

Research Article

Defense Attorney in Cases of Administrative Offenses and Criminal Offenses in the Field of Trafficking in Narcotic Drugs, Precursors and their Analogues

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Abstract

Background: The article reveals the role of a defense attorney in cases of administrative offenses and criminal offenses in the field of trafficking in narcotic drugs, precursors and their analogues.

Methods: In accordance with the purpose and objectives of the research, the dissertation used a system of methods of scientific knowledge. Among them, general scientific methods, methods of management science, sociology, law, as well as special methodological principles for studying the representation of the rights, freedoms and interests of citizens in administrative offenses and criminal offenses in the sphere of circulation of narcotic drugs, precursors and their analogues.

Results: Attention is paid to the protection of the rights and legitimate interests of persons who are participants in administrative offenses and criminal offenses in the field of trafficking in narcotic drugs, precursors and their analogues, through the mechanism of representation by a lawyer of completely different subjects in administrative offenses and criminal offenses in the field of trafficking in narcotic drugs, precursors and their analogues (victim, witness, civil plaintiff, civil defendant, suspect, accused, legal entities). Special attention is paid to the lawyer's capabilities in defending the interests of the client depending on the situation and procedural status in administrative offenses and criminal offenses in the field of trafficking in narcotic drugs, precursors and their analogues.

Conclusion: The issue of representation in administrative offenses and criminal offenses in the field of trafficking in narcotic drugs, precursors and their analogues is considered in terms of protecting the rights, freedoms and legitimate interests of participants in criminal and administrative proceedings. Representation by a defense attorney is considered a stage of involving a lawyer in conducting procedural actions at different stages of the pre-trial investigation and in relation to completely different procedural statuses of participants in criminal and administrative proceedings. The subjects who may be provided with professional legal assistance from a defense attorney in administrative offenses and criminal offenses in the field of trafficking in narcotic drugs, precursors and their analogues include: A victim, a witness, a minor witness, a suspect, an accused, a civil plaintiff, a civil defendant and legal entities. The provision of assistance to each of the subjects is individual in its own characteristics in connection

with the procedural status of each, rights and obligations.

Keywords: Defense attorney; Illegal circulation; Narcotic drugs; Legal regulation; Legal ideas; Psychotropic substances; Mechanism

Introduction

The institution of representation in administrative offenses and criminal offenses in the field of trafficking in narcotic drugs, precursors and their analogues occupies a significant place among the current problems of criminal procedural legislation and determines the features of the procedural status of persons who may represent the interests of subjects of criminal proceedings. Representatives may exercise the procedural rights of the persons they represent, except in cases of personal participation of the person. In administrative offenses and criminal offenses in the field of trafficking in narcotic drugs, precursors and their analogues, such participants as the victim, witness, suspect, accused, civil plaintiff and civil defendant, legal entities may have representatives.

The role of a defense attorney as a representative of a person in criminal proceedings is a topical and little-studied issue, therefore it requires more detailed study. Every person has the right to respect for the rights, freedoms and legitimate interests of the procedural status in criminal proceedings, while receiving professional legal assistance as a tool of protection [1].

The basis of this article was the works of such Ukrainian scientists as A.M. Biryukova, V.V. Zabrovsky, T.V. Varfolomeeva, L.D. Udalova, S.S. Chernyavsky, O.G. Yanovska, as well as other scientists who made a significant

contribution to the study of the role of a lawyer in the implementation of representation in criminal proceedings [2]. Special attention was focused on the issues of providing legal assistance individually to each subject involved in administrative offenses and criminal offenses in the field of trafficking in narcotic drugs, precursors and their analogues (victim, witness, minor witnesses, suspect, accused, civil plaintiff and civil defendant, legal entities). Despite this, the above issue remains relevant for research. That is why some aspects require more detailed study.

Methodology

In accordance with the purpose and objectives of the research, the dissertation used a system of methods of scientific knowledge. Among them, general scientific methods, methods of management science, sociology, law, as well as special methodological principles for studying the representation of the rights, freedoms and interests of citizens in administrative offenses and criminal offenses in the sphere of circulation of narcotic drugs, precursors and their analogues. The main one in this system is the general scientific dialectical method, which contributed to the consideration and study of the problem in the unity of its social content and legal form and the implementation of a systematic analysis of the representation of the rights, freedoms and interests of citizens in administrative offenses and criminal offenses in the sphere of circulation of narcotic drugs, precursors and their analogues. Using the logical-semantic method, the conceptual apparatus was deepened, the scientific basis for the study of the representation of the rights, freedoms and interests of citizens in administrative proceedings and the place of representation in administrative offenses and criminal offenses in the sphere of trafficking in narcotic drugs, precursors and their analogues was determined. System-structural and comparative legal methods allowed us to study the essence of the representation of the rights, freedoms and interests of citizens in administrative offenses and criminal offenses in the sphere of trafficking in narcotic drugs, precursors and their analogues. Using the formal-legal method, the content of legal norms that serve as the legislative basis for ensuring the representation of the rights, freedoms and interests of citizens in administrative proceedings was studied, and proposals were formulated for their improvement. A comparative analysis of the experience of representing the rights, freedoms and interests of citizens in administrative offenses and criminal offenses in the field of trafficking in narcotic drugs, precursors and their analogues in some foreign countries, their synthesis allowed us to study the evolution of regulation in this area abroad, to identify the main modern approaches, and the possibility of their application in Ukraine.

Results and Discussion

Representation in criminal proceedings is of public interest to scientists and practitioners regarding the possibility of creating a mechanism for observing rights and freedoms, fulfilling obligations by subjects of criminal proceedings who turn to a defense attorney for proper protection. It

is receiving legal aid that allows each person, within the framework of criminal proceedings, to feel protected and to establish the boundaries of communication with law enforcement agencies, prosecutor's offices and the court [3].

Engaging a defense attorney helps to obtain not only a legal analysis of the situation, but also recommendations for defense. Each subject has its own needs in involving a lawyer: The victim wants to protect his rights and compensate for physical, moral or material damage; the witness needs the opportunity to give evidence on the facts; the suspect has the right to explain the fact of the suspicion brought against him, to give evidence and defend his interests; the accused builds positions on the accusation, etc.; the civil plaintiff or civil defendant is interested in resolving the issue of a civil claim.

According to Art. 59 of the Constitution of Ukraine "everyone has the right to professional legal assistance. In cases stipulated by law, this assistance shall be provided free of charge. Everyone is free to choose a defender of their rights"¹. In turn, parts 1, 2 of article 20 of the Criminal Procedure Code of Ukraine (hereinafter referred to as the CPC of Ukraine) establish the foundations for ensuring the right to defense in criminal proceedings, one of which is to provide the suspect, accused, acquitted, convicted person with the opportunity to use qualified legal assistance of a defense lawyer [4].

The provision of legal assistance in accordance with clause 3. part 1 of article 1 of the Law of Ukraine "On Free Legal Assistance" is defined as the provision of legal services, which in clause 4 part 1 is generally defined as the provision of legal information, consultations and explanations on legal issues; drawing up applications, complaints, procedural and other documents of a legal nature; representation of the interests of a person in courts, other state bodies, local government bodies, before other persons; ensuring the protection of a person from prosecution; providing assistance to a person in ensuring the person's access to secondary legal aid and mediation), then the provision of such legal aid in administrative offenses and criminal offenses in the field of trafficking in narcotic drugs, precursors and their analogues should be understood through the criterion of the degree of qualification of the specialist.

Persons who may apply for representation in criminal proceedings include persons who are held criminally liable-suspects, accused, witnesses, victims, civil plaintiffs, civil defendants, legal entities against whom proceedings are being conducted, third parties (regarding seized property) and other participants who have the right to represent their interests. It is appropriate to consider the implementation of representation in administrative offenses and criminal offenses in the field of trafficking in narcotic drugs, precursors and their analogues by a lawyer.

V.V. Zaborovsky establishes that a lawyer in a criminal proceeding may have a different status (defendant,

representative or lawyer himself), and therefore may perform various procedural functions. The scientist supports the position according to which the witness's lawyer should be considered as an independent participant in criminal proceedings [4].

In turn, O.G. Yanovskaya notes that a lawyer, as a professional specialist who acts in court, represents the interests of a person and provides professional legal assistance. However, the main feature of representation is the ability of a representative to act instead of the person he represents [5].

A.M. Biryukova emphasizes that the status of a lawyer can be general law and criminal procedure, since legal assistance provided to the accused by a lawyer is possible even before the latter enters criminal proceedings as a defender.

The Criminal Procedure Code of Ukraine establishes in Article 44 the activities of a legal representative of a suspect or accused; Articles 58, 59-the legal representative of the victim; Articles 63, 64-the civil plaintiff and defendant [6].

According to Part 4 of Art. 46 of the Code of Criminal Procedure of Ukraine, the defense attorney shall enjoy the procedural rights of the suspect, the accused, whose defense he shall provide, except for the procedural rights, the implementation of which shall be carried out directly by the suspect, the accused and may not be entrusted to the defense attorney, from the moment of providing the documents stipulated in Article 50 of this Code to the investigator, prosecutor, investigating judge, or court [7].

In accordance with Part 1 of Article 58 of the Code of Criminal Procedure of Ukraine, it is stated that the victim shall be represented by a representative who has the right to be a defense attorney. Part 2 of this Article establishes a similar rule for representatives of a legal entity who are victims in criminal proceedings, who may be a manager, another person authorized by law or constituent documents, an employee of a legal entity with a power of attorney, as well as a person who has the right to be a defense attorney.

Part 1 of Art. 63 of the Code of Criminal Procedure of Ukraine establishes that the representative of a civil plaintiff and a civil defendant in administrative offenses and criminal offenses in the field of trafficking in narcotic drugs, precursors and their analogues may be: A person who in administrative offenses and criminal offenses in the field of trafficking in narcotic drugs, precursors and their analogues has the right to be a defense attorney; a manager or other person authorized by law or constituent documents, an employee of a legal entity by power of attorney-in the event that the civil plaintiff/defendant is a legal entity [8].

In accordance with clause 2, part 1, article 66 of the Code of Criminal Procedure of Ukraine, it is stipulated that a witness has the right to use the legal assistance of a lawyer, whose powers are confirmed in accordance with the provisions of article 50 of this Code, when giving testimony and participating in other procedural actions.

Criminal procedural legislation establishes provisions on the involvement of a lawyer in procedural actions as a representative of participants in criminal proceedings, establishes the procedural status of each of the participants, rights and obligations within the framework of the pre-trial investigation.

It should be emphasized that in administrative offenses and criminal offenses in the field of trafficking in narcotic drugs, precursors and their analogues, a lawyer may be a lawyer who protects a suspect, accused, convicted, acquitted person, a person in respect of whom it is envisaged to apply compulsory medical or educational measures or the issue of their application is being resolved, as well as a person in respect of whom it is envisaged to consider the issue of extradition to a foreign state.

It is important to note that a necessary stage of establishing legal relations is the correct documentation of the relationship between the lawyer and his client in criminal proceedings. That is why the documentary confirmation of the relationship between the subject of criminal proceedings and the representative is of great importance in the process of confirming such relationships [9].

Documents confirming the authority to represent include:

- 1) A certificate of the right to practice law, a warrant and a contract with a defense attorney, or an order from a body (institution) authorized by law to provide free legal aid-if the representative is a person who has the right to be a defense attorney in criminal proceedings;
- 2) A copy of the constituent documents of a legal entity-if the representative is the head of the legal entity or another person authorized by law or constituent documents;
- 3) A power of attorney-if the representative is an employee of a legal entity that is a participant in the proceedings [10].

According to the Law of Ukraine "On Advocacy and Advocacy", representation is defined as a type of advocacy activity that consists in ensuring the implementation of the rights and fulfillment of the obligations of the client in civil, commercial, administrative and constitutional proceedings, in other state bodies, before individuals and legal entities, the rights and obligations of the victim during the consideration of cases of administrative offenses, as well as the rights and obligations of the victim, civil plaintiff, civil defendant in criminal proceedings. The main function performed by a defense attorney in criminal proceedings is to provide the proper right to defense, clarify the situation to the client who engaged him, provide consultations, participate in procedural actions with the client, write legal documents and submit them, etc. We can point out that the defense attorney is an important participant in criminal proceedings and plays the role of an intermediary between the pre-trial investigation body, the prosecutor's office, the court and the client. A participant in criminal proceedings may decide not to use the services of a lawyer, or involve him at any stage of the pre-trial investigation [11].

Laws on drugs and drug-related offenses

National laws on drugs: The Law of Ukraine of February 15, 1995 No. 60/95-VR “On narcotic drugs, psychotropic substances and precursors” defines the legal and organizational principles of state policy regarding the circulation of narcotic drugs, psychotropic substances and precursors (hereinafter referred to as PDS) in Ukraine, establishes the procedure for state control, the powers of executive authorities, and the rights and obligations of individuals and legal entities in the sphere of circulation of narcotic drugs, psychotropic substances and precursors [12].

At the same time, the Law of Ukraine dated February 15, 1995 No. 62/95-VR “On Measures to Counteract Illicit Trafficking in Narcotic Drugs, Psychotropic Substances and Precursors and Their Abuse”, taking into account international obligations, defines a system of measures in Ukraine aimed at combating the illicit trafficking in narcotic drugs, psychotropic substances and precursors and their abuse, and also defines the rights and obligations of legal entities and citizens in connection with the application of this Law [13].

The same Law defines that illicit trafficking in narcotic drugs, psychotropic substances and precursors is the act of cultivating drug-containing plants (plants of the genus hemp and poppy), developing, producing, manufacturing, storing, transporting, shipping, purchasing, selling, importing into the territory of Ukraine, exporting from the territory of Ukraine, transiting through the territory of Ukraine, using, destroying narcotic drugs, psychotropic substances and precursors, carried out in violation of the legislation on narcotic drugs, psychotropic substances and precursors [14].

The list of narcotic drugs, psychotropic substances and precursors and amendments to it are approved by the Cabinet of Ministers of Ukraine (CMU Resolution No. 770 of 06.05.2000, as amended) upon submission by the Ministry of Health.

Violations of legislation in the field of circulation of controlled substances, types of crimes and punishments are defined by the Criminal Code of Ukraine (hereinafter-the Criminal Code of Ukraine) and the Code of Ukraine on Administrative Offenses (hereinafter-the Code of Administrative Offenses).

Criminal liability is defined by the Criminal Code of Ukraine and is provided for such acts as, for example, smuggling; use of funds obtained from the illegal circulation of narcotic drugs, psychotropic substances, their analogues and precursors; illegal production, manufacture, purchase, storage, transportation, shipment or sale of narcotic drugs, psychotropic substances or their analogues; sowing or growing of hypnotic poppy or cannabis; illegal introduction into the body, incitement to use narcotic drugs, organization or maintenance of places for the illegal use, production or manufacture of narcotic drugs, psychotropic substances or their analogues; illegal issuance of a prescription for the

right to purchase narcotic drugs or psychotropic substances and violation of the established rules for the circulation of narcotic drugs, psychotropic substances, their analogues or precursors [14].

Administrative liability is determined by the Code of Administrative Offenses and is provided for the illegal production, acquisition, storage, transportation, shipment of narcotic drugs or psychotropic substances without the purpose of sale in small quantities.

The use of narcotic drugs or psychotropic substances (except for public use) is not a crime. Illegal production, acquisition, storage, transportation, shipment of narcotic drugs or psychotropic substances without the purpose of sale in small quantities is an administrative offense and entails the imposition of a fine of 25 to 50 tax-free minimum incomes of citizens or community service for a period of 20 hours to 60 hours, or administrative arrest for a period of up to 15 days.

Small, large and especially large quantities of narcotic drugs, psychotropic substances and precursors that are in illegal circulation are established by the Ministry of Health (Order of the Ministry of Health of August 1, 2000 No. 188, as amended) [15].

A person who voluntarily surrenders narcotic drugs or psychotropic substances that he or she had in small quantities and which he or she produced, manufactured, acquired, stored, transported, or sent without the purpose of sale shall be exempted from administrative liability for such actions.

In addition, other measures of influence may be applied to persons aged 16 years to 18 years who have committed such administrative offenses, such as a warning or transfer of a minor to the supervision of parents or persons replacing them, or to the supervision of a pedagogical or labor collective with their consent, as well as to individual citizens at their request [16].

Criminal liability is already provided for the illegal production, acquisition, storage, transportation, or sending of narcotic drugs or psychotropic substances without the purpose of sale in quantities exceeding small. The maximum penalty for such acts (if they are committed with the involvement of a minor, as well as if the subject of such acts were narcotic drugs, psychotropic substances or their analogues in especially large quantities) is imprisonment for a term of 5 years to 8 years [17].

The same acts committed by prior conspiracy by a group of persons or within a year after conviction under this article or if the subject of such acts were narcotic drugs, psychotropic substances or their analogues in large quantities, are punishable by a fine of 2000 to 5000 non-taxable minimum incomes of citizens or imprisonment for a term of up to 3 years.

A person who voluntarily turned to a medical institution and began treatment for drug addiction is exempt from criminal liability for such acts.

In 2023, 7,344 cases of administrative offenses related to the illegal production, acquisition, storage, transportation, and transfer of narcotic drugs or psychotropic substances without the purpose of sale in small quantities were pending in courts in Ukraine (Article 44 of the Code of Administrative Offenses), of which 6,063 cases were considered and relevant decisions were made [18] (Figure 1).

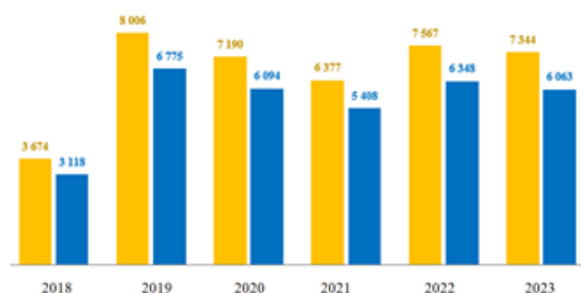


Figure 1: Number of cases of administrative offenses under consideration and number of cases considered 2018-2023

Cases of administrative offenses were considered in respect of 6,063 persons and relevant decisions were made:

- 4,068 persons (67.1%)-were brought to administrative responsibility and administrative penalties were imposed (3,807-in the form of a fine, 204-in the form of community service; 57-in the form of administrative arrest);
- 1,901 persons (31.3%)-cases closed: 47-due to exemption from administrative liability due to minor offense; 191-due to the absence of an event and the composition of an administrative offense; 8 due to the transfer of the case to the prosecutor, pre-trial investigation body; 1,595 due to the expiration of the terms for imposing administrative penalties).
- 94 people (1.6%)-measures of influence were applied to minors aged 16 to 18, provided for by Article 24-1 of the Code of Administrative Offenses (obligation to publicly or in another form apologize to the victim; warning; reprimand or severe reprimand; transfer of the minor to the supervision of parents or persons replacing them, or to the supervision of a pedagogical or labor team with their consent, as well as to individual citizens at their request) [19].

Of the 4,068 people held administratively liable for offenses related to the illegal production, acquisition, storage, transportation, or transfer of narcotic drugs or psychotropic substances without the purpose of sale in small quantities, 19 are citizens of another state, 156 are women, and 18 are disabled. Also, the majority of them-3,091 people (76%) are able-bodied individuals who did not work or study at the time of the offense. This indicator remains almost unchanged during 2018-2021 (in 2020-out of 3,701 persons held accountable-2,772 persons (75%) who did not work or study at the time of the offense; in 2019-out of 2,762 persons-2,102 persons (76%); in 2018-out of 3,287 persons-2,330 persons (70%) respectively) [20,21].

Conclusion

The issue of representation in administrative offenses and criminal offenses in the field of drug trafficking, precursors and their analogues is considered in terms of protecting the rights, freedoms and legitimate interests of participants in criminal proceedings. Representation by a defense attorney is considered a stage of involving a lawyer in conducting procedural actions at different stages of the pre-trial investigation and in relation to completely different procedural statuses of participants in criminal proceedings. The subjects who may be provided with professional legal assistance by a defense attorney in criminal proceedings include: A victim, a witness, a minor witness, a suspect, an accused, a civil plaintiff, a civil defendant and legal entities. The provision of assistance to each of the subjects is individual in its own characteristics in connection with the procedural status of each, rights and obligations. It is important to note that the participation of a defense attorney in criminal proceedings is of great importance for the participants in the proceedings, obtaining proper legal assistance, conducting a legal analysis of the situation and establishing the client's position to achieve a result.

Representation is defined as a type of advocacy that consists in ensuring the implementation of the rights and fulfillment of the client's obligations in civil, commercial, administrative and constitutional proceedings, in other state bodies, before individuals and legal entities, the rights and obligations of the victim during the consideration of cases of administrative offenses, as well as the rights and obligations of the victim, civil plaintiff, civil defendant in criminal proceedings. A defense attorney may be a lawyer who protects a suspect, accused, convicted, acquitted, a person in respect of whom the application of compulsory medical or educational measures is envisaged or the issue of their application is being resolved, as well as a person in respect of whom the issue of extradition to a foreign state (extradition) is envisaged.

The defense attorney performs an important function during the pre-trial investigation in criminal proceedings, such as the implementation of the right to defense of the participant in the proceedings. The provision of legal aid is carried out depending on the procedural status of the subject of the proceedings and is reflected in the criminal procedural legislation.

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Conflict of Interest

Authors have no conflict of interest to declare.

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