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ILLEGAL DRUG TRAFFICKING AS A THREAT TO NATIONAL
SECURITY: A LAW PERSPECTIVE

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Abstract

The article studies the issues of national security in the context of drug trafficking. The relevance of the issue is confirmed by statistical data and survey results. The article examines the danger and consequences of drug trafficking. Attention is paid to the drug trafficking as a social phenomenon that poses a real threat to the national security. It negatively affects health of the population and causes various infections. Health is one of the highest benefits, without which individuals cannot exercise other rights. The phenomenon affects vital interests of individuals, society and the government. Health issues are related to the national security. In addition, the article deals with the problem of public health and the AIDS, since the drug trafficking and drug use cause the AIDS. The authors make an attempt to identify proposals aimed at solving the problems. The authors' proposals are aimed at describing the phenomenon under study, defining the concept that reveals the nature of non-medical consumption of narcotic drugs, psychotropic substances and their precursors. The article deals with psychological health problems, the need to prevent illegal drug trafficking. It describes measures aimed at preventing specific drug-related crimes.

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Keywords: Drug trafficking crimes, human immunodeficiency virus, prevention, national security, non-medical consumption



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1. Introduction

The National Security Strategy of the Russian Federation (Decree of the President of the Russian Federation "On the National Security Strategy of the Russian Federation" of December 31, 2015) lists activities of criminal organizations and groups, including transnational ones, associated with drug trafficking.

To develop the current National Security Strategy of the Russian Federation, President of the Russian Federation approved a new Strategy of the State Anti-Drug Policy of the Russian Federation until 2030 (Decree of the President of the Russian Federation No. 733 "On Approval of the Strategy of the State Anti-Drug Policy of the Russian Federation until 2030 year" of 23.11.2020), proceeding from the fact that the current drug situation in the Russian Federation is characterized by an increase in the scale of illegal trafficking and non-medical consumption of highly concentrated drugs, such as heroin, cocaine, amphetamine-type stimulants, drugs with psychotropic effects, as well as their influence on the spread of HIV infections, viral hepatitis, which poses a serious threat to the national security, economy and health of the population.

2. Problem Statement

It is necessary to implement a set of measures aimed at reducing the non-medical drug use and preventing negative consequences of drug consumption, as well as contributing to the destruction of financial, organizational and other drug dealer networks.

One of the most important components of the fight against drug trafficking crimes is criminal law measures aimed to counter these offenses and criminal law prevention measures.

The group of criminal offenses is characterized by a number of features.

These crimes are socially dangerous offenses provided for by the Criminal Code of the Russian Federation. They violate established legal norms that ensure health of the population. Commission of such crimes can cause harm to the health of one person and an unlimited number of people, up to the population of certain regions or the whole country. This circumstance helps in distinguishing between drug trafficking crimes and crimes against persons provided for by Chapter 16 of the Criminal Code of the Russian Federation.

The following are the drug trafficking crimes: Art. 228 of the Criminal Code of the Russian Federation; Art. 228.1 of the Criminal Code of the Russian Federation; Art. 228.2 of the Criminal Code of the Russian Federation; Art. 228.3 of the Criminal Code of the Russian Federation; Art. 228.4 of the Criminal Code of the Russian Federation; Art. 229 of the Criminal Code of the Russian Federation; Art. 229.1 of the Criminal Code of the Russian Federation; Art. 230 of the Criminal Code of the Russian Federation; Art. 231 of the Criminal Code of the Russian Federation; Art. 232 of the Criminal Code of the Russian Federation; Art. 233 of the Criminal Code of the Russian Federation; Art. 234 of the Criminal Code of the Russian Federation; Art. 234.1 of the Criminal Code of the Russian Federation.

For the correct qualification of these crimes, it is necessary to define terms used in the criminal law that characterize certain elements of the corpus delicti.

The specific object of these crimes is health of the population. The concept of health is defined in Art. 2 of the Federal Law No. 323-FZ "On the basics of health protection in the Russian Federation" of 21.11.2011. Based on the legislative definition, health is a state of physical, mental and social well-being of a person who does not suffer from diseases or disorders of the body. The right to health protection is guaranteed by Art. 41 of the Constitution of the Russian Federation.

For some crimes, public health safety acts as a direct object of crime, along with the established order of drug trafficking. Additional objects can be public morality and public order, property relations, activities of enterprises and organizations.

The subject of these crimes are substances and means that are under special control, as well as equipment used in the manufacture and processing of these substances.

To specify the subject of drug trafficking crimes, one should refer to Art. 1 of the Federal Law No. 3-FZ "On Narcotic Drugs and Psychotropic Substances" of 08.01.1998. This legal act contains the following definitions.

Narcotic drugs are substances of synthetic or natural origin and included in the List of narcotic drugs, psychotropic substances and their precursors controlled by the Russian Federation (hereinafter referred to as the List) (Resolution of the Government of the Russian Federation No. 681 "On approval of the list of narcotic drugs, psychotropic substances and their precursors controlled in the Russian Federation" of June 30, 1998) in accordance with the legislation of the Russian Federation, international treaties of the Russian Federation, including the 1961 Single Convention on Narcotic Drugs.

Psychotropic substances are substances of synthetic or natural origin, drugs, natural materials included in the List in accordance with the legislation of the Russian Federation, international treaties of the Russian Federation, including the 1971 Convention on Psychotropic Substances.

Precursors of narcotic drugs and psychotropic substances (precursors) are substances often used in the manufacture and processing of narcotic drugs and psychotropic substances included in the List in accordance with the legislation of the Russian Federation, international treaties of the Russian Federation, including the 1998 United Nations Convention on the fight against illicit traffic in narcotic drugs and psychotropic substances.

Analogues of narcotic drugs and psychotropic substances are substances of synthetic or natural origin prohibited for circulation in the Russian Federation, not included in the List whose chemical structure and properties are similar to the chemical structure and properties of narcotic drugs and psychotropic substances whose psychoactive effect they reproduce.

Drug is a mixture of substances in any physical state, containing one or more narcotic drugs or psychotropic substances, or one or more precursors included in the List.

Plants containing narcotic drugs or psychotropic substances or their precursors (narcotic plants) are plants from which narcotic drugs, psychotropic substances or their precursors can be obtained and which are included in the List of plants containing narcotic drugs or psychotropic substances or their precursors controlled in the Russian Federation (Decree of the Government of the Russian Federation No. 934 "On approval of the list of plants containing narcotic drugs or psychotropic substances or their precursors and controlled in the Russian Federation of November 27, 2010).

In the Resolution of the Government of the Russian Federation No. 1178 "On Amendments to the List of Narcotic Drugs, Psychotropic Substances and Their Precursors controlled in the Russian Federation" of November 19, 2012, the List was supplemented with clause 6, which defines derivatives of narcotic drugs and psychotropic substances.

Derivatives of narcotic drugs and psychotropic substances are substances of synthetic or natural origin that are not included in the state register of medicines or the List; their chemical structure is formed by substituting one or more hydrogen atoms, halogens and (or) hydroxyl groups in the chemical structure of the narcotic drug or psychotropic substance into other monovalent and (or) divalent atoms or substituents (with the exception of hydroxyl and carboxyl groups); the total number of carbon atoms should not exceed the number of carbon atoms in the original chemical structure of the narcotic drug or psychotropic substance.

If one and the same substance can be attributed to the derivatives of several narcotic drugs or psychotropic substances, it is referred to as a derivative of the narcotic drug or psychotropic substance; the change in its chemical structure requires the introduction of the smallest number of substituents and atoms.

New potentially hazardous psychoactive substances are substances of synthetic or natural origin included in the Register of New Potentially Hazardous Psychoactive Substances that are prohibited in the Russian Federation.

There is no legislative definition of potent and toxic substances; however, the Government of the Russian Federation approved a list of these substances in Decree No. 964 "On the Approval of Lists of Potent and Poisonous Substances for the Purposes of Article 234 and other Articles of the Criminal Code of the Russian Federation, as well as large size of potent substances for the purposes of Article 234 of the Criminal Code of the Russian Federation" of December 29, 2007.

These definitions were developed by the doctrine of criminal law and may be used due to the lack of legislative acts.

Potent substances are substances that can cause addiction, have a stimulating or depressive effect on the central nervous system, included in the list of potent substances for the purposes of Article 234 and other articles of the Criminal Code of the Russian Federation.

Poisonous substances are substances that, when exposed to living organisms, can cause a sharp disruption of normal life, poisoning and even death (Ivanov, 2011; Korma, 2018; Kosareva, 2004).

One of the fundamental signs for the correct qualification of crimes, including the delimitation of a crime from an administrative offense, is the volume of narcotic drugs, psychotropic substances, their analogues, precursors, narcotic plants, potent and poisonous substances. It should be determined in accordance with the Decree of the Government of the Russian Federation No. 1002 "On approval of significant, large and especially large volumes of narcotic drugs and psychotropic substances, as well as significant, large and especially large volumes of plants containing narcotic drugs or psychotropic substances, or parts thereof containing narcotic drugs or psychotropic substances, large and especially large volumes of cultivated plants containing narcotic drugs or psychotropic substances or their precursors".

The list of tools and equipment that may be the subject of a crime provided for in Article 2291 of the Criminal Code of the Russian Federation was approved by the Government of the Russian Federation in Decree No. 221 “On Approval of the List of Tools and Equipment under Special Control used for the Production of Narcotic Drugs, psychotropic substances, and rules for the development, production, storage, transportation, sale, distribution, acquisition, use, import, export, destruction of tools and equipment under special control used for the manufacture of narcotic drugs, psychotropic substances ” of March 22, 2001.

The assignment of substances to those withdrawn from free circulation should be carried out on the basis of an expert's opinion, since this requires special knowledge (Resolution No. 14 "On Judicial Practice for Crimes Related to Narcotic Drugs, Psychotropic, Potent and Poisonous Substances" of June 15, 2006. The forensic examination for crimes provided for in Art. 228-230, 231-2341 of the Criminal Code of the Russian Federation is a prerequisite for the correct qualification of criminal actions.

The legal acts are regularly amended; therefore, in order to avoid mistakes in the qualification of crimes, it is necessary to monitor all legislative innovations.

The crimes are committed by means of action (Article 228: illegal acquisition, storage, transportation, manufacture, processing of narcotic drugs, psychotropic substances or their analogues, as well as illegal acquisition, storage, transportation of plants containing narcotic drugs or psychotropic substances, or parts thereof, containing narcotic drugs or psychotropic substances; Article 229: theft or extortion of narcotic drugs or psychotropic substances, as well as plants containing narcotic drugs or psychotropic substances, or their parts containing narcotic drugs or psychotropic substances; Article 233: illegal issuance or forgery of prescriptions or other documents entitling to receive narcotic drugs or psychotropic substances), but can be committed both by action or inaction (Article 2282: violation of the rules on the circulation of narcotic drugs or psychotropic substances).

Most of the crimes are formal. The moment of the end of such encroachments is the moment of committing a socially dangerous act specified in the criminal law (Article 231: illegal cultivation of plants containing narcotic drugs or psychotropic substances or their precursors; Article 232: organization or maintenance of dens or provision of premises for consumption of narcotic drugs, psychotropic substances or their analogues). Material crimes are considered completed upon the onset of socially dangerous consequences (part 4 of Article 234: violation of the rules on the production, acquisition, storage, accounting, dispensing, transportation of potent or poisonous substances, if this entailed, by negligence, their theft or infliction of other significant harm; part 3 of Article 2341: illegal production, processing, storage, transportation, acquisition, import, export, illegal sale of new potentially dangerous psychoactive substances prohibited in the Russian Federation resulting in the death of a person by negligence).

The rapid development of digital technologies has led to the widespread of illegal sale of drugs using remote forms of sale (electronic or information and telecommunication networks, including the Internet). Drugs and other illegal substances are distributed via the Internet through the anonymous computer network "DarkNet", which consists of Internet sites. It is difficult to track DarkNet users due to the peculiarities of this network, which complicates the fight against the illegal sale of drugs (Dolgikh, 2020; Dremlyuga, 2017).

The resolution of the Plenary Session No. 14 does not provide explanations for the application of paragraph "b" of Part 2 of Article 2281 of the Criminal Code of the Russian Federation. This circumstance causes difficulties arising in qualifying actions of the guilty person.

The use of electronic, information and telecommunication networks, including the Internet, for illegal purposes is possible for the purpose of advertising drugs, to make contact with a potential buyer, in order to obtain information about payment, to indicate the place from which the buyer can pick up the drug (Vinokurov & Antsiferova, 2019).

The subjective side of most drug trafficking crimes is characterized by a deliberate form of guilt, a direct intent (Article 230: inducement to consume narcotic drugs, psychotropic substances or their analogues). Some crimes can be committed by negligence (Article 2282).

Features of the subject depend on the specific corpus delicti. These are sane persons who have reached the age of 16 years (14 years for committing the crime under Art. 229 of the Criminal Code of the Russian Federation). In some cases, the subject is special (for example, according to Art.233 of the Criminal Code of the Russian Federation, only medical workers are subject to criminal liability for illegal issuance of prescriptions or other documents giving the right to receive narcotic drugs or psychotropic substances).

3. Research Questions

The subject of the article is theoretical, legal and organizational support of drug trafficking crime prevention.

Theoretical and legal support involves the in-depth analysis of existing legal acts regulating this area, as well as the process of applying rules aimed at ensuring the protection of the population from crimes in this area.

Organizational support involves the analysis of a procedure for identifying drug trafficking crimes.

4. Purpose of the Study

The purpose is to develop proposals for improving prevention activities aiming to fight against drug trafficking crimes.

5. Research Methods

An assessment of the drug situation contained in the Strategies is supported by statistical data. Thus, the number of persons convicted of drug trafficking crimes was as follows: in 2015 – 116 371 persons, in 2016 – 105 352 persons, in 2017 – 103 868 persons, in 2018 – 92 528 persons, in 2019 – 79 631 persons. At the same time, approximately 60 % of the convicted committed grave and especially grave crimes, and 12–15 % of the convicted committed the crimes as part of a group of persons (statistical form No. 6-MV-NON of the Judicial Department at the Supreme Court of the Russian Federation for 2015–2019). With the current trend towards a decrease in the above indicators, the number of persons convicted of grave and especially grave crimes remains high, and the number of group crimes has not

decreased. Many convicts who have committed drug trafficking crimes have HIV diagnoses. In penal institutions, there are 61,417 HIV-infected, which is 7 % of all the HIV-infected in the Russian Federation. Every 10th man and every fifth woman in penitentiary institutions are HIV-infected (Retrieved from <https://spid.center/ru/articles/2549/>).

In addition, the survey showed that about 17 % of Russians in a circle of close contacts are people who take or have taken drugs without medical indications (among young people, this share is higher). Only 8 % of the respondents admitted that they had tried drugs. At the same time, the overwhelming majority believe that it is impossible to recover from drug addiction without help. In general, more than two-thirds of the respondents (among Muscovites, the share is slightly less than half) consider it expedient to test schoolchildren and applicants for the use of prohibited substances. The initiative to implement criminal prosecution for drug use, involving compulsory treatment, is supported by 72 % of the respondents; only 6 % were against this initiative. One tenth of Russians approved the legalization of the use of "light" drugs, but the majority (75 %) are against this proposal (Retrieved from the Internet address <https://www.levada.ru/tag/narkotiki/>).

6. Findings

As a result of the analysis of the current y legal acts, the following classification of drug-trafficking crimes can be proposed:

1. Illegal drug trafficking associated with self-harm – Articles 231, 233, 229, 228.2, 234.1 of the Criminal Code of the Russian Federation.
2. Illegal trafficking associated with the involvement in crimes and drug consumption of other persons, including minors – Articles 230, 230.1, 230.2, 232 of the Criminal Code of the Russian Federation.
3. Illegal drug trafficking associated with border crossing and movement, as well as distribution of drugs in the Russian Federation and beyond the Russian Federation – Articles 228, 228.1, 228.3, 228.4, 229.1, 234 of the Criminal Code of the Russian Federation.

Illegal drug trafficking that harms only a limited number of people, without any distribution – Articles 230.2 of the Criminal Code of the Russian Federation

7. Conclusion

The correct qualification of drug trafficking crimes causes difficulties due to the specifics of acts and subjects. To solve this problem, it is necessary to understand the nature of crime, to deal with a complex system of relevant concepts and extensive, changing legislation. Timely identification and correct qualification of the crimes will contribute to the effective prevention of drug trafficking crimes.

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