

## Research Article

# The Administrative-legal and Criminal Aspect of Prosecuting Persons for Offenses in the Field of Illegal Drug Trafficking

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## Abstract

**Background:** This paper focuses on the legal regulation of the ratio of criminal and administrative responsibility for combating crimes in the field of trafficking in narcotic drugs, psychotropic substances, their analogues and precursors.

**Methods:** The methodological basis of the research is comparative and systematic analysis, formal jurisprudence, hermeneutics, hermeneutics, methods of analysis and synthesis. In the course of carrying out the set tasks, the following research methods were used: Legal regulation of the ratio of criminal and administrative responsibility for combating crimes in the field of trafficking in narcotic drugs, psychotropic substances, their analogues and precursors was studied using formal logical methods. In order to distinguish and analyze legal regulations on the ratio of criminal and administrative responsibility for combating crimes in the field of trafficking in narcotic drugs, psychotropic substances, their analogues and precursors, the system structural method was used; with the help of comparative legal method. With the help of comparative legal methods, the ratio of criminal and administrative responsibility for combating crimes in the field of trafficking in narcotic drugs, psychotropic substances, their analogues and precursors was analyzed, which is worth noting.

**Results:** It was proposed that the illegal manufacture, production, purchase, storage, and transfer of small quantities of narcotic drugs and psychotropic substances not intended for illegal manufacture, production, purchase, storage, and transfer of narcotic drugs and psychotropic substances should remain as an administrative offense. Instead of strengthening repressive measures against users of narcotic drugs and psychotropic substances, preventive activities against users of narcotic drugs and psychotropic substances and risk groups should be improved to increase their effectiveness in combating drug addiction and drug crimes by weakening the factors of drug addiction.

**Conclusion:** It has been established that the resources of law enforcement agencies in crime prevention activities are not unlimited. The increase in the number of recorded crimes and criminal cases prosecuted and sent to court under Article 307 of the Criminal Code of Ukraine comes at the expense of a decrease in the number of similar indicators under

Article 309 of the Criminal Code of Ukraine. In order to criminalize the illegal manufacture, production, acquisition, and storage of narcotic or psychotropic drugs, law enforcement agencies need to increase the number of personnel and organizational and material resources to conduct pretrial investigations in the form of investigations, compared to the resources required for administrative procedures. For example, the cost to the state and society of investigating the fact that up to 5 grams of marijuana or 0.5 grams of opium extract was obtained, stored, or transported by a person mentally or physically dependent on these substances would increase disproportionately to the possible positive effects in the form of general drug addiction prevention. There is no certainty that the increased costs of combating drug and psychotropic drug users and small-scale dealers will not run at the expense of resource savings and other socially beneficial objectives to combat the more socially dangerous manifestations of drug crime.

**Keywords:** Administrative liability; Criminal liability; Illegal turnover (trafficking); Illegal drug trafficking; Narcotic drugs and psychotropic substances; Precursors; Countermeasures; Legal regulation

## Introduction

Socio-economic transformations in the state, the establishment of democratic institutions in Ukraine, the granting of broad rights and freedoms to citizens during the years of independence are accompanied by the aggravation of negative processes: The development of the shadow economy, the spread of corruption, and the rooting of organized and professional crime. The transformation of social relations affected the criminalization of various sectors of the economy, the reduction of social protection of the population, and the increase in the number of drug abusers. Today, more than 200,000 drug addicts are registered in Ukraine. Illegal circulation of narcotic drugs, narcotization of the population represent a direct threat

to the gene pool of the nation, to the foundations of the existence of the country itself, and are gaining global proportions. The transnational nature of the drug business involves the smuggling of narcotics over considerable distances, covering the territory of different countries.

In the last century, the spread and abuse of drugs and their illicit trade appeared worldwide as a global threat to humanity. Unfortunately, Ukraine is part of globalization and the scale of drug illicit trade and drug addiction is serious. For more than a year now, drug addiction in Ukraine has shown signs of an epidemic and is one of the real and potential threats to Ukraine's national security and social stability. In the scientific community and in the public consciousness, an important means of curbing the scale of the drug epidemic is the use of the Criminal Code of Ukraine (hereinafter referred to as the Criminal Code of Ukraine) under Chapter 13 of the Special Part of the Criminal Code of Ukraine and the relevant articles of Articles 44, 106-1 and 106-2 of the Law on Administrative Offenses of Ukraine (hereinafter referred to as the Administrative Offenses Law of Ukraine), for illegal acts involving drug use. There is a widespread view that this is to hold the guilty party criminally liable. Furthermore, the recent edition of the project of the New Criminal Code of Ukraine (from the Administrative Text dated July 25, 2021) already recognizes as a crime the illegal manufacture, production, acquisition, and storage of small quantities of narcotic drugs and psychotropic substances without the purpose of sale (projects dated November 14 and 24, 2021 edition, without the purpose of transfer [1-3]). The specified acts are currently recognized as administrative offenses under Article 44 of the CUAO.

## Methods

The methodological basis of the study is a series of methods and techniques of scientific knowledge. The main role in this system is the general scientific dialectical method of cognition. This dialectical cognitive method makes it possible to investigate the problem of the integration of social content and legal form and to carry out a systematic analysis of legal regulations regarding the ratio of criminal and administrative responsibility for combating crimes in the field of trade in narcotic drugs, psychotropic substances, their analogues and precursors. With the help of logical-semantic methods, the conceptual apparatus is deepened and the general principles of legal regulation of the ratio of criminal and administrative responsibility for combating crimes in the field of trafficking in narcotic drugs, psychotropic substances, their analogues and precursors are determined. Systematic, structural and comparative legal methods made it possible to investigate the concept and content of the relationship between criminal and administrative responsibility for combating crimes in the field of trafficking in narcotic drugs, psychotropic substances, their analogues and precursors, as well as the problems of activities performed by organizations ensuring measures against the illegal distribution (trade) of narcotic drugs and psychotropic substances.

Historical legal methods were used to study the state and general nature of the ratio of criminal and administrative responsibility for combating crimes in the field of trafficking in narcotic drugs, psychotropic substances, their analogues and precursors. With the help of formal legal methods, the content of legal norms (regulating criminal and administrative responsibility for combating crimes in the field of trafficking in narcotic drugs, psychotropic substances, their analogues and precursors) was studied.

## Results and Discussion

The liberal process in many countries of Europe and the world in the field of regulating the high volume of trade of certain narcotics, the widespread prevalence of drug addiction among the Ukrainian population, and therefore the relevant illegal manufacture, production, acquisition, storage, transport, and transfer of narcotic and psychotropic drugs (Code on Administrative Offenses of Ukraine Article 44, Articles 307 and 309 of the Criminal Code of Ukraine) transfer determines the relevance of the study on the limits of criminal legal response to the illegal trafficking of small quantities of narcotic drugs and psychotropic substances without the purpose of sale (transfer).

Theoretical principles of criminalization (criminal law criminalization) have been developed by O.O. Dudorov, M.I. Khavronyuk, P.L. Fris, D.O. Balabanova, G.A. Zlobin, V.M. Kudryavtsev, O.I. Korobeyev, V.O. Navrotsky, O.M. Hotin, M.I. Melnik, A.A. Mitrofanov and other scientists. Today, in the study of criminalization, the issues concerning the grounds, principles, conditions and reasons of criminalization, their number and interrelationships are of a debatable nature, but the relevant discussions are not limited to "... In fact do not relate to the essence of the criminalization rules, but to their systematization (grouping) and the generic names of such requirements" [4]. For example, what O.O. Dudrov and G.A. Zlobin call the social and socio-psychological principles of criminalization and what D.O. Balabanova calls the grounds of criminalization [4-6]. Without entering into a theoretical discussion of these issues, we will deal with them within the framework of an approach to criminalization research. This approach determines the grounds of criminalization of an act as the appropriate degree and nature of its social danger and divides the principles of criminalization into 2 main groups:

1. Social and socio-psychological, and
2. Systemic, legal and criminal legal) [4,7].

According to the scientist, social and socio-psychological principles include the principle of social risk, the principle of relative prevalence of the act, the principle of proportionality of positive and negative consequences of criminalization, and the principle of criminal political relevance [4]. In relation to the particularities of this study, we will focus on the grounds of criminalization and the social and socio-psychological principles of criminalization of acts. After all, systematic legal principles aim to ensure that the novelties introduced do not degrade the quality

of the criminal legal system, primarily its systemic characteristics.

In the framework of the approach we have chosen, the principle of social risk corresponds to the grounds for criminalization of acts. That is, the degree and nature of the social danger of the act whose criminalization is planned must cause serious (and otherwise) damage to the object of criminal law protection [7]. The main role in determining the public danger of the illegal manufacture, production, acquisition and storage of narcotic drugs and psychotropic substances belongs to the characteristics of the offender who commits such acts. After all, as P.L. Frith rightly pointed out, social danger is not only a characteristic of an act, but also of the person against whom the act is committed [8].

Order No. 188 of the Ministry of Health of Ukraine, dated August 1, 2000, "On the Approval of the Table of Small, Large, and Especially Large Amounts of Narcotic Drugs, Psychotropic Substances, and Precursors to the Illicit Trade", defines a small amount as a small amount of a drug, as defined by the UN International Narcotics Control Board (The "Approval of the Table of Small, Large and Particularly Large Doses of Narcotic and Psychotropic Substances Involved in the Illicit Trade" defines small quantities to include narcotic and psychotropic substances with a daily dosage not exceeding 10, as defined according to the UN International Narcotics Control Board [9]. In view of this, and in view of the absence of the purpose of sale (transfer) referred to in Article 44 of the CUAO and the corresponding norms of the Draft Criminal Code of Ukraine, we are convinced that the subjects of these crimes are consumers of narcotic or psychotropic drugs, and/or petty traders in cases where proof of purpose of sale (transfer) of narcotic or psychotropic drugs seized from them (or) petty traders in cases where there is a procedural lack of proof of the purpose of the sale (transfer) of narcotic drugs or psychotropic substances seized from them. The structure of persons involved in the illicit trade of narcotic drugs and psychotropic substances is characterized by the lowest social risk, especially when compared to participants and leaders of organized drug crimes [10].

Furthermore, one cannot ignore the fact that some consumers and petty traders are drug addicts who are psychologically and physically dependent on certain drugs and psychotropic substances. Therefore, we need not expect that the enhanced legal responsibility for the purchase, storage, and transportation of these drugs will eliminate their dependence on these drugs, even in one daily dose. Criminalization of such behavior will only increase the psychological pressure on them [11].

Structure of crimes in the field of illegal trafficking in narcotic drugs and psychotropic substances (Articles 44, 106-1, 106-2 of the CUAO; Articles 305-320 of the Criminal Code. Articles 305-320 of the Criminal Code of Ukraine), the open danger of illegal manufacture, production, acquisition, storage of small quantities of narcotic drugs or psychotropic substances not intended for sale (transfer),

illegal sale of narcotic drugs and psychotropic substances, illegal manufacture, acquisition, storage, transportation, transfer with intent to sell (Article 307 of the Criminal Code of Ukraine) and also characterized as being much smaller in degree and nature than the public danger of illegal manufacture, acquisition, storage, and transportation not intended for sale in the quantities specified in Article 309 of the Criminal Code of Ukraine [12].

According to the principle of relative dissemination of acts, "Even if an act constitutes a public danger, the excessive dissemination of that act is not an argument for criminalization, as may seem somewhat surprising to the layman, but an argument against criminalization" [5]. As already mentioned, today the scale of illegal drug distribution (trafficking) and drug addiction in our country is critical. According to the Ministry of Internal Affairs, there are officially about 500,000 drug addicts in Ukraine, of whom more than 170,000 regularly use drugs [13]. According to the methodology for assessing the latency of non-medical drug use developed by the Ministry of Health according to international recommendations, in the Ukrainian context the number of registered persons using drugs for non-medical purposes is 5 times the number of registered persons, and in recent years the number of such persons is about 2.5 million [14]. And all these people are currently the subjects of crimes provided for in Article 44 of the CUAO and/or Article 309 of the Criminal Code of Ukraine. While this is unfortunate, this number is the reason for its excessive prevalence. We must admit that law enforcement agencies are unable to prosecute so many people for acts related to drug consumption. And it can be said that today Article 309 of the Criminal Code of Ukraine is applied selectively and the principle of inevitability of punishment is not always implemented; the transformation of administrative offenses into criminal offenses, as provided for in Article 44 of the CUAO, only strengthens this trend [15]. Even more acts that are criminally illegal will remain unpunished. Is it really possible to keep more or less of the population from using drugs and psychotropic substances in such a state? Will mass impunity for new criminal acts enhance the authority of law enforcement agencies and the state as a whole?

With these questions in mind, we proceed to the next principle of criminalization of acts-the principle of proportionality of positive and negative consequences of criminalization of acts. The content of this principle lies in the fact that the criminalization of an act is admissible only when it is certain that the positive social consequences of the applicable criminal law substantially outweigh the inevitable negative consequences of criminalization [5].

In order to predict the possible consequences of criminalization of administrative offenses provided for in Article 44 of the CUAO, statistical data on the number of recorded qualified acts under Articles 307 and 309 of the Criminal Code of Ukraine and the number of criminal proceedings directed to the courts in prosecutions under these articles are analyzed [16] (Table 1).

**Table 1:** Statistical data on registered crimes related to illicit trafficking (trafficking) of narcotic drugs, psychotropic substances, their analogues and precursors in Ukraine

Period of time %	The number of registered criminal offenses in Ukraine	The number of registered criminal offenses related to illegal turnover of narcotic drugs, psychotropic substances, their analogues and precursors	The specific weight of criminal offenses related to the illegal turnover of narcotic drugs, psychotropic substances, their analogues and precursors in the structure of crimes
2016	529141	30499	5.78
2017	565182	25908	4.58
2018	592604	23029	3.89
2019	523911	29010	5.54
2020	487133	27007	5.54
2021	444130	28774	6.48
2022	360622	27437	7.6
2023	368765	29589	7.9

After the new Criminal Procedure Code came into force at the end of 2012, the ratio of the number of crimes registered under Articles 307 and 309 of the Criminal Code of Ukraine was almost 1 to 2, respectively, in 2013-2015 (8,152 and 16,766 on average, respectively). In 2016, the number of crimes registered under Article 309 of the Criminal Code of Ukraine the number of crimes registered was 7.6 times higher than the similar indicator under Article 307 of the Criminal Code of Ukraine (17,398 and 2,293 crimes, respectively). For the sake of correctness of analysis, we do not consider the indicator for 2016, since this can be explained by the active formation process of the newly established National Police; in 2017-2018, the ratio of crimes recorded under Articles 307 and 309 of the Criminal Code of Ukraine was almost 1 to 4 (an average of 5241 and 19047), in 2019 this ratio was 1 to 3 (6165 and 18483 cases, respectively), and in 2020 1 to 2 (8150 and 15735 cases, respectively).

In 2013-2015, the correlation of criminal cases sent to court with indictments under Articles 307 and 309 of the Criminal Code of Ukraine was also approximately 1 to 2 (5,454 and 13,028 cases on average).

This means that law enforcement resources in crime fighting are not infinite. The increase in the number of recorded crimes as well as criminal proceedings prosecuted and sent to court under Article 307 of the Criminal Code of Ukraine is carried out at the expense of a decrease in the number of similar indicators under Article 309 of the Criminal Code of Ukraine. To criminalize the illegal manufacture, production, acquisition, and storage of narcotic or psychotropic drugs, law enforcement agencies need to increase the number of personnel and organizational and material resources to conduct pretrial investigations in the form of investigations, compared to the resources required for administrative procedures. For example, the cost to the state and society of investigating the fact that up to 5 grams of marijuana or 0.5 grams of opium extract was obtained, stored, or transported by a person mentally or physically dependent on these substances would increase disproportionately to the possible positive effects in the

form of general drug addiction prevention. There is no certainty that the increased costs of combating drug and psychotropic drug users and small-scale dealers will not run at the expense of resource savings and other socially beneficial objectives to combat the more socially dangerous manifestations of drug crime [17].

#### **Comparative legal analysis of anti-drug crime laws in Ukraine and certain European countries**

The illicit trade of narcotics and its organized sector, the drug business, are on the rise worldwide and are among the most dangerous types of organized crime. These areas are characterized by their transnational nature, their specialization, the high technical equipment of the criminal groups, the presence of their own intelligence and counterintelligence, and the possession of the latest forms and methods of countering law enforcement and judicial authorities. In addition to this, the drug business causes an increase in the number of drug addicts, selfish and violent crimes [18].

According to the sanctions against drug crimes stipulated by law, the country can be divided into 3 groups:

The first group is the "hard policy group". This group includes Malaysia, Iran, Pakistan, and China, where the law is fought with the harshest means, up to and including the death penalty, and the laws regarding drug dealers are strengthened to the maximum extent possible. In Iran, for example, more than 1,000 people were publicly executed in just 18 months, according to a 1989 law.

The second group is the "strict control group. In countries in this group (e.g., the United Kingdom, France, and Austria), state agencies strictly control the distribution of all types of drugs and actively confront the drug mafia, although the most extreme measures are not taken.

As in other countries, the problem of drug crime in the United Kingdom is quite relevant: In 1964, the Narcotics (Prevention of Abuse) Act was adopted. The law, dated June 2, 1965, established basic provisions regarding criminal liability for the illegal distribution of narcotics and

provided a detailed list of the types of narcotics prohibited for import and export without a special permit. A detailed list of the types of narcotics prohibited for import and export without a special permit was given.

In 1967, the Dangerous Drugs Law was adopted in connection with the proliferation of hallucinogenic drugs such as heroin and LSD; the Criminal Justice Law of 1982 significantly changed the criminal penalties system for female offenders, mainly in the procedures for imposing and executing sentences of imprisonment; since May 1983, a review of criminal policy concerning crimes committed by minors has also begun. As a rule, persons who have not yet reached the age of 17 years are sentenced to imprisonment for a term not exceeding one year. If the court deems it possible to impose a sentence of less than 4 months' imprisonment, the young person may be sent to a temporary detention center; if a woman under 17 commits a criminal act, the court may find her guilty but will not impose a penalty in the form of deprivation of liberty; the minimum detention period for women aged 17 to 21 is 3 weeks; the minimum detention period for women aged 17 to 21 is 3 weeks. In addition, reforms to criminal policy for minors in England include the expansion of all types of educational programs (for example, establishing a minimum of 2 hours per week of general education and one hour per week of physical training).

Since 1994, there has been a multifaceted strategy for combating drug abuse, which prescribes the implementation of counter-drug measures according to 5 priority directions. The fight against drug demand is carried out from 2 directions: Detention of those who have not yet abused drugs and assistance to those who have already become addicted [19].

France, one of the main producers of poppy straw, effectively controls its production on the basis of the licensing and criminal penalties system introduced, limiting the scope of leakage and illegal use of this drug as well as other types of drugs. In France, individuals (natural persons) as well as legal entities are held criminally liable. In addition to the principal penalties, the court may decide to impose additional penalties in the form of forfeiture of facilities, equipment, and all property that played a role in directly or indirectly aiding criminal activity to individuals and legal entities guilty of committing criminal acts related to illegal drug trafficking; total or partial forfeiture of property of the convicted person or partial confiscation of all or part of the convicted person's property; if the owner has engaged in (or conspired to engage in) an illegal drug transaction subject to criminal penalties, revocation of the license or closure of the establishment for 5 years.

One of the main features of French law is that it provides similar penalties for both completed and attempted crimes.

The third group is the "liberal group". This group includes countries where certain "soft" drugs are partially allowed. Typical examples are the Netherlands, Germany, Italy, Spain, and Switzerland. However, an analysis of the Dutch

solution to this problem shows that the country has little experience in combating drug trafficking. There is a double standard on narcotics, on the one hand allowing the export of cannabis grown in its own country to Western Europe, and on the other hand stimulating the flow of "drug tourists". Furthermore, the Netherlands (mainly Amsterdam) has become the "European drug den".

In Italy, the illegal handling of small quantities of drugs for consumption by others (offering, selling, transferring, etc.), the storage of drugs for consumption by others, and the illegal production of narcotic substances (the qualities of "in large quantities" and "organized illegal production of narcotic substances" are selected) are recognized as crimes [20].

In addition, members of armed mafia groups in the country (criminal groups whose members carry or hide firearms or explosives in their hideouts) bear higher criminal responsibility for their illegal activities in the field of drug trafficking.

Spanish law is most suggestive in the area of distinguishing liability for illegal acts involving the use of different types of drugs: After the introduction of the Dutch model (legal drug use for non-medical purposes) in Spain in 1985, the number of registered drug addicts increased from 200,000 to 1.5 million and Spain became the world It became a trans-shipment base for drugs from many countries. This had a significant impact on the scale of penalties. Currently, Spanish law changes the penalty for the act of using "soft drugs" to 17 years and 4 months from the previous 6 years, and the penalty for the act of using hard drugs to 23 years and 4 months from the previous 12 years.

Since Ukraine is a signatory to all major treaties, Ukrainian legislation is largely consistent with the provisions of these treaties. Among the achievements of domestic law makers is that Ukraine was the first among the CIS countries to align its domestic legislation in the area of regulation of the distribution (trade) of narcotic drugs, psychotropic substances, and precursors with the requirements of the relevant UN conventions, which was reflected in the adoption of relevant legislation.

Thus, Ukrainian legislation provides for strict control of the trade (sale) of narcotic drugs, psychotropic substances, their analogues and precursors, prohibition of acts of use for purposes contrary to legal regulations, and liability measures in case of violation of such regulations.

The Law of Ukraine "On Narcotic Drugs, Psychotropic Substances and Their Precursors" establishes the legal and organizational principles of state policy on trafficking in narcotic drugs, psychotropic substances and their precursors in Ukraine, defines the powers of the administrative authorities, the procedures of state control, and clearly defines the rights and obligations of individuals and legal entities in the field of trafficking in narcotic drugs, psychotropic substances and their precursors. It clearly defines the rights and obligations of individuals and legal entities in the field of trafficking in narcotic drugs,

psychotropic substances and their precursors [21].

The next important aspect in this area is the Law of Ukraine “On Measures to Combat Illicit Trafficking and Abuse of Narcotic Drugs, Psychotropic Substances and Precursors”. This law establishes a system of measures in Ukraine to combat illicit trafficking (trafficking) and abuse of narcotic drugs, psychotropic substances, and precursors, taking into account international norms, as well as the rights and obligations of legal entities and citizens related to the application of this law.

The Law also provides for organizations to combat illegal trafficking (trafficking) of narcotic drugs, psychotropic substances, and precursors, namely: The Ministry of Internal Affairs of Ukraine, the Security Service of Ukraine, the Prosecutor General’s Office of Ukraine, the State Customs Committee of Ukraine, the State Border Guard, the Central Administrative Authority for the Medical Sector of Ukraine, and other administrative authorities are responsible for combating the illegal trafficking (trafficking) of narcotic drugs, psychotropic substances, and precursors within the scope of their powers granted by law [22].

The Criminal Code of Ukraine occupies a leading position in this area. This Code of Regulations (i.e., its Chapter

13) establishes offenses in the area of trafficking in narcotic drugs, psychotropic substances, their analogues or precursors, and liability for these offenses. Compared to other European countries, Ukraine has the highest number of components (corpus delicti) of crimes in the field of narcotics, with 16 components. As for other European countries, Bulgaria has the highest number of components of analytical crimes (corpus delicti) in its criminal code with 8, and Denmark and Norway have the lowest number of components (corpus delicti) in their criminal codes with 3 each [23].

The threshold for prosecution in Ukraine is extremely low, and the small amount for which a person is held criminally liable is far less than the average single dose of a drug addict.

Thus, according to Order No. 188 “On Approval of Tables of Small, Large, and Especially Large Amounts of Narcotic Drugs, Psychotropic Substances, and Precursors of Illegal Trafficking,” the Ukrainian Ministry of Health approved such tables and determined the so-called “threshold” at which criminal liability is imposed.

It should be emphasized that this threshold in Ukraine is much lower than in most European countries (Table 2).

**Table 2:** Sizes of drugs, which if illicitly possessed cause criminal liability in certain countries

Type of drug	Ukraine	Russia	The Federal Republic of Germany	The Netherlands	Austria	Portugal	Finland
Cocaine	from 0.02 g	0.5 g	1 g-2 g	0.5 g	15 g	2 g	1.5 g
Opium, opium extract	from 0.5	1 g	-	-	-	-	-
Heroin	from 0.005	0.5 g	1 g-2 g	0.5 g	3 g	1 g	1 g
Marijuana (Cannabis)	from 5 g	6 g	6 g-30 g	30 g	20 g	25 g	15 g
Amphetamine	from 0.15 g	0.2 g	10 pills	0.5 g	10 g	1 g	3 g

The scientifically unsubstantiated volume of the conventional daily dose forming the basis for calculating small, big and especially big amounts of narcotic drugs and psychotropic substances in illicit turnover, represent the reason for difficulties and abuses (including corruption) in the classification of crimes related to in drug trafficking. As a result, a real single dose of a psychoactive substance with this calculation of a conditional daily dose turns into several single doses and, as a result, the crime is qualified under that part of the article of the Criminal Code, which provides for a more severe punishment.

Thus, on the basis of unreasonably low “thresholds” for criminal liability for what is not considered a crime in most civilized countries of the world, thousands of drug addicts in Ukraine receive punishment every year, and taxpayers are forced to pay almost UAH 3,800 for custody of each such person (according to the Secretariat of the Human Rights Commissioner of the Verkhovna Rada (2016), the state allocates UAH 126 for the daily maintenance of a convicted person), which is significantly higher than the amount of the average pension of most citizens of retirement age.

Therefore, drug addicts are the persons who were and remain the main object of criminal prosecution by law enforcement agencies. This circumstance undoubtedly criminalizes this sphere, it increases the number of prisoners, diverts the attention of the police from the fight against drug dealers, while presupposing use of considerable material and human resources. All this testifies to the need to humanize the legislation, target it to counteract really “painful” drug processes and phenomena.

The principle of criminal-political adequacy consists in the fact that the content of each criminal-law novel in one way or another should reflect the general directions of the state criminal policy [24]. It should be noted that criminalization of the acts provided for in Article 44 of the Criminal Code contradicts the purpose, tasks and principles of the still valid State Drug Policy Strategy for the period until 2020, as well as the project of the State Drug Policy Strategy for the period until 2030 [25,26]. Both documents recognize the need for reorientation of measures against illegal turnover of narcotic drugs and psychotropic substances from criminal sanctions to administrative correctional, bio psychosocial and preventive measures.

The analysis of investigative and operational practice testified that the most common objects of criminal offense in Ukraine are drugs of plant origin, which are made from poppy and hemp plants.

Drugs obtained from the hypnotic poppy can be divided into the following groups:

a) Natural (natural) drugs: Poppy straw; opium: Extraction (extract, concentrate of poppy straw); acetylated; morphine; codeine (3-methylmorphine) [27].

b) Semi-synthetic drugs: Heroin (in its pure form is called diacetylmorphine, i.e. heroin of a high degree of purification).

There are other semi-synthetic drugs derived from the hypnotic poppy-hydromorphone (dimorphon), oxycodone (dihydron), etorphine, omnopon, thebaine, etc. [28].

The vast majority of criminal offenses in the field of illegal drug trafficking are usually committed with prior preparation. Actions in preparation for the commission of a crime include: Selection of narcotics that will be the subject of a criminal offense; choice of place and method of execution; selection of means for committing illegal actions with narcotics; development of a plan to commit an illegal act; selection of accomplices and distribution of roles.

Actions regarding the direct commission of criminal offenses in the field of illegal drug trafficking are differentiated in several different ways with a clear division of roles. The analysis of criminal proceedings proved that the following are the main ways of committing criminal offenses by organized groups and criminal organizations related to the illegal circulation of narcotics: Smuggling of drugs, falsified medicines (72.3%); illegal production (43.5%), manufacturing (69.8%), acquisition (89.5%), storage (58.8%), transportation (48.5%), forwarding (47.4%), sales (89.5%) of narcotics; tendency to use narcotic drugs (58.8%); illegal public use of narcotics (31.2%); appropriation of narcotics, equipment intended for their production (12.1%); violation of the rules of production, processing, storage, accounting, release, realization, sale, distribution, transportation, shipment, acquisition, use, import, export or destruction of narcotic drugs (11.2%); illegal possession of narcotic drugs (0.4%); theft of narcotics (34.5%) [29].

## Conclusion

Therefore, today, criminalizing the illegal manufacture, production, acquisition and storage of small quantities of narcotic drugs or psychotropic substances not intended for transfer (sale) unfortunately leads to the conclusion that it is contrary to the social and socio-psychological principles of criminalization acts for the following reasons:

1. These acts are the least socially dangerous compared to similar acts provided for in Articles 307 to 309 of the Criminal Code of Ukraine. These acts are the least social danger in comparison with similar acts provided for in Articles 307-309 of the Criminal Code

of Ukraine;

2. The sheer prevalence of drug addiction (meaning the illegal manufacture, production, purchase and storage of small quantities of narcotic drugs or psychotropic substances not intended for sale (transfer)) is beyond the practical capacity of criminal justice;
3. Criminalization of these acts is a crime that is not within the scope of law enforcement efforts. Criminalizing these acts risks leading to the fact that the efforts of law enforcement agencies will be directed toward combating these acts at the expense of saving personnel, material, technical, and organizational resources for other socially useful purposes and combating the manifestations of more socially dangerous drug crimes. As provided for in Article 44 of the CUAO. The negative social consequences of the criminalization of administrative offenses as provided for in Article 44 of the CUAO would outweigh the expected positive consequences in the form of reduced demand for narcotic drugs and psychotropic substances;
4. Criminalizing the illegal manufacture, production, purchase and storage of small quantities of narcotic drugs or psychotropic substances not intended for transfer (sale) would be contrary to state policy on narcotics.

In light of the above, we propose that the illegal manufacture, production, purchase, and storage of small quantities of narcotic drugs or psychotropic substances not intended for transfer remain an administrative offense and not a criminal offense. Instead of strengthening repressive measures against users of narcotic drugs and psychotropic substances, the effectiveness in combating drug addiction and drug crimes should be increased by improving preventive activities against drug and psychotropic drug users and risk groups.

The comparative study of legislation in the field of combating drug crime in different states has made it possible to highlight the characteristics of legislative measures for combating drug addiction and drug crime in European countries. These characteristics are related to the national characteristics of the legal system of a state, the existence of international legal obligations at the level of interstate relations, and also depend on whether the state is an exporter (producer), importer (consumer) or transit country of drugs.

Summing up the analysis of the legal regulation of the fight against drug crime in different countries, it should be noted that the legislation of the vast majority of countries in the world is governed by the international legal acts. At the same time, the legislation and executive system of punishments of various states in the sphere of combating drug crimes are specific, which is due not so much to the national characteristics of the country, but to the concretely formed criminogenic situation in this area. Given the existing features of the legal systems that regulate responsibility for drug trafficking and drug addiction in

different countries, the general trend is a sharp increase in penalties for organized forms of crimes related to illegal turnover (trafficking) of narcotic drugs and psychotropic substances.

From the above, it is possible to single out the main signs of illegal circulation of narcotic drugs, psychotropic substances and precursors: Creation of conditions conducive to the introduction of narcotic drugs, psychotropic substances and precursors into illegal circulation; committing illegal transactions with drugs, which are necessarily included in the List of narcotic drugs, psychotropic substances and precursors; a set of socially dangerous actions not permitted by current legislation, expressed in the cultivation of narcotic plants; development, production, manufacture, storage, transportation, forwarding, acquisition, sale, import into the territory of Ukraine, export from the territory of Ukraine, transit through the territory of Ukraine, use, destruction of narcotic drugs, psychotropic substances and precursors; profiting from illegal transactions with narcotic drugs, psychotropic substances and precursors; the presence of a raw material base (drug-containing plants) or permanent connections with the source of acquisition of narcotic drugs, psychotropic substances and precursors; availability of premises and other technical means for the development, production, manufacture, storage of narcotic drugs, psychotropic substances and precursors; a clear system of illegal actions with narcotic drugs, psychotropic substances and precursors; transnational character regarding illegal acts of importation into the territory of Ukraine, exportation from the territory of Ukraine, transit through the territory of Ukraine of narcotic drugs, psychotropic substances and precursors; the presence of corrupt connections in law enforcement agencies, which are especially necessary for the smuggling of narcotic drugs, psychotropic substances and precursors.

Criminal offenses related to the illegal circulation of narcotic drugs are committed by both drug addicts and persons who do not use narcotic drugs. That is why it is advisable to consider persons engaged in illegal activities with narcotic drugs, psychotropic substances, their analogues and precursors, in relation to their specific role in such activities. It is clear that the identity of the sellers of large consignments of narcotics will differ from the identity of retailers, and the latter-from consumers, etc.

#### Conflict of Interest

The authors declare that they have no conflict of interest.

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