

Research Article

European Convention on Human Rights Case Law as a Source of Administrative and Criminal Law in Cases Concerning the Application of Measures by Law Enforcement Agencies in the Area of Drug Trafficking

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Abstract

Aim: Drug enforcement in Ukraine consists of a chain of small coercive decisions—a street stop, an administrative protocol over a few grams, a test purchase arranged online—and each link of that chain is reviewable not only under domestic statutes but also under the standards developed in Strasbourg. Since 2006, Ukrainian courts have been bound by law to treat that jurisprudence as a source of law. This paper asks what the duty means in practice in a field where an administrative offence easily turns into a crime and where covert techniques are routine.

Methods: We read the convention, twenty Strasbourg judgments and two communicated Ukrainian applications concerning narcotics policing, the relevant domestic codes and statutes, and cassation rulings on incitement and double prosecution. Administrative narcotics offences were checked against the Engel test, and official figures for 2024-2025 were summarised.

Results: Five clusters of the court's reasoning prove decisive in drug cases: (i) the autonomous reading of the term “criminal charge”; (ii) *ne bis in idem*; (iii) entrapment; (iv) the examination of hidden witnesses and informants; and (v) bodily integrity and privacy in searches and surveillance. Article 44 of the code of Ukraine on administrative offences allows up to fifteen days' arrest, which is enough to place every case under it within the criminal limb of Article 6. Domestic courts cope well with the substantive part of the entrapment test; its procedural part and the duplication of administrative and criminal proceedings over one seizure remain weak points.

Conclusion: In this area, the court's case law operates as a binding interpretive source and fills lacunae in both branches of law. A three-tier model of its reception is proposed, together with amendments requiring written reasons before each test purchase, suspension of administrative proceedings while a criminal case on the same facts is pending, and safeguards against abusive body searches.

Keywords: European court of human rights, Case law as a source of

law, Illicit drugs, Entrapment, Autonomous concepts, *Ne bis in idem*, Administrative offences, Policing, Article 6 European Convention on Human Rights (ECHR)

Introduction

Article 17 of the law of 23 February 2006 makes the convention and the case law of the European court of human rights a source of law that Ukrainian courts are required to apply [1]. The rule is not merely declaratory. It is mirrored in Article 9 § 5 of the criminal procedure code, which links the application of criminal procedural legislation to the European Court of Human Rights (ECtHR) case law [2], and in Article 6 § 2 of the code of administrative procedure, which ties the rule of law in administrative adjudication to the same body of case law [3]. Since its ratification in 1997, the convention has also formed part of national legislation [4]. For a Ukrainian judge, Strasbourg judgments are therefore binding material rather than an optional reference to foreign best practice.

Drug enforcement tests this rule harder than most fields, because a single episode can move through three legal regimes. An officer finds a substance during a preventive

police measure [5]. Depending on the quantity, the finding leads either to an administrative protocol under Article 44 of the Code of Ukraine on Administrative Offences (CUAO) or to criminal proceedings under Articles 307 or 309 of the criminal code [6,7]. If the police then pursue the seller, covert operational or investigative steps follow under the law on operational and search activity or chapter 21 of the criminal procedure code [2,8]. The volume is considerable: 47,617 Drug offences were registered in 2024 [9] and 48,629 in 2025 [10]. Of the 12,320 persons convicted under drug articles in 2024, only 933 were sentenced for supply under Article 307 [9]. Almost every such file depends on material produced by the police through stops, searches, test purchases, surveillance and witness statements—precisely the activities that the Strasbourg court has subjected to detailed scrutiny.

Ukraine still generates a heavy caseload in Strasbourg. The court's country profile reports 164 judgments delivered in 2025 on 568 Ukrainian applications, with at least one violation established in 160 of them, and 3,341 applications awaiting a judicial formation by mid-2026 [11]. Fair trial, personal liberty and police conduct dominate this list, and these are exactly the questions that decide the outcome of drug prosecutions. Kuchuk, et al. accordingly speak of Strasbourg judgments that “revealed numerous systemic human rights violations in Ukraine, particularly in the areas of conditions of detention” [12].

Domestic writing on the status of the case law has tended to remain at the level of general theory. Kalancha, analysing criminal procedure, describes it as a set of legal positions derived from the court's decisions [13]; Kravchenko, reviewing judicial practice, found convention references rare and Strasbourg citations sporadic [14]; Soloviova, concentrating on fair-trial guarantees, singled out the weakness of the mechanism for executing judgments [15]. Foreign scholarship, by contrast, has examined entrapment in depth. For Görlitz, et al., provocation is an established and widely used police technique in Germany [16]; Turanjanin, measuring the Serbian criminal procedure code against Strasbourg standards, places undercover investigations squarely under Article 6 [17]; and Ho defends a permanent stay of proceedings as the only proper response to state entrapment [18].

Our own earlier work dealt with the interplay of administrative and criminal liability for drug offences [19],

the prevention of such offences among minors [20] and foreign regulatory models [21]. Other Ukrainian authors have studied investigation methodology [22], international cooperation in covert operations [23], police tactics [24], controlled delivery [25], online drug sales [26] and the scope of police competence [27]. What is still missing is an account that reads the Strasbourg drug cases as one set of standards operating in administrative and criminal law at the same time; this paper seeks to fill that gap.

Purpose and objectives: The paper sets out to establish whether, and in what way, the ECtHR case law functions as a common source of administrative and criminal law in anti-drug enforcement. The objectives are: (1) To place the case law within the Ukrainian system of sources of law; (2) to test administrative drug offences against the Engel criteria; (3) to examine double prosecution arising from a single seizure; (4) to systematise the Strasbourg standards on incitement, informants, searches and covert surveillance and compare them with domestic practice; and (5) to construct a model of reception and propose legislative amendments.

Methods

The study combined doctrinal, comparative and formal-logical methods. The doctrinal part covered the Convention [4], the 2006 Law on the execution of judgments [1], the codes on administrative offences, crimes, criminal procedure and administrative procedure [2,3,6,7], the statutes on the police and on operational-search activity [5,8], the framework drug statute [28] and the ministerial table of drug quantities [29]. The comparative part used the official guide on Article 6 (criminal limb) [30] and twenty Strasbourg judgments, chosen because each either arose from a narcotics case or explains when an administrative offence amounts to a criminal charge: Engel [31], Öztürk [32], Gurepka [33], Sergey Zolotukhin [34], case of A and B vs. Norway [35], Teixeira de Castro [36], Vanyan [37], Khudobin [38], Ramanauskas [39], Bannikova [40], Veselov [41], Matanović [42], Akbay [43], Yakuba [44], Jalloh [45], Gillan, et al. [46], Volokhy [47], Welch [48], McGlinchey [49] and Wenner [50]. Two Ukrainian applications communicated to the government, Triska [51] and Martynenko [52], were added. Quotations from judgments follow the official English texts; where the court's reasoning is paraphrased rather than quoted, the relevant paragraph of the judgment is indicated in square

brackets. Quotations from Ukrainian statutes and rulings are the authors' translation.

Domestic reception was traced through cassation rulings concerning incitement in narcotics cases and double prosecution [53-59]. A review of these rulings published by the higher school of advocacy [60] and a conference address by a judge of the grand chamber [61] served as secondary material. Figures come from the national reports on the drug situation [9,10], from a scholarly digest of judicial statistics [62] and from the Strasbourg country profile [11].

Results and Discussion

Where Strasbourg rulings stand among Ukrainian sources of law

Article 17 [1] refers to case law "as a source of law", and the phrase lends itself to a narrow and a broad reading. Read narrowly, it makes only the convention a source, with judgments serving as aids to its interpretation. Read broadly, it turns the court's legal positions, including those formed in cases against other states, into normative material that a Ukrainian judge must apply wherever domestic law is silent [13,14]. Drug enforcement shows that practice has settled on the broad reading. The criminal procedure code prohibits incitement in Article 271 § 3 without ever defining it [2], and yet courts routinely apply the two-limb Bannikova test [40,60]. Likewise, the CUAO neither proclaims the presumption of innocence nor secures the examination of witnesses in terms comparable to Article 6 § 3; in administrative drug cases these guarantees arrive only through the autonomous concept of a "criminal charge" [31,33].

Three functions follow from this. The first is interpretation: The case law gives content to open statutory terms such as "provocation", "admissible evidence" or "proportionate measure". The second is gap-filling: Where the statute says nothing—for instance, about how prior suspicion is to be documented before a test purchase—the court's criteria supply the rule of decision. Article 9 § 6 of the criminal procedure code facilitates this role by referring courts to the general principles of criminal proceedings whenever the code is silent or unclear [2], and judges read those principles through the lens of Strasbourg judgments. The third is correction: A court may decline to apply a domestic

rule or practice that would lead to a violation, as the Supreme Court did by excluding evidence obtained through repeated test purchases [54,55].

Its impact varies between the two branches. Substantive criminal law, which defines offences and sanctions, is touched mainly through Article 7 and the autonomous concept of a "penalty" [48]. Criminal procedure feels the effect immediately and at every stage. Administrative law receives it by two routes: Through the criminal limb of Article 6, which extends to punitive administrative cases, and through Articles 3, 5 and 8, which constrain police action even before any proceedings start [45-47]. These routes structure the analysis below.

Administrative narcotics offences as a "criminal charge"

The test comes from Engel and has three elements [31]. Domestic classification is only a starting point of formal and relative value. Greater weight attaches to the nature of the offence, and account is also taken of how severe a penalty the person faces. The autonomy of the notion is one-directional [31]: Relabelling an offence as administrative cannot strip it of convention guarantees, whereas a state may always choose to extend them.

Öztürk applied the same logic to petty regulatory offences. Decriminalisation as such was accepted, yet the domestic label was declared not decisive [32]; a rule of general application, combined with a penalty pursuing deterrence and punishment, was enough to trigger Article 6 [32]. Gurepka transposed this reasoning to Ukraine. The applicant had served seven days of administrative detention, and that severity alone made the case criminal and brought the full set of Article 6 guarantees into play [33].

Table 1 applies the test to the narcotics-related articles of the CUAO, and the outcome is unambiguous. Under Article 44, handling small quantities of narcotics without intent to sell is punishable by "a fine of twenty-five to fifty tax-free minimum incomes of citizens or community work for a period of twenty to sixty hours or administrative arrest for a period of up to fifteen days" [6]. The rule is addressed to everyone, its purpose is deterrent and punitive, and deprivation of liberty is possible. All three Engel criteria point to a criminal charge.

Table 1: Engel test and narcotics-related articles of the Ukrainian administrative code.

CUAO article	Label and character of the rule	Most severe sanction available	Outcome under Engel
Article 44-production, acquisition, storage etc. of drugs in small quantities without intent to sell	Administrative; general rule addressed to everyone; deterrent and punitive purpose	Fine (25-50 non-taxable minimum incomes), 20-60 hours of community service, or up to 15 days' administrative arrest	Criminal charge (nature and severity) [31,33]
Article 106-2-illegal sowing or growing of opium poppy or hemp in small amounts	Administrative; general rule; punitive purpose	Fine with confiscation of the crops	Criminal charge (nature of the offence) [32]
Article 130-being in charge of a vehicle while drug-impaired	Labelled administrative; binds all drivers; aims to deter and punish	Fine equal to 1,000 tax-free minimum incomes plus a one-year driving ban	Criminal charge (nature and severity) [32,63]
Article 44 § 2-handing over drugs of one's own accord	Release from liability	No sanction	Encourages surrender; fits a health-oriented reading of Articles 3 and 8
Source: Authors' elaboration based on [6,29,31-33].			

The practical effects are tangible. Whoever is accused under Article 44 may rely on being presumed innocent, on sufficient time and facilities for the defence, on a lawyer and on the chance to question both the officers who compiled the protocol and the persons who attended the search. A file consisting merely of a protocol, an officer's report and an unsigned note on the seizure falls short of these requirements. The ministerial table of quantities draws the line between Article 44 CUAO and Article 309 of the criminal code [29], so the regime is in effect chosen by the forensic examination of the substance. The defence must be able to dispute that examination before an administrative court no less fully than before a criminal one. The official guide on Article 6 confirms that an administrative label does not take proceedings outside the criminal limb [30].

One seizure, two sets of proceedings

Under Article 4 of protocol number 7, no one may be tried or punished again for an offence of which he or she has already been finally acquitted or convicted [4]. Notably, the leading grand chamber case on this guarantee, Sergey Zolotukhin, began with an administrative penalty and continued with a criminal prosecution. For the court, what matters is whether both sets of proceedings concern one and the same conduct, assessed by reference to the factual circumstances rather than to their legal characterisation [34]; where the sanction may include detention, the charge is presumed to be criminal [34]. *A and B vs. Norway* later admitted combined proceedings provided they are "sufficiently closely connected in substance and in time" [35], serve complementary aims and are foreseeable.

Narcotics enforcement generates such conflicts routinely. A patrol officer draws up a protocol under Article 44 CUAO; the court imposes a fine; weeks later an expert report shows that the quantity exceeded the "small" threshold, and a

criminal case under Article 309 of the criminal code is opened for the same packet. Measured against Zolotukhin, both cases rest on one and the same packet, so the criminal case may continue only after the administrative ruling has been annulled in a Convention-compliant review [34]. Cassation practice follows this logic. In case No. 663/3390/19 an acquittal was left intact because the criminal accusation was built solely on conduct already punished under the administrative code [58]; in case number 585/3184/20, by contrast, prior administrative liability did not shield the person from prosecution for later and graver acts [59]. As Judge Mazur put it, everything turns on whether the two sets of proceedings are "sufficiently closely connected in substance and in time" [61].

For everyday practice this means two things. On the administrative side, the protocol under Article 44 should go to court only when the expert has determined the quantity, and the case should be suspended once criminal proceedings concerning the same substance appear in the unified register of pre-trial investigations. On the criminal side, the investigator should check for a final administrative decision before notifying a person of suspicion; otherwise the prosecution itself supplies the defence with a *ne bis in idem* objection.

The ban on incitement: From Teixeira de Castro to Akbay

Fittingly, the court first formulated the prohibition of entrapment in a drug case. In Teixeira de Castro, a man with no criminal record obtained heroin for two plain-clothes officers at their request. The court did not deny that drug trafficking may call for special methods, but insisted that undercover agents be used within limits and with safeguards [36]. In its view, the right to a fair administration of justice ranks too high for the public interest to justify reliance

on evidence obtained through incitement [36]; and since nothing suggested that the offence would have occurred without the officers, the proceedings were unfair from the start [36].

The grand chamber generalised this reasoning in *Ramanauskas*. It recognised that undercover agents and informers are increasingly deployed, particularly against organised crime and corruption, and that their deployment is not as such incompatible with Article 6 [39]. The line is crossed when the agents stop observing criminal activity passively and instead induce the offence [39]; it is then for the prosecution to show that no incitement occurred [39]. *Khudobin*, again a heroin case, condensed the rule to the formula that the police “may act undercover but not incite” [38] and found a violation because no judge or other independent body had supervised the operation [38]. *Vanyan and Veselov* confirmed that test purchases arranged without objective grounds and without a clear authorisation procedure breach Article 6 [37,41].

Bannikova vs. Russia systematised these principles into the two-limb test applied today. Under the substantive limb, the court establishes whether, absent any intervention by the authorities, the offence would still have taken place [40] and whether the authorities had objective grounds to suspect the applicant’s involvement in criminal activity [40]; any preliminary information about a pre-existing intent to offend must be capable of verification [40]. Under the procedural limb, which the court regards as an indispensable part of the analysis [40], the prosecution bears the burden of proving that there was no incitement [40]. Of particular relevance to drug cases, where admissions of guilt are frequent, is the court’s finding that confessing to a provoked offence neither removes the incitement nor cures its consequences [40].

Subsequent judgments reinforced the procedural limb. *Matanović vs. Croatia* demanded clear and foreseeable rules for authorising investigative measures [42] and that the courts examine an entrapment plea in adversarial proceedings, in a thorough and comprehensive manner, reaching a conclusive finding on it [42]. *Akbay and others vs. Germany*, which concerned a cocaine importation arranged with the assistance of an informant, specified the consequences: Evidence resulting from police incitement must either be excluded or be dealt with under a procedure producing comparable effects, and even a substantial reduction of the sentence does not qualify as such a procedure [43]. The court further held that entrapment may also affect a person who had no direct contact with the police officers [43]. This matters greatly for networks of couriers and stash-layers hired through messengers.

Domestically, the case law found its way into Article 271 § 3 Criminal Procedure Code (CPC), which prohibits investigators to “provoke (incite)” anyone to offend and declares things and documents so obtained unusable as evidence [2]; it also entered through cassation practice. Ruling number 646/6873/15-к demanded that a prosecutor who authorises control over the commission of an offence explain why provocation is excluded [53]. In cases No. 602/253/14-к and number 676/3183/15-к acquittals were upheld where the seller was not detained after the first deal and the same informant made further purchases [54,55]. In case No. 415/6262/17 the judges saw no incitement because “the accused was free in choosing her actions” [56], and in case No. 535/83/18 they held that a buyer’s abstract readiness to purchase does not amount to incitement [57]. Taken together, these rulings show that the three Strasbourg questions-prior suspicion, passivity and an effective test of the plea-have become part of what must be proved in Ukrainian narcotics trials [60] (Table 2).

Table 2: The Strasbourg incitement test and its domestic reception.

Strasbourg question	Key formula of the ECtHR	Ukrainian reception	What the file must contain
Was there objective prior suspicion?	“Whether there were objective suspicions...” [40]; information “must be verifiable” (§ 40)	Prosecutor’s decision must state grounds for absence of provocation [53]	Sources of suspicion, dates, verification steps before the first contact
Did the authorities remain essentially passive?	No influence inducing the commission of an offence [39]	No incitement where the accused “was free in choosing her actions” [56]	Recording of first contact: Who initiated it, who set price and quantity
Would the offence have occurred anyway?	No indication that the offence would have occurred without State involvement [36]	Repeated purchases through one informant point to provocation [54, 55]	Justification for any purchase after the first documented sale
Could the plea be tested?	Review must be “adversarial, thorough, comprehensive and conclusive” [42]	Courts must examine the plea against the evidence, not in general terms [60]	Access of the defence to recordings, the agent and the informant [44]
What are the consequences?	Evidence “must be excluded”; mitigation of sentence is not enough [43]	Inadmissibility under Art. 271 § 3 CPC; acquittals [2,54]	-

Source: Authors’ elaboration based on [2,36,38-40,42,43,53-57].

Two weaknesses remain. Repeated buys are the first. Officers sometimes stage a second or third purchase to show that sales were “systematic”, an aggravating circumstance in Article 307 [7]. Strasbourg logic, adopted by the Supreme Court [55], regards every purchase made after the offence has already been documented as potentially provoked, because at that point the state is producing rather than detecting crime. Internet sales are the second. A covert account that writes to a seller first, picks the product and presses for delivery may abandon passivity even though no one ever meets face to face. Shevchenko’s study of online selling [26] and the Strasbourg reasoning on chains of intermediaries [43] indicate that recording who made the first contact, who took the initiative and who fixed the price is as important online as in the street.

Informants, covert officers and the right of confrontation

Hidden testimony is the subject of a further group of judgments, and *Yakuba vs. Ukraine* is the most instructive among them. The applicant was convicted of three sales of drugs to an undercover agent, P., whom the defence was never able to question, while the video of the first sale was withheld. Recalling that the prosecution must disclose to the defence all material evidence for or against the accused [44] and that the specific rights in Article 6 § 3 are facets of the overall fairness of the trial [44], the court concluded that the defence had been placed at a disadvantage which the available safeguards could not offset, in breach of Article 6 §§ 1 and 3 [44].

Similar complaints have reached Strasbourg in other Ukrainian cases. In *Triska*, communicated in 2023, the applicant alleged that the offence had been provoked by an informant he never had the opportunity to cross-examine; the government were questioned on the fairness of the proceedings under Article 6 § 1, but the case was struck out in 2025 because the applicant no longer pursued it [51]. In *Martynenko*, communicated in 2020, the key witness first said he had incriminated the applicant under police pressure and then retracted that statement [52]. These cases show that the confidentiality of sources protected by the operational-search statute [8] must be balanced against the defence’s right to test the evidence, and that the balance must be struck by the trial court, not by the operational unit.

Bodily integrity, searches and surveillance

Jalloh vs. Germany marks the point at which the fight

against drugs meets an absolute prohibition. A suspected street dealer who had swallowed a small bag of cocaine was forcibly given an emetic through a nasal tube. The grand chamber classified this as inhuman and degrading treatment contrary to Article 3, imposed against the applicant’s will and gravely intruding on his body and mind [45]. Three circumstances weighed heavily: The drugs would in time have left the body naturally [45]; the target was a small-scale street dealer [45]; and the interest in securing his conviction could not justify an intrusion of that gravity [45]. As the evidence was a direct product of the breach of a core convention right [45], its use made the trial unfair.

For the national police, this means that a preventive surface check of clothing and belongings under the police statute [5] must not turn into an intimate or medical examination without a specific statutory basis, the involvement of a doctor and a proportionality assessment. Gillan and Quinton adds the requirement of legality: Where an officer exercising a stop-and-search power need not have even a subjective suspicion concerning the person searched, the risk of arbitrariness is obvious, and powers that are too broadly drawn and lack proper protection against misuse fail the “in accordance with the law” requirement of Article 8 § 2 [46]. Preventive checks at locations associated with street dealing should therefore rest on concrete grounds captured on the body camera or in the report.

Covert monitoring in narcotics cases follows the same logic. In *Volokhy vs. Ukraine*, the interception order set no time-limit, and the legislation did not specify the persons whose communications could be monitored; recalling that it must be satisfied that adequate and effective guarantees against abuse exist, the court concluded that the interference lacked a sufficient legal basis of the required quality [47]. Matanović repeated the need for a clear authorisation procedure [42]. Newer analytical tools—monitoring of messengers, tracing of cryptocurrency, open-source intelligence—are still not named among operational-search measures [8,64], which exposes their results to the same objection.

Sanctions, confiscation and the health dimension

In *Welch*, a drug trafficker’s assets were confiscated under legislation that entered into force only after he had committed the offences. The court treated a “penalty” as “an autonomous convention concept” and stressed that it “must

remain free to go behind appearances and assess for itself” the true nature of a measure [48]. Transposed to Ukraine, this reasoning governs special confiscation and the seizure of virtual assets held by online drug shops: Whatever their label, measures with a punitive purpose cannot be applied retroactively and require criminal-law guarantees [7].

Strasbourg case law also protects drug users in custody. In *McGlinchey and others vs. the United Kingdom*, a heroin-dependent prisoner died after her withdrawal went untreated; finding a breach of Article 3, the court stressed that detention must respect human dignity and that the authorities must provide detainees with the medical care they need [49]. In *Wenner*, Germany violated the same Article by failing to assess properly whether a prisoner’s opioid substitution therapy should be continued, the court relying

on the state’s positive obligation regarding conditions of detention [50]. These standards apply to administrative arrest under Article 44 CUAO and to police custody after arrest, and they support the health-oriented approach of the national drug strategy to 2030 [65]. Ukrainian law already contains relevant tools: Article 44 § 2 CUAO exempts from liability a person who voluntarily surrenders drugs [6], and Article 309 § 4 of the criminal code exempts a person who voluntarily seeks treatment [7]. Police should inform detained users of these options.

A model of reception

The material analysed allows us to distinguish three tiers at which Strasbourg case law enters Ukrainian drug enforcement (Table 3).

Table 3: Tiers through which Strasbourg standards enter narcotics enforcement.

Tier	In administrative law	In criminal law and procedure	Leading cases
Law-making	Article 6 safeguards for Article 44 cases; statutory limits on body searches and on preventive stops	Named list of covert techniques; prior suspicion put in writing before a test buy; coordination of the two tracks for one seizure	Engel; Gurepka; Zolotukhin; Volokhy; Matanović
Operational (police practice)	Recorded grounds for stops; medical staff for intimate searches; information on voluntary surrender and treatment	Passive conduct of agents; documentation of first contact; disclosure-ready recordings	Gillan; Jalloh; Bannikova; Akbay; McGlinchey; Wenner
Adjudication	Complete Article 6 scrutiny in administrative cases; defence counsel whenever arrest is requested	Adversarial review of incitement pleas; exclusion of provoked evidence; questioning of covert agents	Teixeira de Castro; Ramanauskas; Khudobin; Yakuba

Source: Developed by the authors based on [1-3,5,6,8].

To give this model a statutory footing, we propose four amendments. (1) Article 271 CPC and Article 8 of the law on operational and search activity should oblige officers, before any test purchase, including one made online, to document the objective grounds for suspicion, the source of the information and the steps taken to verify it—the requirement that flows from *Bannikova* and *Matanović* [8,40,42]. (2) The CUAO should require an Article 44 case to be stayed once criminal proceedings concerning the same substance have been registered, while the CPC should list a final administrative decision on identical facts among the grounds for closing criminal proceedings, consistent with *Zolotukhin* [6,34]. (3) The police statute should distinguish a surface check from an intimate search, forbid forcible medical procedures used to obtain evidence, as *Jalloh* requires [5,45], and demand recorded grounds for preventive checks at drug-dealing hotspots [46]. (4) Whenever administrative arrest is sought in an Article 44 case, the court should secure the participation of a lawyer,

in line with *Gurepka* [33].

These proposals do not weaken enforcement. On the contrary, the gap between registered supply offences and supply convictions [9,62] shows that cases are lost at the stage of proof. Evidence gathered in line with Strasbourg standards survives judicial review; evidence obtained in disregard of them is lost, as acquittals upheld in cassation demonstrate [54,55]. We share the view of *Predmestnikov* and *Skrebovska* that the bare number of registered cases tells little about success [66]; it is more telling to count convictions that withstand appeal and scrutiny in Strasbourg.

Conclusion

The ECtHR case law functions as a source of both administrative and criminal law in Ukraine. In the narcotics field it interprets, fills gaps and corrects, acting through the convention’s autonomous concepts (“criminal charge”,

“penalty”) and through the restrictions that Articles 3, 5 and 8 places on police powers.

Since Article 44 CUAO permits up to fifteen days of administrative arrest, it satisfies each Engel criterion and calls for criminal-law safeguards. Handling one packet of drugs first administratively and then criminally infringes Article 4 of protocol number 7 unless both procedures are closely linked in substance and time; waiting for the expert report and staying the administrative case once criminal proceedings are registered is the most reliable course.

The prohibition of entrapment, developed in drug cases from Teixeira de Castro to Akbay, has been absorbed by the Supreme Court as a substantive test, but its procedural half-written prior suspicion, independent authorisation, adversarial review-and its extension to online purchases require statutory support. Yakuba *vs.* Ukraine shows that undisclosed recordings and unexamined undercover agents are a recurring source of violations. Jalloh, Gillan and Volokhy set limits on bodily searches, preventive checks and surveillance; McGlinchey and Wenner protect dependent persons in custody.

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Conflict of Interest

Authors have no conflict of interest to declare.

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