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Modern anti-drug policy of Ukraine and human rights

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Abstract

The topic of human rights in the aspect of relations between the state and addicted patients (and in general relations in the sphere of circulation of drugs) remains scantily explored for modern Ukraine, which actualizes further scientific research. The purpose of the article is to determine the authors' vision of compliance with international human rights standards of the legal anti-drug prohibitions established by the state. To achieve this goal, using the historical-legal, comparative, dialectical, systemic, hermeneutic, sociological methods and legal method of cognition, national and foreign legislation was critically analyzed, international experience in implementing various models of anti-drug policy was studied, and proposals for the draft of a new Criminal Code of Ukraine were formulated. The authors pay special attention to the problems of protecting the rights of drug addicts, legal liability in the field of drug trafficking, legalization of drugs for non-medical needs and compulsory treatment of drug addicts.

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Key words

Anti-drug policy; drug addiction; drug trafficking; human rights; compulsory treatment

Resumen

El tema de los derechos humanos en el aspecto de las relaciones entre el Estado y los pacientes adictos (y en general las relaciones en la esfera de la circulación de drogas) sigue siendo escasamente explorado en la Ucrania moderna, lo que actualiza una mayor investigación científica. El objetivo del artículo es determinar la visión de los autores sobre el cumplimiento de las normas internacionales de derechos humanos de las prohibiciones legales antidroga establecidas por el Estado. Para lograr este objetivo, utilizando los métodos histórico-jurídico, comparativo, dialéctico, sistémico, hermenéutico, sociológico y el método jurídico de cognición, se han analizado críticamente la legislación nacional y extranjera, se ha estudiado la experiencia internacional en la aplicación de diversos modelos de política antidroga y se han formulado propuestas para el proyecto de un nuevo Código Penal de Ucrania. Los autores prestan especial atención a los problemas de la protección de los derechos de los drogodependientes, la responsabilidad jurídica en el ámbito del tráfico de drogas, la legalización de las drogas para necesidades no médicas y el tratamiento obligatorio de los drogodependientes.

Palabras clave

Política antidroga; adicción a las drogas; tráfico de drogas; derechos humanos; tratamiento obligatorio

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1. Introduction

Drug addiction as a disease and illicit circulation of drugs are among the global problems of our time. The European Monitoring Center for Drugs and Drug Addiction (EMCDDA 2021, 12, 26) estimates that at least 83 million or 28.9% of adults (aged 15–64 years old) have used "illegal drugs" in the European Union at least once in their lifetime. At the same time, about 1.5 million drug law violations were registered in the European Union in 2019, which is almost a quarter (24%) more than in 2009. The phenomena of drug addiction and drug trafficking are characterized by a high degree of public danger, due to the serious consequences not only for the health of a particular person, but also for many families, the health of the population and society as a whole.

To curb the dynamics of the spread of these phenomena, the states of the world are introducing different models of anti-drug policy: from repressive (for example, China) to liberal (in particular, the Netherlands, Portugal). However, we have to state that not a single country has yet achieved significant results in overcoming this evil. On the contrary, there is even an official statement about a complete fiasco in the fight against drug trafficking (Economist 2015). At the global level, it has already been stated that in the "war on drugs" drug users have become its main victims: they are reproached, they are persecuted and marginalized, imprisoned, tortured, denied assistance, executed without trial. But neither the billions of dollars spent, nor the bloodshed, nor the imprisonment of millions of people, has helped to reduce the drug trade and the number of users of psychoactive substances (United Nations Office on Drugs and Crime – UNODC – 2019). Appropriate in this regard are the words of UN Secretary-General António Guterres: "It is extremely important that we analyze the effectiveness of the so-called 'War on Drugs', which is controversial and has had serious consequences for human rights" (UNAIDS 2019, Lozano 2020).

Active opposition to the spread of drug addiction and drug trafficking entails many topical human rights issues. Cases of non-observance of human rights are fixed by experts in different countries of the world and are reduced to the following violations: the right to life (the use of the death penalty or the organization of murders without trial and investigation for drug-related offenses); the right to be free from torture or inhuman treatment (when drug users are detained and harsh coercive drug treatment measures are applied); the right to health (when access to life-saving medicines is limited); social and economic rights (when implementing programs for the forced eradication of illegally cultivated plants); the right to be free from discrimination (in the application of discriminatory drug control measures against ethnic minorities, indigenous people, youth and women) (Beckley Foundation Drug Policy Programme – BFDPP – 2008).

It should be noted that the problems of observance of human rights in the context of drug policy were not noticed for a long time. But over time, scientists started to talk... So, in 1996, the American researcher Norbert Gilmore, highlighting various cases of violation of the rights of drug addicts and the lack of research on the problems of ensuring their rights, proposed the idea of studying domestic and international responses to drug use and their compliance with industry standards human rights (Gilmore 1996). In 2008, the UN Special Rapporteur on Human Rights, Professor Paul Hunt at the international conference "Harm Reduction 2008: Harm Reduction International" stated that the provision of human rights in the implementation of

measures to combat drug trafficking by individual states are "parallel universes". The scientist noted that drug policy should be implemented exclusively in compliance with human rights (Hunt 2008). Further in this direction, in 2018, a group of international scientists progressed, stating the development of international standards for ensuring human rights in the field of countering many problems (in particular, terrorism, natural disasters), and advocated the development of an International Guide on Human Rights and Drug Policy (Lines *et al.* 2017). At the discretion of the international community, the International Guide to Human Rights and Drug Policy as a comprehensive and systemic document was presented in March 2019 (International Centre on Human Rights and Drug Policy *et al.* 2019). In the same year, some recommendations aimed at harm reduction, decriminalization and zero discrimination against drug users were presented by UNAIDS (2019). Also MedNET (2020) made a significant contribution towards resolving the issue of respect for the rights of drug users by defining "human rights as a fundamental cornerstone in drug policy".

Without touching on many other aspects of the problem under consideration and taking into account the subject of our scientific interests, we will focus our attention on the modern anti-drug policy of Ukraine in the aspect of defining in the national legislation prohibitions on the cultivation of drug-containing plants, non-medical drug use, as well as compulsory treatment of drug addicts. Undoubtedly, these issues directly affect human rights to freedom, health, and human dignity.

Ukraine's anti-drug policy can now be described as restrictive (lat. *restrĭctio* – 'restriction', 'reduction'), that is to say, it is restraining. Ukraine has ratified the well-known UN Conventions – Single Convention on Narcotic Drugs (1961), Convention on Psychotropic Substances (1971), United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), on combating the illegal distribution of drugs and psychotropic substances, and also brought national legislation into line with these documents. The state has established a special legal regime for the circulation of drugs. Taking into account the public danger of a number of actions, administrative and criminal liability has been introduced. Therefore, having the necessary regulatory framework, one could hope for an adequate response from law enforcement agencies and visible results in this area. However, reality shows otherwise.

In Ukraine, the abuse of drugs and psychotropic substances has become an epidemic, which leads to harm to human health, a negative impact on the social sphere, and also poses a threat to the national security of the State (Stratehiya nº 735, 2013). The actual number of people who allow non-medical use of drugs in Ukraine is approximately 3 million. The United Nations (UN) World Health Organization (WHO) specialists concluded that if the proportion of drug addicts in the structure of the population of the state is 7% or more, this indicates the development of irreversible processes of population degeneration in society (Shcheglov 2000). Considering that as of January 1, 2021, the population of Ukraine was 41.4 million people, in fact, about 7.2% of the country's population abuse drugs. Doesn't this mean that Ukraine has already "crossed over" the crisis border? If the situation does not change for the better, then we can assume that in 100 years, taking into account the annual growth rate of drug users (about 150-170 thousand in real terms), their number will be about 15 million people. And this is without taking into account the steady downward tendency in the demographic

situation, as well as the number of patients with alcoholism, acquired immunodeficiency syndrome (AIDS), tuberculosis, and cancer patients. The foregoing indicates that the genetic security of the Ukrainian people and, in general, the future (!) of the State is at the stage of self-destruction.

Despite the catastrophic situation in this area, Ukrainian society is increasingly calling for the liberalization of anti-drug policy, with an emphasis on the need to ensure human rights (Turyansky 2020). Among other things, it is noted that state-imposed bans on the cultivation of drug-containing plants, non-medical drug use, as well as compulsory treatment of drug addicts are a violation of human rights. The search for answers to these questions is quite relevant, in particular, through the processes of the current reform of administrative and criminal legislation in Ukraine. To disclose the subject of research in this article, a number of problems have been identified by formulating them in the form of topical interconnected issues. Does a ban on the cultivation of drug plants violate human rights? Does drug prohibition violate human rights? What is meant by the abolition of liability for non-medical drug use, and what is meant by the legalization of drug use? What is the policy of individual states to legalize activities with cannabis for recreational as well as medical purposes? Is it advisable to legalize such actions in Ukraine? Does compulsory treatment of drug addicts violate human rights? How is it acceptable to solve the problem of drug addict patients who do not want to voluntarily be treated? After all, how is it expedient and permissible to solve the problem of compulsory treatment of persons suffering from socially dangerous diseases in the new Criminal Code of Ukraine?

Finding answers to the issues raised is possible only by conducting a comprehensive research using appropriate methods of scientific knowledge. In general, it seems important and productive to research the anti-drug policy of Ukraine in the historical genesis. We consider it interesting to raise issue whether the rights of drug addicts were violated during the Soviet period. It is also important to study and compare the models of anti-drug policy of different states in establishing (cancelling) the prohibition of the use of narcotic drugs. We see the knowledge of the results of the introduction of different approaches to combating the spread of drug addiction as relevant. In general, it is necessary to study the world systems of legal measures to combat drug trafficking and the question of establishing the place of the institution of compulsory treatment in such systems.

In the course of the research, international legal acts in the field of ensuring human rights require close attention. In this aspect, it is necessary to analyze, in particular, the provisions of the Universal Declaration of Human Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter, the International Covenant on Economic, Social and Cultural Rights and the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in their systemic relationship. The relevant national legislation also deserves critical analysis in terms of its social conditionality. Practically significant is the development of proposals for the unification of terms and terminological phrases used in anti-drug legislation. Taking into account the identified tendencies in anti-drug policy in this area and forecasting possible changes in legislation, it is necessary to initiate appropriate

proposals to improve the Criminal Code of Ukraine in the aspect of combating drug offenses.

So, the purpose of the article is to determine the author's vision of compliance with international standards in the field of ensuring human rights of legal anti-drug prohibitions established by the state of Ukraine.

2. Materials and methods

In the course of our research, philosophical, general scientific and special methods of cognition of legal phenomena were used. Such general principles of research methodology as objectivity, comprehensiveness, unity of the historical and logical, consistency, determinism, dialectical development, reliability and unity of theory and practice are taken into account (Bermus 2007).

When choosing research methods, we relied on a specific subject of research, its goals and objectives described in the introduction.

The use of the historical and legal method contributed to the research of anti-drug policy in Ukrainian lands. It served as a researcher of changes in administrative and criminal legislation on combating drug trafficking in the aspect of human rights. This method was chosen to study changes in the liberalization of the state anti-drug policy, justified by ensuring the observance of human rights, depending on the socio-economic situation, taking into account the "zigzags" and "turns" of the real historical path of Ukraine.

The research of the declared topic would be incomplete without an analysis of various modern models of anti-drug policy using the comparative method. The comparative method was used at the stage of a comparative legal research of state anti-drug policy models regarding the establishment (cancellation) of a ban on the use of drugs, as well as compulsory treatment of drug addicts. With its help, various models of anti-drug policy are identified to curb the dynamics of the spread of drug addiction and illicit drug circulation: from repressive through restrictive to liberal. The experience of the Netherlands, the USA, Uruguay, and Canada on the legalization of actions with marijuana for recreational and medical purposes was also studied.

In order to achieve a rational balance in the formation of anti-drug policy in ensuring the rights of an individual person (on the one hand) and the interests of society and the state (on the other hand), a dialectical method was used. This made it possible to clarify the problem of human rights in the aspect of the unity and opposition of the interests of an individual (drug addict) and society. The dialectical method contributed to the definition of ways to solve the problem of narcological patients who do not want to be treated voluntarily. Also, this method was useful in the formation of a balanced solution to the problem of compulsory treatment of drug addicts, which should be taken into account in the new Criminal Code of Ukraine.

To explain what measures to combat drug trafficking restrict human rights, a systemic method (the method of system-structural analysis) was applied, it contributed to the definition of a system of legal measures to combat illegal drug trafficking.

Legal research is difficult to imagine without the use of a dogmatic (formal-logical) method. This method served to interpret the normative content of the provisions of laws and formulate definitions of such legal concepts as "human rights", "cultivation of drug-

containing plants", "drug use", "illicit drug use", "legalization of drug use", "medical use cannabis", "compulsory treatment", "mandatory treatment".

The tasks of this research include, in particular, a literal understanding and correct interpretation of the law, a critical analysis of approaches to its interpretation by lawyers, the formulation of proposals de lege ferenda, and therefore the hermeneutical method of cognition was also chosen. We believe that its main goal is to satisfy certain intellectual needs in the field of norm-setting and law enforcement, scientific activity and the educational process through the knowledge of the legal system (establishing the legal meaning of the corresponding text associated with the individual components of the latter). The hermeneutic method was useful, in particular, when interpreting the components of the relevant conceptual apparatus within the framework of the research topic, as well as developing proposals for the unification of terms and terminological phrases used in articles on liability for certain offenses in the field of drug circulation. In addition, hermeneutic method was used to construct legal norms for compulsory treatment. With its help, the concept of compulsory treatment is defined and the purpose of this means of coercion is reflected.

Sociological method played an important role – it made it possible to research the relevant legal norms in the aspect of their social conditionality. It has been proven that establishing responsibility for illegal drug use violates human rights. Therefore, non-medical (without a doctor's prescription) drug use in itself should not be recognized as an administrative or criminal offense.

Empirical research methods were used to substantiate the theoretical conclusions. Methods for studying documents and the statistical method have also been widely used. A variation of the sociological method, the criminological method, made it possible to determine the effectiveness of the application of the rules on responsibility for "drug" crimes, as well as to identify tendencies in anti-drug policy in this area and predict possible changes in legislation. Thanks to this method, the experiments of different countries on the legalization of certain activities with cannabis have been studied. It is emphasized that the legalization of activities with cannabis with recreational purpose in Ukraine seems premature and requires further study. Note that the concept of 'recreation' (lat. *recreātio* – 'restoration') is ambiguous. It is understood, in particular, as a recreational activity – active recreation, playing in nature or a favorite pastime. The concept of 'recreational purpose' in this article is used in a negative sense – to refer to the actual pleasure of non-medical drug use during recreation.

The application of the modeling method served as the initiation of legislative novels that can be used to improve the provisions of the Criminal Code of Ukraine on combating 'drug' offenses. In particular, this method made it possible for us to propose to the members of the Working group on the development of criminal law within the Law Reform Commission under the President of Ukraine a theoretical model of the relevant norms in the system of security measures ("Article... The concept and purpose of compulsory treatment", "Article... Application, continuation and termination of compulsory treatment").

Recently, in Ukrainian civil law (at the level of a scientific hypothesis that is properly verified and not falsified by anyone), a method of research in the field of jurisprudence, the method of the rule of law (legal method), has been introduced into scientific

circulation (L. Muzyka 2020). The practical implementation of the rule of law as a scientific method is carried out through the use of the tools developed by the Venice Commission – "The Rule of Law Checklist" (2016). Human rights in the aspect of our research are also analyzed using this latest method of cognition, in particular, legal uncertainty is illustrated in relation to legislative norms and the position of the Supreme Court of Ukraine on the compulsory treatment of drug addicts.

3. Results and discussion

3.1. Does a ban on the cultivation of drug plants violate human rights?

According to Art. 1 of the Law of Ukraine on Narcotic Drugs, Psychotropic Substances and Precursors, the cultivation of plants included in the List is the sowing, growing of plants containing drug substances included in the List of drugs, psychotropic substances and precursors (Zakon nº 60/95, 1995). According to Art. 15 of this Law, the cultivation of plants included in Table I of the List is prohibited on the territory of Ukraine, with the exception of the cultivation and (or) use of plants included in List No. 3 of Table I of the List, containing small amounts of drug substances, subject to the conditions specified in parts two, three and four of this Article.

For illegal cultivation of soporific poppy or hemp, as well as failure to take measures to ensure the protection of crops, places of their storage and processing, administrative (Articles 106-1, 106-2 of the Code of Administrative Offenses, respectively) and criminal liability (Article 310 of the Criminal Code of Ukraine) are provided. It is considered expedient to retain responsibility for these actions by the developers of the drafts of the new Code of Ukraine on Administrative Offenses (Article 64) and the new Criminal Code of Ukraine (Articles 5.2.6, 5.2.7, 5.2.15) (Proekt Kodeksu Ukrayiny pro administratyvni pravoporushennya, 2022; Teksts proyektu novoho Kryminal'noho kodeksu Ukrayiny, 2022).

It should be noted that before the appearance in 1995 of the Laws on Narcotic Drugs, Psychotropic Substances and Precursors, On Measures to Counter Illicit Trafficking in Narcotic Drugs, Psychotropic Substances and Precursors and Their Abuse (1995), the state monopoly on the cultivation of drug-containing plants was already in effect. As before, and now this issue is quite painful to resolve. At one time, it caused heated discussions among the members of the working group who prepared the relevant bills (1995), and in the session hall of the Verkhovna Rada of Ukraine. A significant number of then People's Deputies of Ukraine opposed the provisions of the legislation, which provided a ban on the cultivation of soporific poppy and hemp. Indeed, the issue under consideration is not simple, taking into account the interests of law-abiding citizens. The vast majority of villagers or other citizens who grow poppies or hemp do so in order to obtain seeds, and not to use them as drug plants. And when a ban is introduced to sow and grow the same poppy with which religious holidays, the eternal cultural traditions of the people are personified, respectable citizens arise indignation and ask a dumb question: why is this happening and what is their fault? The answer to the banal is simple: such a measure should serve to overcome the cultivation of drug-containing plants, which some use to illegally distribute drugs.

The 1988 UN Convention proposes to be cautious about resolving this issue: "Each Party shall take appropriate measures to prevent the illicit cultivation and destruction of plants containing drug or psychotropic substances, such as the opium poppy, the coca bush and the cannabis plant illicitly cultivated in its territory. These measures respect fundamental human rights (highlighted by the authors of this article) and take due account of the traditional forms of legitimate use of such plants, when there are historical facts confirming such use, as well as the interests of protecting the environment" (Section 2, Article 14).

The introduced ban on the cultivation of soporific poppy and hemp is an unconditional, though a forced violation of human rights. Therefore, in order for citizens to be able, without fear of liability, to freely use the traditional forms of legal use of such plants, the state must at least partially compensate for its actions. To do this, it is necessary to provide the population with the opportunity to obtain (purchase) seeds of soporific poppy and hemp, cultivated legally by enterprises, in the trading network. Actually, this practice is being implemented in Ukraine.

In this aspect, another question is worth attention. The experience of applying the laws and other normative legal acts of Ukraine, which regulating the activities of the police shows that, according to administrative legislation, police officers can enter land plots and residential and other premises of citizens. This applies, in particular, to the following articles of the Code of Administrative Offenses of Ukraine: 106-1 "Failure to take measures to ensure the protection of soporific poppy or hemp crops, places of their storage and processing", 106-2 "Illegal sowing and cultivation of soporific poppy or hemp". At the same time, according to Art. 10 of the Law of Ukraine on Measures to Counter Illicit Trafficking in Narcotic Drugs, Psychotropic Substances and Precursors and Their Abuse (1995), measures to counter the illegal cultivation of drug-containing plants are carried out in accordance with the current legislation.

The basis of the legal status of an individual in society is his constitutional rights and obligations. In particular, the Constitution of Ukraine, guaranteeing the inviolability of citizens' housing, fixed the following provision: "It is not allowed to enter housing or other possessions of a person, to conduct an inspection or search in them, except by a reasoned court decision" (part 2 of article 30). In Art. 41 of the Constitution of Ukraine, which protects the right of private property, provides that everyone has the right to own, use and dispose of their property; the right to private property is inviolable; compulsory alienation of objects of private property rights can be applied only as an exception to the motives of public necessity, on the grounds and in the manner prescribed by law, and subject to the preliminary and full reimbursement of their cost (Konstytutsiya Ukrayiny, 1996). So, is there a legal mechanism for ensuring these human rights in the native legislation that regulates the activities of the National Police of Ukraine?

According to Art. 38 of the Law of Ukraine On the National Police (Zakon Nº 580, 2015), police officers can enter a person's housing or other property without a reasoned court decision only in urgent cases related to: 1) saving people's lives and valuable property during emergencies; 2) direct persecution of persons suspected of committing a criminal offence; 3) termination of a crime that threatens the lives of persons in housing or other possessions.

Consequently, the ambiguity of the definition in the Law on the National Police of its rights regarding the performance of the norms of administrative legislation, the prerequisite for the performance of which is the entry into the living quarters of citizens and their land plots, in practice can lead to a violation of the constitutional rights of citizens. It is no coincidence that illegal entry into a housing or other possessions of a person, illegal inspection or search in them by an official, provides for criminal liability (part 2 of article 162 of the Criminal Code of Ukraine). The above indicates the need to amend the current legislation in order to ensure human rights in these cases.

3.2. Does drug prohibition violate human rights?

This problem is not new. It is periodically consulted by scholars and practitioners, governments and non-governmental organizations. Although drug use is not prohibited in many countries of the world, this situation requires certain clarifications and explanations. Let's try to answer such questions related to the problem under consideration: does the establishment (or absence) of responsibility for illegal drug use violate human rights? Does the lack of responsibility for illegal drug use affect the effectiveness of the fight against drug trafficking? Does a ban on the medical use of cannabis violate human rights?

We believe that establishing responsibility for illegal drug use really violates human rights. None of the three conventions on combating illicit drug trafficking (1961, 1971 and 1988) focuses on the establishment in national legislation of responsibility for the use of drugs or psychotropic substances.

At one time, the general legal basis for recognizing drug use as an administrative offense or crime was the provision of Art. 4 of the Fundamentals of the legislation of the USSR and the Union republics on health care: "Citizens of the USSR must take good care of their health" (Zakon USRS, 1969). However, such an obligation was not provided for by the Constitution of the USSR (as well as by the current Constitution of Ukraine); it is not provided for by international human rights acts. Therefore, non-medical (i.e., without a doctor's prescription) drug use in itself should not be considered an administrative offense or a crime. And this is not accidental, since a person causing harm to himself, although it represents a public danger, however (with minor exceptions) does not entail legal liability.

It is appropriate to note that in the conclusion of the USSR Constitutional Supervision Committee dated October 25, 1990, it was noted that Art. 10 of the Decree of the Presidium of the Supreme Soviet of the USSR of April 25, 1974 On strengthening the fight against drug addiction (as amended in 1987), which established administrative and criminal liability for the use of drugs without a doctor's prescription, does not comply with the Constitution of the USSR, Articles 5 and 7 of the Fundamentals of the legislation of the USSR and the Union republics on administrative offenses, Art. 3 of the Fundamentals of the Criminal Legislation of the USSR and the Union Republics, international acts on human rights, and therefore loses force.

On this basis, in order to bring national legislation in line with international legal acts on human rights, the Decree of the Presidium of the Supreme Soviet of the USSR On Amendments and Additions to Certain Legislative Acts of the USSR dated January 28, 1991, canceled criminal and administrative liability for non-medical drug use (1991).

Thus, an end was put to the application of certain norms of the Soviet anti-drug legislation that infringed on human rights.

It should be noted that in 2018, the issue of compliance of the ban on the use of cannabis established by the legislation with the Constitution of Georgia also became the subject of consideration by the Constitutional Court of Georgia (Apsny 2018). This Court upheld the applicants' claim and rightfully found it unconstitutional to impose a fine on marijuana use without a doctor's prescription. However, the justification for the decision seems rather strange: "... everyone has the right to free development of their personality" (Gruziya onlayn 2018). (*'development'* of their own Ego by recognizing as a normal practice the use of substances harmful to health? highlighted by the authors of this article.)

Without establishing responsibility for the sole use of drugs, devoid of a public character, the criminal legislation of Ukraine at the same time provides for liability for public or illegal use of drugs committed by a group of persons in places of mass stay of citizens (Article 316 of the Criminal Code of Ukraine). It is appropriate to note that the legislators of Belgium and Great Britain, who have decriminalized the possession of cannabis for their own use, simultaneously recognize the use of this drug in a public place as a crime (European Information and Pre-Slavic Center – EIPSC – 2020) A similar approach is implemented in the legislation of Luxembourg (EMCDDA 2005).

The authors of this article hold opposite views on the validity of such a legislative decision. In particular, A.A. Muzyka believes that the legislative approach under consideration neglects human rights and is, in fact, a covert version of criminal liability for non-medical drug use. He, as a member of the working group, also defended this position during the development of anti-drug legislation in 1995. In his opinion, such legal practice shifts the focus in combating illicit trafficking in drugs and psychotropic substances: the main 'guilty' is the consumer, and not the distributor of such items. At the same time, A.A. Muzyka believes that appealing to the existing foreign experience in the field of regulation of relevant social relations is not always a correct argument. In turn, O.P. Gorokh is convinced that this criminal law ban is called upon to protect public order and deter advertising of non-medical drug use. Awareness of these circumstances played a decisive role in the formulation of O.P. Gorokh in the draft of the new Criminal Code of Ukraine (Tekst proyektu 2022) of the provisions of Article 5.2.12: "Incitement to the non-medical use of a narcotic or intoxicating drug, psychotropic substance or doping". It proposes, in particular, to provide for the liability of a person "in a public place who has used such a drug, substance or doping."

Answering the second question (does the lack of responsibility for illegal drug use affect the effectiveness of the fight against drug trafficking?), it should be clearly understood that the lack of such responsibility does not mean the legalization of their use. These are different, though closely related, questions. It is necessary to correctly determine the vision of the problem under consideration. It is also pertinent to note that the common use of compound words like 'drug legalization' is incorrect. It is possible to legalize only certain actions with certain drugs or psychotropic substances, and not the corresponding subject of the crime.

Under the legalization of drug use in society, for the most part, understand the complete removal by the state of prohibitions on the acquisition, storage, transportation of drugs

for their own use and cultivation of drug-containing plants for the purpose of own consumption. Individual public organizations focus on the implementation of such an anti-drug policy (Odes'ka pravozakhysna hrupa «Veritas» 2011, p. 9, UNAIDS 2019). At the same time, activists of the corresponding movement forget (but drug dealers remember) about other actions that simultaneously require legal regulation: production, manufacture, purchase, storage, cultivation of drug-containing plants for the purpose of sale, sale of drugs. European countries in terms of the problem under consideration have already encountered the ingenuity of drug manufacturers and consumers (Sedláčková 2016). After all, demand traditionally forms supply. How to deal with such actions? Should the state react by pushing out the 'black' market? The question is rhetorical.

Supporters of the legalization of certain actions with drugs often appeal to the *'positive'* practice of other countries on this issue. The Netherlands is by far the world leader in this policy. In this country, since the 80s of the twentieth century, it has been allowed to buy cannabis for personal use in special establishments (coffee shops) with a volume of no more than 30 grams. Such establishments are prohibited from advertising drugs, selling hard drugs or cannabis to minors. Starting from 2013, only residents of the Netherlands are allowed to enter these establishments, although local adjustments to this criterion are allowed (Netherlands Institute of Mental Health and Addiction 2019). However, the Netherlands is not the only country that has legalized cannabis on a small scale. Today, some states of the USA, Uruguay, Canada also have a short experience in introducing a liberal anti-drug policy for the circulation of cannabis.

In particular, since 2014, fifteen US states have gradually legalized recreational marijuana activities (to meet non-medical needs), and in December 2020, the US Congress voted to decriminalize marijuana activities for this purpose throughout the country (2020). From July 19, 2017, residents of Uruguay can purchase marijuana weighing up to 10 grams, having previously registered in individual pharmacies, or grow cannabis for their own use (on their own in the amount of no more than 5 bushes per year, or by joining a co-cultivation club). The use of this drug is prohibited in the workplace, while driving or in a public place (Gushcha 2017). Also in Canada, starting from October 17, 2018, any adult citizen of this country can purchase up to 30 grams of cannabis or grow up to 4 bushes of this plant at home. Marijuana is prohibited from being sold in places where alcohol or tobacco is sold. At the same time, in the Russian Federation, the legalization of the use of cannabis for recreational purposes is recognized as a threat to national security (Strategiya antinarkoticheskoy politiki Rossiyskoy Federatsii na period do 2030 goda).

The peculiar experiments of these countries on the legalization of certain actions with cannabis do not give grounds for an unambiguous assessment of its results (2020). Feedback on the results of such an unconventional approach is very controversial and correlates with negative and positive consequences, respectively. However, it is obvious to us that thousands of consumers (many of whom have a criminal past) will respond to the legalization of actions with a drug that was banned yesterday. Such a flow of *'drug tourists'* [which is surprisingly noted as a positive development for Ukraine as a result of the possible legalization of cannabis activities (petition № 41/002102-19, 2019; Lehalizatsiya lehkykh narkotykiv 2019] can turn the country into a *'drug pit'* of the

continent. This is exactly what some experts believe happened to the Netherlands (Khairullin 2003).

Is it advisable for Ukraine to appear in the center of Eastern Europe as such a place for supporters of non-medical cannabis use (and at the same time lead to an increase in crime)? Of course not. If we consider the tourism potential of Ukraine, then our country is able to surprise foreign tourists with other things: the diversity of natural wealth, the heritage of ancient culture, modern national coloring, and incredible hospitality.

We should note, that in support of the legalization of actions with cannabis, there is also an argument that the derivatives of this drug are less harmful to health than tobacco or alcohol (Pravova abetka 2018, Turyansky 2020). Indeed, according to the results of individual researches, the use of cannabis does not pose a greater danger than the use of alcohol or tobacco (Rykhlik 1988). But at the same time, for some reason, the actual harm that is caused to human health by the same drugs – legalized in circulation – is ignored. In addition, the harm caused to offspring is not taken into account: drug addiction is inherited. Researches, for example, by Italian scientists have revealed the impact of drug addiction on future generations in biological, psychiatric and psychological aspects (Nutt *et al.* 2007).

At the same time, other expert data regarding the harm to human health from cannabis use also require awareness. In particular, according to studies by the US National Institutes of Health (conducted jointly with the National Institute for the Study of Drug Abuse; 2002), long-term use of marijuana leads to numerous disorders in the physiological, social and intellectual spheres of a person and, in the end, degradation of the personality and its dementia. Confirm the conclusion of American colleagues researches of German experts (Preuss 2018).

It is important to take this into account as well. In addition to the negative effects on human health, there is a high likelihood that cannabis abuse will be the first step towards the use of more dangerous drugs (amphetamine, cocaine, heroin, *etc.*). After all, the use of cannabis forms among young people the realization that the use of any mind-altering drugs is not something dangerous (Kurshev 2001). By the way, it was the lack of a deep conviction that marijuana is not perceived as a 'starter' drug that did not allow president of the US Joe Biden to make a decision on the legalization of marijuana activities at the national level (BBC news 2019).

It should also not be forgotten that the drug mafia is often behind the slogans about human rights. Experts rightly emphasize that, in fact: "No one is interested in Ukraine, which is in a state of war, or the number of drug addicted Ukrainians, or the decline of the economy, or the death rate of the population. The only thing that is interesting is that drug-containing substances can generate a considerable income. The bonus is human rights." (Ivashko 2020). To resolve this issue, it is necessary to take into account the position of specialized international organizations. The official reports of the UN International Narcotics Control Board (INCB) constantly express an uncompromising attitude towards the legalization of the use of narcotic drugs (INCB 1990, UNODC 2017). Without exception, all international legal acts affecting the issues of illicit trafficking in narcotic drugs are aimed at overcoming their abuse and condemn such actions. Also, the EU acts of anti-drug strategies developed at the present stage do not provide for the legalization of the use of narcotic drugs (Council of the European Union 2021).

The program of legalization of the use of drugs is one of the directions of state policy in the field of social rehabilitation of drug addicts. Therefore, the search for new ways to counter non-medical drug use is a good sign, but in this direction it is necessary to act very carefully. First of all, specialists in the field of narcology, psychiatry, sociology, and psychology should be determined in this case. This issue lies within the competence of health authorities. Of course, the reasoned opinion of lawyers on this matter should be taken into account. A thorough study of the experience of countries that legalized the use of drugs, and not a simple reference to them, should become mandatory in this case. Only later, having a real idea of such measures and their consequences, having defined the tasks by law, can one begin with conducting an appropriate experiment in two or three regions of Ukraine.

Critical considerations regarding the legalization of actions with cannabis may concern, in our opinion, another aspect of the problem – the legalization of actions for the use of the so-called medical cannabis.

In the mid-1990s, in several US states, the demand for patients suffering from chronic pain, cancer, and multiple sclerosis was met by local referendums legalizing the medical use of cannabis-based drugs. A similar approach to resolving the issue of legalizing medical cannabis activities was later adopted by many other US states. In 1999, Canada introduced a medical cannabis program. In the early 2000s, Israel (2001) and the Netherlands (2003), and later Switzerland (2011), the Czech Republic (2013), Australia (2016) and Germany (2017) legalized the medical use of cannabis under certain conditions. The results of clinical trials have laid the foundation for marketing authorizations for cannabis-based medicinal products in many EU Member States, which have proven effective in the treatment of muscle spasticity due to multiple sclerosis (EMCDDA 2018, p. 48).

On December 2, 2020, the UN Commission on Narcotic Drugs supported the WHO recommendation to remove cannabis and its derivatives from Schedule IV of the 1961 Single Convention on Narcotic Drugs. This drug was retained in Schedule I of the said Convention (contains drugs under international control) (2020).

In turn, on April 7, 2021, the Cabinet of Ministers of Ukraine, by Resolution (Postanova) No. 324, amended the list of narcotic drugs, psychotropic substances and precursors – List No. 2 of Table II of this List [Psychotropic substances whose circulation is restricted) was supplemented with new substances: Dronabinol, Nabilon (a synthetic cannabinoid that mimics the action of tetrahydrocannabinol (THC)] and Nabiximols (a standardized cannabis extract with the same content of THC and cannabidiol). The circulation of these psychotropic substances is allowed only in the form of medicines or in the form of substances intended for the production, manufacture of such medicines.

Thus, in Ukraine, in order to exercise the right of patients to the necessary medical care, actions with certain cannabis-based medicines have been legalized. Such a decision by the government, at first glance, seems humane. However, is it legal? Obviously, it can be argued that the executive branch has assumed the powers of the legislator. The relevant draft law is under consideration in the Parliament (2021), but so far it does not have the necessary support of the People's Deputies of Ukraine.

In this matter, the current discovery of scientists is alarming. As Bloomberg reported on October 25, 2022 (Kary 2022), at the conference of the American Society of Anesthesiologists in 2022, the results of a large-scale scientific experiment that lasted more than 10 years were presented. Researchers have found that cannabis, used to relieve pain from various diseases or after surgery, can, on the contrary, increase it. The experiment involved 34,521 patients who underwent elective surgery, 1,681 of them were marijuana users. The researchers found that those who used cannabis in the 30 days before surgery experienced 14% more pain in the first 24 hours after surgery and began consuming 7% more opioids.

At the same time, in the context of the problem under consideration, attention should be paid to false legal practice, the traditional "priorities" of Ukrainian law enforcement officers in countering the spread of drug addiction. Approximately 60% of persons prosecuted for "narcotic" criminal offenses are persons who committed such actions without the purpose of sell (Article 309 of the Criminal Code of Ukraine, 2021). It should be the other way around. The main vector of anti-drug policy should be directed at drug dealers. Along with this, effective control over the dissemination of pro-drug information in the media (often – pro-drug propaganda, which is carried out through literary works, television programs, films, the Internet, in disco clubs) is not actually ensured. As a result, a "narcotic" subculture is being implanted – a powerful factor in the drug addiction of the youth population.

3.3. Does compulsory treatment of drug addicts violate human rights?

The use of compulsory treatment is directly related to human rights. Recently, a lot has been done to overcome the existing system of coercion to drug addicts. There is a force here to move the problem both on the part of scientists and enthusiastic practitioners, and, of course, at the legislative level. Compulsory treatment of drug addicts who have committed criminal offenses has not been applied in the criminal law for a long time (Article 96 of the Criminal Code of Ukraine). If in 1996 the number of those convicted for "drug" crimes to whom this measure was applied was 5,018 people (23.3%), then in 2019, none of those convicted for such offenses received compulsory treatment. The main reason for which, in fact, since 2006, the use of compulsory treatment for narcological patients has been discontinued is violations of criminal law. Previously, it was applied only to narcological patients (Article 14 of the Criminal Code of the Ukrainian SSR in 1960), and now - "to persons who have committed criminal offenses and have a disease that poses a danger to the health of others" (Article 96 of the Criminal Code of Ukraine). On the one hand, the content of this rule is simple and concise – the text of the law does not list diseases that pose a danger to the health of others. On the other hand, the legislator has not specified anywhere what law (or other legal act) should be followed when deciding on the danger of a particular disease "for the health of others".

Unclear wording of the provisions of Art. 96 of the Criminal Code and hence the ambiguous, generally unsuccessful, confusing position on the issue under consideration by the Plenum of the Supreme Court of Ukraine caused conflicting interpretations of the content of the law by scientists and practitioners. In particular, the highest judicial instance of the state did not define the circle of persons to whom compulsory treatment could be applied at all, expressing a contradictory assertion that both compulsory medical measures (as mentally ill) and compulsory treatment should be applied to those

with limited responsibility at the same time. That is to say, persons who are ill, for example, with tuberculosis, leprosy or AIDS, in accordance with the position of the Plenum of the Supreme Court of Ukraine, are at the same time mentally ill. In addition, the said resolution notes that compulsory treatment cannot be applied to drug addicts (Article 96 of the Criminal Code of Ukraine), since alcoholism and drug addiction allegedly do not pose a danger to the health of others (Gorokh 2017). But this position seems no less controversial: in fact, both alcoholism and drug addiction can be inherited. We repeat, studies by Italian genetic scientists have revealed the impact of drug addiction on future generations in biological, psychiatric and psychological aspects (Rykhlik 1988). In our opinion, for the correct solution of this issue, it is necessary to be guided by the Fundamentals of Ukrainian legislation on healthcare:

"For the purpose of public health, health authorities and institutions are obliged to carry out special measures for the prevention and treatment of socially dangerous diseases (tuberculosis, mental, venereal diseases, AIDS, leprosy, chronic alcoholism, drug addiction), as well as quarantine diseases.

The procedure for hospitalization and treatment of such patients, including involuntarily, is established by the legislative acts of Ukraine" (Article 53. Special measures for the prevention and treatment of socially dangerous diseases, 1992).

Consequently, the criminal law norms on the compulsory treatment of convicted persons suffering from a certain disease, and the incorrect interpretation of the law by the Supreme Court of Ukraine have created legal uncertainty in the field of legal relations under research. In general, this indicates that ignoring the principle of the rule of law (legal uncertainty is one of its elements) creates criminal legal risks that destroy the foundations of justice (A. Muzyka 2020).

At the same time, however, paradoxical as it may seem, the use of compulsory treatment for drug addiction is provided for in the administrative legal order – in connection with the dangerous behavior of the persons concerned (Articles 16-19 of the Law of Ukraine on Measures to Counter Illicit Trafficking in Narcotic Drugs, Psychotropic Substances and Precursors and Their Abuse, 1995). Although, suitably note, in reality this measure is also not applied, since specialized medical (for minors – specialized medical and educational) institutions have not been created to comply with the Law. Meanwhile, at one time the understanding of the current situation was complicated by the fact of a legislative initiative to supplement the Civil Procedure Code of Ukraine (2020) with a new chapter 10-1 and articles 342-1, 342-2, 342-3, 342-4 regarding the consideration by the court of cases on referral to compulsory treatment drug addicted person. Responding to such an initiative, individual public organizations (without any justification for their position) expressed a categorical objection, arguing that such a practice is a violation of basic human rights, which include the voluntary nature of any medical procedures (Proektu Zakonu nº 2784, 2020).

It should be noted that the Civil Procedure Code of Ukraine provides for the possibility of providing compulsory medical care to persons suffering from another socially dangerous disease - tuberculosis (Chapter 11. Consideration by the court of cases on involuntary hospitalization in an anti-tuberculosis institution, articles 343-346).

We have repeatedly expressed our attitude about the use of forced treatment for drug addicts in criminal law (in particular, regarding the imaginary, contrived incompatibility of this tool with human rights). However, the lack of relevant changes in the legislation during over two decades makes us once again respond to this situation.

The problems of narcological patients who do not want to voluntarily be treated can be solved in different ways. There is a passive way: society, while ensuring the rights of a person (as an individual) to personal integrity and voluntary treatment, does not interfere in the affairs of a drug addict (if he does not suffer from a serious mental illness) and leaves him to the mercy of fate. Mostly this approach is based on certain provisions of the Universal Declaration of Human Rights (1948, Article 3), the Convention for the Protection of Human Rights and Fundamental Freedoms (Part 1, Article 5) (1950), which ensure the right of every person to personal integrity. In developing these provisions, the World Congress of Psychiatry in 1989 emphasized that "coercive intervention is a gross violation of human rights and fundamental freedoms (...) Hospitalization or treatment should not be carried out against the will of the patient, unless the patient suffers from a serious mental illness".

In turn, the Convention for the Protection of Human Rights and Dignity on the Application of Biology and Medicine (Convention on Human Rights and Biomedicine, 1997) establishes a general rule: "Any intervention in the field of health can be carried out only after the voluntary and informed consent of the person concerned. Such person is provided with relevant information in advance about the purpose and nature of the intervention, as well as about its consequences and risks. The person concerned may at any time freely withdraw his or her consent." (art. 5). However, subject to statutory protection requirements, including supervisory, control and appeal procedures, a person suffering from a serious mental disorder may be subject, without his own consent, to an intervention intended to treat his mental disorder only if, without such treatment, his health would be seriously harm (art. 7) (1997). Obviously, it is precisely on the basis of these provisions that the WHO reports (2004) and joint UN statements note the expediency of abolishing compulsory treatment of narcological patients (UNODC 2012). These documents, in comparison with the anti-drug conventions, are controversial in nature. Thus secured with the right to personal inviolability, the narcological patient does not receive proper medical care, gradually degrades in every possible way and, in the end, dies. Is such an approach humane?

Another way to solve the problem of narcological patients is an active one. It is also based on international law, which certifies indifference regarding the fate of a sick person, and is also aimed at protecting society from the spread of drug addiction. Again, already mentioned the Universal Declaration of Human Rights (1948), while guaranteeing the human right to personal integrity (Article 3), at the same time focuses on the obligations of each of us to society. In exercising his/her rights and freedoms, a person should only experience such restrictions as are established by law solely for the purpose of ensuring proper recognition and respect for the rights and freedoms of others and meeting the just requirements of morality, public order and the general welfare in a democratic society (Article 29). Similarly, the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), guaranteeing the right to personal integrity (Article 5), in order to respect the rights of other people, provides for the possibility of

lawful detention of persons to prevent the spread of infectious diseases, lawful detention of the mentally ill, alcoholics or drug addicts or vagrants (paragraph "E" part 1 article 5). These provisions do not prevent the State from detaining persons who abuse alcohol in order to: limit the harm caused by alcohol to this person and the public; preventing a person from engaging in dangerous behavior following the abuse of certain substances (*Kharin v. Russia*, 2011); protection of public and private interests (*Hilda Hafsteinsdóttir v. Iceland*, 2004). After all, a common feature of all constitutional restrictions on human rights and freedoms is that such restrictions are due to objective circumstances necessary for a democratic society (Plakhotniuk *et al.* 2021).

It is appropriate to note that in the case of several Czech families against the Czech Republic on a complaint about respect for private and family life [Article 8 of the European Convention on Human Rights (ECHR)] - in terms of the legitimacy of compulsory vaccination, the ECHR also emphasized: this measure is justified and can be considered necessary in a democratic society (Probytiuk 2021).

The European Social Charter (1996) is also of great importance, obliging Member States: "In order to ensure the effective exercise of the right to health care, independently or in cooperation with public or private organizations, to take appropriate measures to prevent, as far as possible, epidemic, endemic and other diseases" (Art. 11). Similar provisions are contained in the International Covenant on Economic, Social and Cultural Rights (1966). For the full implementation of the right of every person to the highest attainable level of physical and mental health, this document establishes the obligation of the State to take measures to prevent and treat epidemic, endemic, occupational and other diseases and combat them (paragraph "C" part 12). 2 article 12) (European Social Charter, 1966). After all, according to the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), the parties may provide for the relevant narcotic offenses if the offender is a drug addict, in addition to punishment or as an alternative or instead of punishment, such a measure as treatment (paragraphs 4 "b", "c", "d" Art.3).

Against the background of these provisions of international documents, the position of enthusiasts who defend the rights of addicted patients (denying the legitimacy of their compulsory treatment) seems unreasonable, biased and truly inhumane. The main thing in the social essence of compulsory treatment should be considered to be the provision of the necessary level of public health as a condition for the social activity of members of society. In addition, the use of compulsory treatment increases the effectiveness of the fight against crime, becomes an obstacle to the spread of drug addiction, especially among young people, strengthens the family as the basis of society, helps to increase the labor activity of the population, and therefore to strengthen the state and improve the welfare of its citizens (Yunoshev 2007).

One should agree with the opinion that the efforts of the state to prevent crimes should be multifaceted and consist not only of ordinary measures (Tymoshenko *et al.* 2021). The criminal law policy of European countries is oriented towards restorative justice; with this approach, the functioning of legal institutions is ensured through the cooperation of the offender and society (Šimunová 2016). From the point of view of human values in a state dominated by the rule of law, state power should be based on the faith and trust of citizens (Balayan 2021).

First of all, every effort should be made to convince the drug addict to voluntarily agree to treatment (in such a circumstance, medical intervention may be more effective than involuntary treatment). The actualized task is complex, but it has a humanistic focus and real potential to achieve the necessary treatment results. According to the developed European standards on ensuring the patient's right to information, he must be informed about the methods of treatment, the quality and safety of medical care, etc. This approach allows the patient to make an informed choice (Čípová 2019). If this consent is not reached, the patient, against his will, should be forced to provide medical care. In this way, serious consequences of the disease can be prevented. According to the decision of the ECHR in the case *Velichko v. Ukraine* of January 28, 2021, the general declaration of a person's refusal of treatment does not relieve the state of the obligation to provide it. And this can only be done by force. At the same time, we are talking about a system of state measures: the allocation of the necessary financial resources; introduction of substitution therapy; taking into account the individual characteristics of patients; control over their condition; psychological and psychiatric support, as well as the use of other means of the 'harm reduction' policy (Butler 2009).

It is important to realize that a human rights issue already arises when a person first illegally used a drug. Society is not indifferent to what will happen to such a person later, what offspring will be born, whether he will commit a crime on the basis of drug addiction. It should be borne in mind that narcological patients are trying in every possible way to avoid the application of medical measures to them. Such behavior pursues the interests of preserving the pathological condition that arranges the alcoholic, drug addict or substance addict, but not society. Therefore, the state is forced in such situations to use coercion to restore the health of the individual in the interests of public health. This circumstance even gave rise to the thesis that, from the point of view of criminal law, compulsory treatment, according to outward signs, is similar to actions performed in a state of emergency, is used to preserve a more valuable good, which is the health of the population. This is exactly how, by the way, the compulsory treatment of drug addicts is considered in Sweden, where they believe that the State has the right to make a decision on the compulsory treatment of drug addicts to protect citizens (Palm and Senius 2002). Also in the United States, which is known for its uncompromising attitude towards human rights violations, compulsory treatment is used at the level of voluntary treatment, and in some cases, as practice shows, it is even more effective (Shtengelov 2001). A similar position is taken by individual representatives of the WHO. At one time, D. Cameron noted that the need to use restrictive means against drug addicts is justified by the significant spread of this disease and the serious danger it poses to public health (Cameron 1971).

For some reason, no one doubts about the rights and legitimate interests of the mentally ill when, in accordance with Art. 94 of the Criminal Code of Ukraine, compulsory medical measures are used. The term 'compulsory medical measures' itself does not raise questions, and the fact that in these cases the law also ensures the rights of other persons. It is also necessary to perceive the compulsory treatment (Article 96 of the Criminal Code of Ukraine) of persons suffering from other socially dangerous diseases. We repeat, according to the Fundamentals of Ukrainian legislation on healthcare, socially dangerous diseases include: tuberculosis, mental, venereal diseases, AIDS,

leprosy, chronic alcoholism, drug addiction. The possibility of compulsory treatment of such persons is envisaged (Article 53, Zakon nº 2801 of 1992).

The use of compulsory treatment is the criminal law means by which the state tries to ensure due recognition and respect for the rights and freedoms of other members of society. In particular, in a state of drug and other intoxication, abstinence individuals are capable of committing serious, cruel crimes, which is a potential violation of the rights of others on their part. Obviously, this is precisely why the norms on compulsory treatment are enshrined in the legislation of most democratic states of the world.

We believe that the choice of the only correct solution by a sick offender would be greatly simplified if the legislation regulated the issue of voluntary treatment of a guilty person for a drug addiction as an alternative to criminal liability for committing a misdemeanor or a minor crime. In the process of improving the criminal legislation governing the issues under consideration, the relevant experience of foreign states, for example, Belgium, Germany, Estonia, may also be useful. It is precisely this approach in terms of ensuring human rights that the vast majority of Mediterranean countries are oriented towards (MedNET 2020). In fact, we consider such an approach to be truly humane both in relation to society and in relation to a sick person in need of help. In the legal literature, it is rightly noted that for reforms in the sphere of the rule of law, it is necessary to increase the level of involvement of representatives of the scientific community in the process of evaluating, preparing and adopting legislation (Petryshyn *et al.* 2021); when it comes to scientific integrity — respect for the role of independent, nonpartisan scientific expertise in government policymaking — we have really seen a collapse of the rule of law; science-based policymaking is not optional; in many cases, it is a legal requirement (Kinsella *et al.* 2020). It should be recognized that the rule of law reigns where the balance of private and public interests is observed: "The balancing of interests, the protection and defense of public and state interests through the protection and defense of private interests is the balance of interests that the state in the face of power should strive for" (L. Muzyka 2020, p. 490). This fully applies to human rights.

The presence and awareness of these arguments allows us to offer the members of the Working group on the development of criminal law as part of the Commission on Legal Reform under the President of Ukraine, who are developing a draft of the new Criminal Code of Ukraine, a theoretical model of the relevant norms in the security system (Book 3 of the draft of the new Criminal Code of Ukraine, 2022).

We believe that the system of these norms should cover the following provisions: the concept and purpose of compulsory treatment, the procedure for its application, the timing and procedure for extension and termination. Why is it important to enforce these provisions?

The concept of compulsory treatment. The concept of compulsory treatment should define the essence of this means in the system of criminal law means; the circle of persons to whom it applies, as well as the terms of its application. In this context, in addition to alcoholism and drug addiction, another narcological disease, toxicomania, requires attention. This is an unhealthy addiction, in particular, to various toxic substances for industrial and domestic purposes, potent medicines (which specifically affect the central nervous system and do not belong to narcotic drugs or psychotropic substances). In terms of its negative consequences, toxicomania is not inferior to alcoholism and drug

addiction, and according to some characteristics, it is even more harmful to human health. Measures to counteract the spread of toxicomania are to a certain extent similar to countermeasures for drug addiction.

Purpose of compulsory treatment. The concept of compulsory treatment is inextricably linked with the purpose of applying the considered criminal-legal remedy. The purpose characterizes its essence and emphasizes the truly human nature of this legal institution. In our opinion, it reflects two components of its application. The first of them is directly related to the interests of the persons suffering from socially dangerous diseases. It is aimed at treating such persons through the application of medical and psychological measures to them, as well as their resocialization. Thus, the components of the goal of punishment are largely achieved – the correction of narcological patients who have committed a criminal offense and the prevention of the commission of these acts by them. Another component of the purpose of the application of compulsory treatment is directly related to the interests of society and is aimed at ensuring the safety of its citizens. In particular, narcological diseases are among the factors of antisocial behavior of their carriers. Therefore, the goal of compulsory treatment is also general prevention – the prevention of socially dangerous diseases that threaten other citizens. It is appropriate to note that the goal of compulsory treatment has found its legislative embodiment in the criminal legislation of many states, including the Republic of Moldova (Article 98 of the Criminal Code), Switzerland (Article 44 of the Criminal Code). At the same time, it is extremely important to emphasize that compulsory treatment is not intended to inflict physical suffering on a person or humiliate human dignity.

The procedure for the application, extension and termination of compulsory treatment is covered by us directly in the legislative proposals. At the same time, we emphasize that compulsory treatment should be applied from the moment the disease is detected, even at the stage of pre-trial investigation, that is to say, compulsory treatment should be considered as necessary, timely medical care for the patient. We emphasize once again: radical changes are needed in the understanding that drug addiction (and also toxicomania) are diseases that need to be treated, and only then consider the issue of criminal liability. To do this, in cases where a person held criminally liable needs treatment for alcoholism, drug addiction or toxicomania, the pre-trial investigation or trial of the case should be stopped. Immediately after such a decision is made, the person is invited to voluntarily undergo treatment for the disease – as an alternative to exemption from criminal liability. In particular, a person who has committed a crime in the field of drug circulation and who voluntarily underwent a course of treatment for alcoholism, drug addiction or substance abuse, as a result of which positive results of treatment were achieved and such a person ceased to be socially dangerous, after completing voluntary treatment, may be released from criminal liability or punishment. If a person refuses to undergo a course of treatment voluntarily, the pre-trial investigation body (we are talking, for example, about the consideration of this issue at the stage of pre-trial investigation), should send to the court materials relating to the disease of the suspect or the accused, and the court would have to decide within 24 hours the issue of compulsory treatment. If such a measure is applied, the suspect or the accused shall be subject to immediate hospitalization. The time of compulsory treatment should refer to the term of punishment (if it is assigned to the guilty person).

Consequently, in the new Criminal Code of Ukraine, the relevant norms can be set out, for example, in the following wording:

> Article ... Non-imposition of punishment in connection with voluntary treatment for a socially dangerous disease
>
> 1. No punishment shall be imposed on a person who has committed a misdemeanor or a minor crime for the first time, if he/she voluntarily agreed to undergo a course of treatment for alcoholism, drug addiction, toxicomania or another socially dangerous disease, followed by social rehabilitation within six months.
>
> 2. Treatment of a person is carried out in special medical institutions with subsequent social rehabilitation depending on the severity of a socially dangerous disease for up to one year.
>
> 3. If the measures of medical influence did not bring positive results, the court imposes a punishment on the person and applies compulsory treatment to him/her.
>
> Article ... The concept and purpose of compulsory treatment
>
> 1. Compulsory treatment is a criminal law means of state coercion, which can be applied by a court for a period of up to one year to a person who has committed a crime and is suffering from a socially dangerous disease (in particular, alcoholism, drug addiction or substance abuse), regardless of the type of punishment imposed or exemption from punishment for a period of up to one year.
>
> 2. Compulsory treatment of a person suffering from a socially dangerous disease is used to cure and resocialize him/her, prevent him/her from committing criminal offenses, and also to ensure the protection of the rights and freedoms of other citizens.
>
> 3. Compulsory treatment is not intended to cause physical suffering or humiliate human dignity.
>
> Article... Application, continuation and termination of compulsory treatment
>
> 1. Compulsory treatment may be applied to a suspect, accused or convicted person after the patient refuses to undergo treatment voluntarily.
>
> 2. Compulsory treatment is applied from the time when the medical commission establishes that the person is ill with a socially dangerous disease. Based on the decision of the court, measures are taken to immediately hospitalize the patient in a special medical institution.
>
> After proper medical care is provided to the suspect or the accused, criminal proceedings are resumed.
>
> 3. When a person is convicted and a fine is imposed on him, compulsory treatment for a socially dangerous disease is carried out in special medical institutions. When other types of punishments are imposed, compulsory treatment is carried out at the place of serving the sentence.
>
> 4. If the measures of medical influence have not brought positive results, the court may extend the period of compulsory treatment. The total period of

compulsory treatment may not exceed the period provided for by paragraph 1 of Article ... of this Code.

5. In case of a serious illness of a person that prevents his further stay in a special medical institution or in a place of serving a sentence, or if positive results of treatment are achieved, the court, on the basis of a presentation from the administration of the relevant institution (body or institution for the execution of punishment) and a medical opinion, may terminate the forced treatment.

6. The time during which compulsory treatment was applied to a person shall be included in the term of punishment according to the rule: one day of imprisonment for a certain period is equal to one day of compulsory treatment.

7. A person in respect of whom compulsory treatment has not been terminated in the manner prescribed by law cannot be released from punishment on parole, and also he is not subject to release from punishment on the basis of the Law of Ukraine On amnesty or an act of the President of Ukraine on pardon. This approach is applied to the convict even when positive results of his treatment are not achieved.

Unfortunately, our proposed legislative solution to the problem of compulsory treatment has not yet been accepted by individual developers of the draft of the new Criminal Code of Ukraine. The basis for denying the expediency of enshrining this legal remedy in criminal law is the same far-fetched argument – compulsory treatment violates a person's right to personal integrity.

We do not rule out that the position of opponents (especially from the point of view of countering epidemics and pandemics, in particular, SARS-CoV-2) regarding the legality of compulsory treatment of persons suffering from a socially dangerous disease may change. Perhaps, alternative ways will be proposed that will satisfy the supporters of both active and passive approaches to solving the problem under consideration. In any case, we are fully convinced of the rational need to further search for the optimal settlement of criminal law relations related to the compulsory treatment of persons suffering from socially dangerous diseases.

4. Conclusion

1. The issues considered in the plane of the declared topic convincingly attest to the importance and necessity of further study of the problem of bringing Ukrainian legislation closer to global human rights standards.

2. The ban on the cultivation of drug-containing plants is an absolute, though a forced violation of human rights. Such a measure should serve to overcome the cultivation of drug-containing plants for the purpose of illegal distribution of drugs.

The legal mechanism for ensuring human rights needs to be further improved when the bodies of the National Police of Ukraine comply with the norms of administrative legislation on the entry of police officers in the living quarters of citizens and their land plots in order to counteract the cultivation of drug-containing plants.

3. Establishing responsibility for illegal drug use violates human rights. Therefore, non-medical (without a doctor's prescription) drug use in itself should not be recognized as

an administrative or criminal offense. At the same time, it seems relevant to conduct a scientific discussion about the advisability of establishing responsibility for the public use of drugs or psychotropic substances.

4. The policy of individual states on the legalization of actions with cannabis for recreational purposes (for non-medical needs) does not give grounds for its unambiguous assessment. The legalization of such actions in Ukraine seems premature and requires further study.

The decision of the Ukrainian government to legalize actions with certain cannabis-based medicines in order to realize the right of patients to the necessary medical care can be perceived as a humane act. However, the solution of this issue, firstly, is within the competence of the Verkhovna Rada of Ukraine, and secondly, taking into account the results of recent studies, it requires additional study. Most importantly, following a systematic approach, it is important to consider the program of legalizing the use of certain drugs by addicted patients as one of the directions of state policy in the field of social rehabilitation of such persons. And this means, along with the updated legalization of drug use, the need to develop and introduce appropriate measures (among the latter – state registration of these persons, individual preventive activities of law enforcement agencies and specialists in the field of narcology and psychology, professional anti-drug propaganda, involvement of patients in socially useful labor, in particular, through the use of foreign experience in the operation of "Narcotics Anonymous" societies).

5. The use of compulsory treatment is directly related to human rights. However, the main aspect of this problem ("forced treatment of convicts is a violation of human rights"), professed by individual experts, seems to be a distorted understanding of its essence. This is a kind of flirting with the phenomenon of 'human rights'. With this approach, in the event that a suspect, accused or convicted person refuses to voluntarily undergo a course of necessary treatment for a socially dangerous disease he has, the problem remains unresolved and entails serious consequences, at least for the patient. It is in this way that the constitutional right to health care is violated not only for these persons, but also for other citizens. The latter are potential victims due to direct or indirect communication with carriers of this or that socially dangerous disease.

6. The problems of drug addicted patients who do not want to voluntarily be treated can be solved in different ways – passively or actively. More rational and fair seems to be active opposition, characterized by indifference to the fate of such persons and their offspring. This should also protect society from the spread of the drug epidemic.

In order to solve the problem of compulsory treatment in the criminal law, the new Criminal Code of Ukraine should provide for appropriate provisions on compulsory treatment: to define the concept of compulsory treatment, to reflect the purpose of this means of state coercion, and to provide for the features of its application.

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