually deprives drug cartels of their economic basis. In the countries of the European Union, the approach is more balanced: On the one hand, the criminalization of drug trafficking is unconditional, on the other hand, considerable attention is paid to the individualization of punishment and the differentiation of responsibility depending on the role of the person and the scale of the crime [29].

In all the studied legal systems, a tendency towards the differentiation of criminal responsibility is clearly visible. The legislation distinguishes between cases of small-scale illegal trafficking and organized cross-border drug trafficking [30]. Participation in transnational criminal organizations that systematically transport drugs across state borders is especially severely punished. This approach allows law enforcement agencies to focus resources on combating the most dangerous forms of crime [31].

An important component of criminal law mechanisms is the use of special procedural instruments. Controlled deliveries, covert investigative (search) actions, operational implementation, as well as international legal assistance

in criminal cases are actively used in foreign practice [32]. These tools are key to investigating cross-border crimes, as they allow documenting the activities of criminal groups in several jurisdictions simultaneously [33].

It is worth noting the importance of the confiscation approach, which in many countries is considered no less important than imprisonment itself. Depriving criminals of illegally obtained income and assets significantly reduces the economic attractiveness of the drug trade and makes it difficult to resume criminal activity. In this context, the United States and a number of other countries demonstrate the most developed practice of financial blocking of drug cartels [34].

Another important feature is the strengthening of international coordination. No state is able to effectively counteract transnational drug trafficking on its own, so the mechanisms of Interpol, Europol, bilateral and multilateral agreements on legal assistance and extradition are actively used. This ensures the consistency of actions of law enforcement agencies of different countries and increases the effectiveness of criminal prosecution [35].

Thus, criminal law mechanisms for combating illegal drug trafficking across the border in foreign experience are characterized by a combination of a tough punitive policy against organized crime, a differentiated approach to liability, and the widespread use of international and procedural instruments. The most effective models are those that combine strict sanctions with a developed system of international cooperation and financial blocking of criminal proceeds [36].

Conclusion

The analysis of administrative and legal mechanisms for combating the illegal movement of narcotic drugs across the border in foreign legal systems allows us to draw a number of general conclusions regarding their content, structure and effectiveness.

First, administrative and legal mechanisms in most states form the primary (preventive) level of combating drug trafficking, which is aimed not at punishment, but at preventing and early detecting offenses. They act as the “first filter” in the state border protection system.

Second, the key trend is the transition from continuous to risk-oriented customs control. The use of analytical systems for risk assessment, profiling of subjects and cargo allows us to increase the effectiveness of detecting smuggling while simultaneously optimizing the resources of customs authorities.

Third, a defining feature of modern administrative mechanisms is a high level of digitalization. Electronic declaration, advance exchange of cargo data, use of artificial intelligence and big data significantly increase the efficiency and accuracy of customs control, minimizing the possibilities for concealing narcotics.

Fourth, a significant role is played by strict administrative regulation of the circulation of precursors, which in developed countries is one of the most effective tools for preventing illegal drug production. Licensing, accounting and reporting ensure control over potentially dangerous substances even at the legal stage of their circulation.

Fifth, an important element of the system is administrative responsibility, which performs a preventive function through the application of fines, confiscation of goods and other sanctions, which allows for a prompt response to violations without involving criminal proceedings.

Sixth, the effectiveness of administrative and legal mechanisms is largely ensured by developed international cooperation, which includes information exchange, joint customs operations and the use of global information platforms (WCO, EUROPOL, INTERPOL).

Thus, foreign experience shows that the most effective is an integrated model of administrative control, which combines risk-based technologies, digital tools, strict regulation of precursors and international coordination. It is such a system that allows for early detection of threats and significantly reduces the level of illegal movement of drugs across the state border.

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Conflict of Interest

Authors have no conflict of interest to declare.

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