

УДК: 343. 575 (477)



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DISTINCTIVE FEATURES OF INSTITUTION STAGE OF CRIMINAL CASE ACCORDING TO THE FACTS OF DRUGS ILLEGAL CIRCULATION

In the article the procedural criminal aspects of the primary stage of institution of criminal case and pre-trial investigation of crime are examined in the field of the drug dealing.

Raising of problem in general view.

One of basic tasks of Ministry of Home Affairs of Ukraine is counteraction to the illegal turnover of drugs. From data of Department of information technologies of Ministry of Home Affairs of Ukraine and organs of health protection, there is steady growth of crimes in fact of positive dynamics of number of persons, assuming the unmedical consumption of narcotic drugs. So, already in 2005 were incorporated over 53 thousands of persons, assuming the unmedical consumption of narcotic drugs, including more than 34 thousands of persons with a diagnosis "dependence on drugs". [1] On expert judgement, in Russian Federation the number of drug users already exceeds 2 million persons, the level of unmedical consumption of drugs for the last 15 years grew in 20 times [2, 3]. Parallell there is passivity of state institutions in part of creation

answering to the international standards of the system of narcological help, actual absence of productive antinarcotic prophylaxis and rehabilitation space. On expert judgement, actual number of drug users, in 5-8 times exceeds the amount of being in an account in Ministry of health protection [4, 5].

The analysis of investigation and judicial practice shows that in a number of cases practical workers had complications at investigation of criminal cases about crimes, related to the illegal turnover of narcotic drugs and drug dealing. Especially it touches the primary stage of criminal procedure *verifications of statements and reports* about the facts of illegal turnover of narcotic drugs, when in the conditions of deficit of time it is necessary to carry out the complex of verification actions, judicially fasten findings, which are capable to become the sources of judicial proofs,

with strictly observing rules, protecting constitutional rights of the subjects of legal process. In the conditions of democratization of society absence of a withstand judicial practice negatively tells on efficiency of investigation.

Formulation of aims of the article (statement of a task). At this paper taked a try to select unsolved before parts of general theoretical and practical task of institution of criminal case about crimes, related to the illegal turnover of narcotic drugs and to define basic trends of scientific development of existent theoretical and applied aspects of procedural criminal legal relationships.

Connection of researches with major scientific and practical tasks. The conducted research corresponds positions of "Conception of judicial reform in Ukraine", ratified the decision of Verkhovna Rada of Ukraine № 2296-XII from 28.04.1992, "Priority trends of legal science to 2005-2010", recommended the separations of Academy of legal sciences of Ukraine [6]; "Conceptions of reformation of scientific and scientific and technical activity are in the system of law-enforcement body", ratified the decision of CM of Ukraine from 16.11.2002 № 649-p.; "Complex program of prophylaxis of offences on 2007-2009, ratified the decision of CM of Ukraine from 20.12.2006 № 1767; sp. 67, 69 "Priority trends of scientific and dissertation researches, requiring primary development and introduction in practical activity of bodies of interior on the period of 2004-2009" [7] and it is included to Plan of scientific research work and Engineering and constructive work of the Dnepropetrovsk state university of internal affairs of Ukraine.

Analysis of the last researches and publications in which the decision of this problem is begun and which an author rests upon.

Problems of counteraction the illegal turnover of drugs, and also violation of the special rules of its turnover, notice attention of many scientists. In papers of I.L. Aleksandrovoy, L.N. Anisimova, T.V. Zhukovoy, B.F. Kakacheva, A.A. Kirichenko, I.I. Klimenko, S.Yu. Kosareva, L.N. Loboyko, N.V. Lukasheva, A.A. Mayorova, V.B. Malirina, S.S. Melkumyana, A.A. Musiku, A.V. Negodchenko, O.V. Odeniya, V.A. Panfilova, A.B. Petrunina, A.P. Poblezhaeva, M.L. Prokhorova, S.A. Roganova,

V.M. Tertyshnika, A.L. Troshina, A.P. Udoda, B.N. Celinskogo, S.A. Shalgunovoy, V.Yu. Shepitko and many other legists is considered different aspects of the state and fight against crimes in the field of turnover of narcotic drugs and psychotropic matters.

Taking into account complication and many-sided nature of concept, kinds and structural parts of counteraction the illegal turnover of narcotic drugs, different aspects of realization and duties of public servants of state authority of fight against narcocriminality papers of scientists and practical workers were dedicated to the field of the different fields of law. Papers, devoted to the problems of counteraction narcocriminality and published in different periods, formed a sound theoretical base for perfection of legal rules of conduct of subjects of criminal trial and operatively-search activity in the conditions of continuous changing public relations. At the same time many scientific and applied aspects of the legal adjusting of procedural criminal and operatively-search legal relations, related to counteraction the illegal turnover of drugs, are not developed enough comprehensively, deeply and full.

At the same time it is impossible not to notice that in works adopted and other authors the questions of criminology or criminalistics character, criminal aspects and criminalistics questions of opening and tactic of investigation of crimes, related to the illegal turnover and violation of the special rules of turnover of narcotic drugs, psychotropic, drastic and poisonous matters. Much in a less measure the features of pre-investigative activity and proving on the stage of excitation of criminal cases are investigational on the examined category of crimes. Incompleteness of development of the indicated questions negatively tells on the results of investigation of these crimes and, in final analysis, on a narcosituation in Ukraine and other contiguous states.

Scientifically-methodical development of procedural criminal and criminalistics aspects of pre-investigative verifications about reports of narcocrimes, sure, presents not only theoretical but also large practical interest. A decision of tasks, arising up at investigation of these crimes on the stage of institution these crimes, is one of important terms of fight against distribution of

drugs and by prosperity of the drug dealing, that defined the choice of research theme.

In accordance with an item 94 PCC of Ukraine excuse for institution of criminal case is:

- 1) statements and reports of enterprises, establishments, organizations, public servants, public, public or separate citizens agents;
- 2) revealing of public agent, public or separate citizens, detaining the suspected person in flagrante delicto or in the act;
- 3) surrender;
- 4) reports, published in a print;
- 5) direct discovery of signs of crime of inquest an organ, by an investigator, public prosecutor and court.

This list is exhaustive and is not subject extended interpretation.

The judicial order of decision of question about institution of criminal case consists of that statement or report about a crime must be considered in the flow of three days from the moment of their receipt. In this term a public prosecutor, investigator, organ of inquiry or judge, are have to accept one of decisions: about laying an action, about a refuse in excitation of criminal case or about direction of statement or report on belonging (ч. 2 items 97 PCC).

In the cases when a question about laying an action can not be decided on the basis of only one report about a perfect crime, PCC of Ukraine allows in terms, no more than 10 days, to check up acting information by such measures:

- examination of site of occurrence (p. 2 items 190 PCC of Ukraine);
- selection of explanations (p. 4 items 97 PCC of Ukraine);
- demanding from the public agents of establishments, enterprises, organizations or citizens of objects or documents (p. 1 item 66 PCC);
- impositions of arrest on correspondence or removal of information from ductings of connection with the purpose of prevention of crime (p. 3 items 197 PCC);
- requirements of leadthrough of revisions (p. 1 item 66 PCC), and also by the production of operatively-search measures (p. 3 items 66, ч. 5 item 97, p. 1 item 103 PCC);

Features of proving on criminal cases about violation of the special rules of turnover of

narcotic drugs and psychotropic matters, conditioned the specific signs of these crimes: presence of specifics feaseance of narcocrimes; possibility of feaseance them only with direct intention; the special article of crime are narcotic drugs, psychotropic, diastic and poisonous matters; blank construction of objective side (the great number of subordinate regulatory act, settings the rules of turnover of named matters); on the row of compositions of crimes - the special subject of crime is a person, accountable for the observance of rules of turnover of the named facilities and matters); in most cases on criminal cases such subject, as victim, absents about the examined crimes.

Features of process of proving on criminal cases about crimes on the facts of illegal turnover of drugs that's that most proofs, as a rule, are formed on the basis of results of operatively-search activity. The proper specialists are actively attracted to the process of proving on the indicated criminal cases, as for investigators certain complication is presented by the analysis of the got document, and the persons brought to the account frequently possess more deep cognitions in this area.

In practice, to laying an action the examined category is made the unique investigation action - examination of site of occurrence. In opinion of many practical workers and scientists-legists, the production of examinations and judicial examinations to the moment of laying an action would allow completer and valider to settle questions about laying an action.

The production of consequence actions and realization of search operations have features, conditioned the specific of the examined crimes:

- during the leadthrough of control and record of public-call and other negotiations, the employees of law machinery at times feel certain complications at decoding of phonograms, as the listened persons often negotiate on foreign languages or with the use of the special systems of codes. Therefore at decoding of record of public-call negotiations must be attracted translators or other conversant specialists in necessary cases;
- for the skilled leadthrough of examinations of scene of actio, locality, apartments, objects, and also for the production of interrogations specialists is rarely attracted. Use in practice

of specialists-cynologists with specially trained dogs on the search of narcotic drugs and psychotropic matters, and also participation of specialists-doctors in the process of interrogations of persons, being in a state of abstinence, would allow to improve quality of leadthrough of the indicated judicial actions.

- the primary purpose of searches, conducted on this category of criminal cases, is finding out narcotic drugs and psychotropic matters, therefore a search is one of the most effective methods of finding out narcotic drugs and psychotropic matters.

In spite of the fact that *explanations* are actively taken away in the process of verification of report about a crime, durable legal framework absents, and from here and uniform practice for similar pre-investigation actions. A faithful output will be addition of positions of Instruction "About the order of reception, registration and consideration in bodies and subdivisions of internal affairs of Ukraine of statements and reports about perfect or preparing crimes" [8] right of investigator to get in process of checking of messages or publishing special law, which is regulate activity of Special subdivision for struggle against illegal turnover of drug of Ukraine in which along with other it is to fasten a similar rule. Also in the indicated acts it is necessary to fasten procedure of demanding of objects and documents on the stage of laying an action, because in PCC of Ukraine this question practically is not well-regulated (see.: item 66 PCC of Ukraine). The similar change of legislation will be brought an order the processes of verification of report investigators about a perfect or preparing crime, as definiteness will be borne in that, what exactly judicial actions can be accomplished during verification of report about a perfect or preparing crime.

The specialized service on a fight against the illegal turn of drugs formed and successfully operates in the structure of Ministry of Home Affairs of Ukraine, which must save as an independent department, a leading role as organ of inquiry at an exposure, opening and investigation of these crimes, it is for what suggested to pass a

special act, regulative activity of Special subdivision for struggle against illegal turnover of drug of Ukraine.

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