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CONCEPT AND TYPES OF STATE CONTROL OF THE LEGAL TRAFFICKING OF DRUGS

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SUMMARY

The author's definition of the term "form", legal design "form of state control over the legal circulation of narcotic drugs, psychotropic substances and precursors" is proposed. The points of view of scientists concerning "forms of state control" are given. The concept of "legal turnover of narcotic drugs, psychotropic substances and precursors" was introduced. Author's classification of forms of state control over the legal turnover of narcotic drugs, psychotropic substances and precursors has been developed. Forms of state control over the legal turnover of narcotic drugs, psychotropic substances and precursors are described. Prospects for the optimization of legislation on the forms of state control in the sphere of the legal turnover of narcotic drugs, psychotropic substances and precursors in Ukraine are determined.

Key words: forms of state control, types of forms of state control, state control, legal turnover of narcotic drugs, psychotropic substances and precursors in Ukraine, classification of forms of state control.

КОНЦЕПЦИЯ И ТИПЫ ГОСУДАРСТВЕННОГО КОНТРОЛЯ ЗА ЗАКОННЫМ ОБОРОТОМ НАРКОТИЧЕСКИХ ЛЕКАРСТВЕННЫХ СРЕДСТВ

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АННОТАЦИЯ

Предложено авторское определение термина «форма», правовой конструкции «формы государственного контроля за законным оборотом наркотических средств, психотропных веществ и прекурсоров». Приведены точки зрения ученых относительно «форм государственного контроля». Наведено понятие «законный оборот наркотических средств, психотропных веществ и прекурсоров». Разработана авторская классификация форм государственного контроля за законным оборотом наркотических средств, психотропных веществ и прекурсоров. Охарактеризованы формы государственного контроля за законным оборотом наркотических средств, психотропных веществ и прекурсоров. Определены перспективы оптимизации законодательства относительно форм государственного контроля в сфере законного оборота наркотических средств, психотропных веществ и прекурсоров в Украине.

Ключевые слова: формы государственного контроля, виды форм государственного контроля, государственный контроль, законный оборот наркотических средств, психотропных веществ и прекурсоров в Украине, классификация форм государственного контроля.

REZUMAT

Se propune definirea de către autor a termenului "formă", formă juridică "formă de control al statului asupra circulației legale a stupefiantelor, a substanțelor psihotrope și a precursorilor". Sunt date punctele de vedere ale oamenilor de știință cu privire la "formele de control al statului". A fost introdus conceptul de "circulație legală a stupefiantelor, a substanțelor psihotrope și a precursorilor". Sa dezvoltat clasificarea de către autor a formelor de control al statului asupra traficului legal de stupefiante, substanțe psihotrope și precursori. Se descriu forme de control al statului asupra traficului legal de stupefiante, substanțe psihotrope și precursori. Se stabilesc perspectivele de optimizare a legislației privind formele de control al statului în sfera traficului legal de stupefiante, substanțe psihotrope și precursori în Ucraina.

Cuvinte cheie: formele de control al statului, tipurile de forme de control al statului, controlul de stat, circulația legală a narcoticelor, a substanțelor psihotrope și a precursorilor în Ucraina, clasificarea formelor de control al statului.



Formulation of the problem: In modern legal science there are various points of view regarding the understanding of the list and types of forms of state control, are characterized, as a rule, by the specific direction of research in scientific research, researchers give different forms of control [1, p. 229; 2, p. 123; 3, p. 161; 4, p. 91], identifying them with the methods of [3, p. 169]; [5, p. 182], directions, means, measures and types of control [2, p. 124]. The current legislation of Ukraine also identifies forms and methods of control [6]. The forms used in the implementation of state control may be different, depending on the subject, the object, the purpose, the means of state control applied.

Relevance of the research topic.

The state control should be carried out on the basis of the current legislation by authorized bodies, officials, civil servants. He follows, in particular, Art. 19 of the Constitution of Ukraine, according to which the state authorities, local self-government bodies and their officials are obliged to act only on the basis, within the powers and in the manner provided for by the Constitution and laws of Ukraine [7]. Compliance with this provision is decisive regarding the legitimacy of forms of state control, that are carried out by its bodies. When carrying out state control over the legal circulation of narcotic drugs, psychotropic substances and precursors, the forms inherent in it are used. In a legal state any form of state control is exercised solely on the basis, within the limits of authority and in the manner provided by law.

Status of the study. Ukrainian and foreign scientists paid special attention to studying the forms of state control: V.B. Averyanov, O.F. Andriyenko, Yu. P. Bityak, V.N. Garashchuk, V.M. Gorshenev, M.S. Studenikin, I.B. Shakhov and others. We have already turned our attention to the problems of establishing forms of state control over the circulation of narcotic drugs and psychotropic substances [8], but we have not considered the question of the criteria for distinguishing its forms from the legal circulation of such funds, substances and precursors, unfortunately, this issue was not investigated.

The task and aim of articles is to establish the concept and types of forms of state control over the legal circulation of narcotic drugs, psychotropic substances and precursors of Ukraine.

Statement of the main material. First, we note that “the legal turnover of narcotic drugs, psychotropic substances and precursors” are activities for the cultivation of plants included in the List of Narcotic Drugs, Psychotropic Substances and Precursors, as well as activities related to trafficking in narcotic drugs, psychotropic substances and precursors included in the said List, which are resolved and controlled by the legislation in the sphere under consideration on the basis of licensing. It is carried out with the purpose of using these means, substances and precursors for the needs of their own production, in medical practice for the treatment of patients, in veterinary medicine, in research, in expert and operational-search activities, with scientific and educational purposes [9, p. 10, 11]. ‘

In order to establish the content of the legal design of the “form of state control over the circulation of narcotic drugs, psychotropic substances and precursors”, as well as for the possible elimination of disagreements, not only in terminology, but also in approaches to the classification of these forms, it is necessary to understand what the term “form” itself means. The structure of the “form of state control over the legal circulation of narcotic drugs, psychotropic substances and precursors” does not contain the current legislation, nor is it interpreted in the legal scientific literature. In the general scientific interpretation of the term “form”, some researchers associate with the category of “content”. In explanatory dictionaries, the form is the expression of any content or anything else [10, p. 1427]. The term “form” means “the type, construction, way of organizing something; the external manifestation of some phenomenon, associated with the essence, content” [11, p. 1328]. The philosophical dictionary treats the form as an external image, the external expression of some content, and also determines or determines the order of the flow, in contrast to its amorphous material or content [12, p. 289]. So, form is a method of organization, an external manifestation of any phenomenon, connected with the essence, content, which determines the order of the latter. In this regard, a similar point of view has V.N. Garashchuk, who determines, that the form is an external manifestation (result) of specific control or supervisory procedural and organizational actions, that visibly

manifests itself in certain acts based on the results of the activity of the inspectors [3, p. 163].

And how is the concept of “form of state control” defined in legal scientific literature? According to some scholars, forms of state control in the sphere of economic activity should be called external manifestation of legally significant procedures of control activity [13, p. 536; 14, p. 52]. V.V. Murza under the forms of state control understands the methods of production of control activity, its practical implementation, carried out within the limits of powers granted to state control bodies, based on the relevant principles and applied to achieve the goals set with the greatest degree of result [15, p. 111].

Attention of O.F. Andriyko, who examines state control, notes, that his form can be defined as the externally expressed effect of the executive body (official), is carried out within its competence and causes certain consequences, that are of a legal nature and a certain legal the value of [16, p. 43]. Taking into account the foregoing, we will draw a conclusion: the forms of state control over the legal turnover of narcotic drugs, psychotropic substances and precursors are an external manifestation of the procedural and organizational actions of subjects of state control over the circulation of narcotic drugs, psychotropic substances and precursors within the limits of the granted powers, is in the legal consequences of implementing the latter.

Yu.P. Bitak and V.V. Zuy refer to the forms of control as revision and verification [17, p. 124], in which the majority of researchers support them. O.F. Andriyko, a list of forms of control of executive authorities complemented by such as the analysis of information materials, reports, messages, warnings [1, p. 24]. E.V. Shorina, in addition to those mentioned, also singles out inspections, surveys, surveillance, review, raids [18, p. 15]. I.K. Zalyubovskaya, in addition to audit and inspection, distinguishes among the forms of control the demand for reports, the analysis of information materials, reports, communications, reservations, as well as audit, expertise, coordination of activities of controlled objects, consideration of complaints, applications [19, p. 13]. A.I. Gurin adds inspection, registration, certification, accreditation, licensing, etc. to the audit



and revision [20, p. 165]. I.S. Orekhova insists, that in the sphere of economic activity the main forms of state control are audits and inspections [21, p. 11]. This opinion is supported by other scientists [22 p. 73]. Thus, in most cases, the separation of forms of state control is carried out by scientists in the field of activity, the main of which are verification and audit.

In accordance with the powers of controlling bodies to use forms of state control is an integrated system, that allows its subjects to fully obtain the necessary information about the status of the activities of the controlled entities [23, p. 24]. The choice of forms by the controlling entity occurs within the limits delineated by its powers or expressly provided for in the legal norm. Basically, the relevant forms provided for by legal acts regulating the activities of the controlling entity [1, p. 186].

There is no single point of view on the notion of “verification” among scientists. L.A. Savchenko, examining financial control, the audit interprets as a system of control actions to study the administrative or financial and economic activities of the relevant facility [24, p. 266]; D.M. Reva believes, that the verification consists in examining the compliance of the data, reflected in the documents with the requirements of the legislation [25, p. 98]; P.N. Chistyakov defines it as the activity of the relevant bodies for the study of documentation for the purpose of checking it [26, p. 57]. So, the majority of scientists define the audit as the activity of controlling bodies in researching the information specified in the documents, for compliance with their legislation requirements.

The Economic Code of Ukraine stipulates, that the state controls the economic activities of economic entities in the form of inspections and inspections [27]. According to the provisions of Art. 1 of the Law of Ukraine “On the main principles of state supervision (control) in the sphere of economic activity” of April 5, 2007, No. 877-V, state control is the adoption of planned and unplanned activities, carried out through inspections, audits, inspections, surveys and other actions [28]. Forms of state control are also defined in other regulatory legal acts.

Planned activities are carried out in accordance with the annual or quarterly plans approved by the state control authority before December 1 of the year preceding the planned one, or until the

25th day of the last month of the quarter preceding the planned one [28]. Within one year of implementation, more than one planned control measure with respect to a particular business entity is not allowed. In the sphere referred to it the state control body determines the criteria for assessing the degree of risk from conducting economic activities. Taking into account the value of an acceptable risk, all subjects of management are classified as one of three risk levels: high, medium and small [28]. Depending on the degree of risk, the monitoring body will schedule the periodicity of the planned state control activities, as well as lists of issues for this, approved by its order. The state control bodies carry out such planned activities, provided that the business entity is notified in writing about this no later than 10 days before the day of their holding. The norms of Art. 6 of this Law, the grounds for conducting unscheduled activities have been determined [28].

Here are statistics on the conduct of inspections by the State Service of Ukraine on Drugs and Drug Control in 2011–2015. And about the types of violations found. So, in 2011 69 unscheduled inspections were carried out, and according to their results 2 licenses were canceled, 19 violations were not detected, 48 instructions were given to eliminate identified violations of the License terms [29, p. 160, 161]. In 2012 140 planned inspections and 31 unscheduled inspections, as a result of which 3 licenses were declared invalid, 2 were canceled, 93 violations were not detected, 73 instructions were given to eliminate identified violations of the License terms. In 2013 559 planned and 49 unplanned inspections were conducted, according to which 10 licenses were canceled, 8 were declared invalid due to non-renewal of them in the period established by law, 289 cases were found without violations, and 301 orders were issued to eliminate the violations of the Licensing Conditions [29 p. 161]. In 2014 285 scheduled and 33 unscheduled inspections were carried out, of which: (a) verification of compliance with the requirements – 1; (b) by letters from the Ministry of Internal Affairs and the Security Service of Ukraine–28 and 1, respectively; (c) other state bodies–1, (d) on the circulation of individuals–1 [29, p.161].

In the first half of 2015 11 unscheduled inspections were carried out, according

to which 1 instruction was issued, 147 instructions were given to eliminate the violations identified during the inspections, in 8 business entities the licenses were declared invalid due to the fact, that they were not re-registered in the prescribed period, and in 4 cases the licenses were revoked [29, p. 162].

According to the State Service of Ukraine for Drugs and Drug Control, a significant number of violations found primarily in business entities, have not been tested since 2009 and vice versa, licensees, who have already been audited by the State Service of Ukraine from medicines and drug control carrying out activities without violations of law and comply with the requirements for mandatory reporting. The most typical violations in health care facilities include the following: 1) the licensing authority was not informed of the change in the data specified in the documents attached to the application for a license; 2) certificates of drug treatment were not updated after the end of their validity period; 3) persons without a certificate from the Ministry of Internal Affairs of Ukraine were allowed to work with controlled substances; in the absence of an employee, according to their official duties, they had access directly to narcotic drugs, psychotropic substances and precursors, that had not been with drawn or outstanding in the established criminal record; 4) annual reports were not submitted to the licensing body, quarterly inventories were not conducted or conducted without the preparation of a balance of inventory. There was an inventory taking into account without balances on the departments or without taking into account the precursors listed in List No. 2 of Table IV of the List of narcotic drugs, psychotropic substances and precursors.

The above violations testify, first of all, to insufficient knowledge and unsatisfactory performance by management of legal entities of the requirements of the current legislation of Ukraine. The lack of funds of the management of medical and preventive health care institutions explains the impossibility of passing mandatory periodic narcological examinations of persons admitted to the treatment of controlled substances. The reason for non-compliance with the requirements for facilities and premises intended for carrying out activities related to trafficking in narcotic drugs, psychotropic substances



and precursors is, first of all, the inadequate financing of hospitals, and as a result, the inability to properly equip the premises used for the storage of such drugs, substances and precursors [29, p. 162]. In addition, when checking the State Service of Ukraine with medicinal substances and drug control concerning legal entities, that carry out activities on the trafficking of precursors (List No. 2 of Table IV of the List), the most common violations are the failure to notify the licensing authority of changes in the data specified in the documents attached to the application for a license, namely: a) on admission to work of persons not specified in the information on the compliance of the material and technical base with the license conditions; b) changed and the head of the institution; c) the storage of controlled substances of new places.

In the future we will consider such forms of state control over the legal turnover of narcotic drugs, psychotropic substances and precursors as: a) inspection of vehicles, cargo and personal belongings of citizens (Article 8) and b) medical examination and medical examination of persons, who abuse narcotic drugs means or psychotropic substances (Article 13) [30]. The specifics of the inspection of the vehicle, the cargo, that it contains, the personal effects of the driver and passengers is that it is carried out by police officers or officials of the Security Service of Ukraine on the basis of statements or reports of offenses related to the illegal traffic in narcotic drugs, psychotropic substances or precursors, or if other reliable information is available from the competent authorities. In case of detection of substances, that cause suspicion as belonging to these and that require further investigation, as well as, if there are signs of drug intoxication in the driver or passengers, the transport and the said persons can be delivered to the bodies of the National Police of Ukraine in order to find out the necessary circumstances [30]. Article 264 of the Administrative Code regulates the procedure for personal search and establishes, that it can be carried out by an authorized person of the same sex from the person being examined and in the presence of two witnesses of the same sex. Narcotic drugs and psychotropic substances found during the detention of a person, personal examination or examination of her belongings are seized by officials of the National Police of Ukraine and stored

together with the relevant documents in certain places by the police to the case on the merits. Note, that with the help of personal inspection, a small amount of narcotic drugs and psychotropic substances in clothes of the inspected person and in the cavities of her body can be detected [31, p. 16]. Things and documents found during the apprehension, personal inspection or examination of things and which are the instrument or the direct object of the offense are seized by the relevant officials of the bodies in accordance with Art. 265 of the Code of Ukraine on Administrative Offenses [33], on which a protocol is drawn up or a corresponding record is made in the protocol on an administrative offense, on the inspection of things or administrative detention.

Let us move on to the disclosure of the question of medical examination and medical examination of persons, who abuse narcotic drugs or psychotropic substances. Medical examination is carried out on an outpatient basis in order to establish a person's state of intoxication; medical examination – in a stationary, setting with the purpose of establishing a diagnosis of “drug addiction” in the person (Article 1). Medical examination is carried out in the direction of the police, and medical examination – in the direction of the doctor-narcologist. A person, who shies away from a medical examination or medical examination is liable to be brought to the narcological institution by the body of the National Police of Ukraine [30]. He order the medical examination and medical examination is regulated by the joint order of the Ministry of Health and the Ministry of Internal Affairs of Ukraine of June 16, 1998, No. 158/417 [34] and the Instruction on the procedure for the identification and registration of persons, who illegally use narcotic drugs or psychotropic substances [35]. For each category of law enforcement officers there are normative and legal acts on these issues. For example, the order of the Security Service of Ukraine “On the organization in the Security Service of Ukraine to identify persons, who unlawfully use narcotic drugs or psychotropic substances” from March 4, 2013, No. 88 determined, that medical examination is carried out in the following cases [36]:

1) presence in the person of: a) signs of drug intoxication – impaired coordination of movements, pronounced trembling of the fingers, sudden changes in the color

of the face (red face or unnatural pallor), inadequate behavior, narrowed or very dilated pupils, do not respond to light, slowness or vice versa of increased liveliness or gait mobility, speech; b) symptoms of mental or physical dependence on narcotic drugs or psychotropic substances found in the treatment and prevention institution security service of Ukraine; c) positive results of studies on the presence of the hepatitis B, C, HIV virus in treatment and prevention institutions;

2) reasonable suspicion of use by a person the narcotic drugs or psychotropic substances without the appointment of a doctor on the basis of information provided by this or that person, as well as other facts. Medical examination and examination of these individuals can only be carried out in certain institutions.

Conclusions. Forms of state control over the legal circulation of narcotic drugs, psychotropic substances and precursors are an external manifestation of the procedural and organizational actions of subjects of state control over the circulation of narcotic drugs, psychotropic substances and precursors within the limits of the powers granted, is rendered in the legal results of such actions. State control in the outlined area is manifested in the form of audits and inspections. Most often the control bodies in this sphere are subject to inspections (planned and unplanned). Special forms of check are distinguished: 1) medical examination of persons, who abuse narcotic drugs or psychotropic substances, by which they understand their outpatient examination with the purpose of establishing the state of drug intoxication; 2) medical examination of persons in inpatient settings to confirm the diagnosis of “drug addiction”; 3) inspection of vehicles, goods and personal belongings of citizens, consists in carrying out by the competent authorities to inspect them, if there is reliable information on the illegal presence of narcotic drugs, psychotropic substances and precursors.

According to the results of the activities for 2011–2015 of the State Service of Ukraine from Drugs and Drug Control, the most typical violations in health care institutions of Ukraine were identified, namely:

1) failure to inform the licensing authority of changes in the data specified in the documents attached to the application for issue of a license;



2) certificates on the passage of narcological examination after the expiration of their validity period are not updated;

3) are allowed to work with controlled substances of a person without the established certificate of the Ministry of Internal Affairs of Ukraine;

4) annual reports are not submitted to the licensing body;

5) quarterly inventories are not carried out or are carried out without drawing up a balance of inventory and without taking into account their residues and the number of precursors.

The solution of problems of improving the legislation on the application of forms of state control over the legal circulation of narcotic drugs, substances and precursors in Ukraine must comply with the norms and standards of the legal system of the European Union and requires the formation of effective activities of controlling and law enforcement bodies, the expansion of the legal framework, the application of forms of state control and methods of influence States, that meet European standards. Solving these problems will increase the effectiveness of implementing forms of state control over the legal circulation of narcotic drugs, psychotropic substances and precursors in Ukraine and improve their applications.

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REASONS FOR ADMINISTRATIVE AND DELICT RELATIONS: FEATURES AND CLASSIFICATION

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SUMMARY

An attempt has been made in the article to highlight the peculiarities of the reasons for administrative and delict relations in the sphere of natural resources use and conservation, as a result it has been emphasized, that the last ones can cause man-made changes in natural resources state, be an obstacle to obtain cultural, economic and social benefits, and violate the rules of natural resources use and conservation. In addition, the classification of these reasons according to individual criteria has been made, namely: an object; level of causing of man-made environmental changes; the blocking degree of necessary economic, social and cultural benefits society obtaining, etc.

Key words: reasons for administrative and delict relations, administrative and legal relations, administrative and delict relations, natural resources use and conservation.

ОСНОВАНИЯ ВОЗНИКНОВЕНИЯ АДМИНИСТРАТИВНО-ДЕЛИКТНЫХ ОТНОШЕНИЙ: ОСОБЕННОСТИ И КЛАССИФИКАЦИЯ

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АННОТАЦИЯ

В данной статье предпринята попытка выделить особенности оснований административно-деликтных отношений в сфере использования и охраны природных ресурсов, в результате чего выделена их особенность вызывать техногенные изменения в состоянии природных ресурсов, способность быть препятствием для получения культурных, экономических и социальных благ обществом и нарушать правила использования и охраны природных ресурсов. Кроме того, классифицированы указанные причин по отдельным критериям, а именно, по объекту; уровню причинения техногенных изменений окружающей среды; степени блокировки получения необходимых экономических, социальных и культурных благ обществом и тому подобное.

Ключевые слова: основания административно-деликтных отношений, административно-правовые отношения, административно-деликтные отношения, использование и охрана природных ресурсов.