



них перевірок дотримання законодавства України з питань державної митної справи, податкового, валютного та іншого законодавства платниками податків – юридичними особами та їх відокремленими підрозділами : наказ Міністерства фінансів України № 727 від 20.08.2015 р. // Офіційний вісник України. – 2015. – № 89. – Ст. 2985.

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THE OPTIMIZATION OF LEGISLATION ON STATE CONTROL OVER DRUG TRAFFIC: CONCEPTS AND TRENDS

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Summary

The author's definition of the legal framework "optimization of the legislation of state control over the circulation of narcotic drugs, psychotropic substances and precursors" is proposed. The points of view of scientists concerning the term "harmonization of legislation" and "adaptation of legislation" in different branches of law are given. The notion of "harmonizing the legislation of state control over the circulation of narcotic drugs, psychotropic substances and precursors" and "adapting the legislation of state control over the circulation of narcotic drugs, psychotropic substances and precursors" is established. Author's classification of ways of harmonization of the legislation in the sphere of state control over the circulation of narcotic drugs, psychotropic substances and precursors has been developed. The forms of adaptation of the legislation of state control over the circulation of narcotic drugs, psychotropic substances and precursors are described. Prospects for optimizing the legislation of state control in the sphere of trafficking in narcotic drugs, psychotropic substances and precursors have been determined.

Key words: adaptation of legislation, harmonization of legislation, state control, trafficking in narcotic drugs, psychotropic substances and precursors.

Аннотация

Предложено авторское определение правовой конструкции «оптимизация законодательства государственного контроля за оборотом наркотических средств, психотропных веществ и прекурсоров». Приведены точки зрения ученых относительно терминов «гармонизация законодательства» и «адаптация законодательства» в разных отраслях права. Установлены понятия «гармонизация законодательства государственного контроля за оборотом наркотических средств, психотропных веществ и прекурсоров» и «адаптация законодательства государственного контроля за оборотом наркотических средств, психотропных веществ и прекурсоров». Разработана авторская классификация способов гармонизации законодательства в сфере государственного контроля за оборотом наркотических средств, психотропных веществ и прекурсоров. Охарактеризованы формы адаптации законодательства государственного контроля за оборотом наркотических средств, психотропных веществ и прекурсоров. Определены перспективы оптимизации законодательства государственного контроля в сфере оборота наркотических средств, психотропных веществ и прекурсоров.

Ключевые слова: адаптация законодательства, гармонизация законодательства, государственный контроль, оборот наркотических средств, психотропных веществ и прекурсоров.

Formulation of the problem. Since Ukraine declared independence before its authorities faced important tasks to ensure the public interest in the field of control of narcotic drugs, psychotropic substances and precursors. In 2014, the Ukrainian parliament ratified the agreement on association between Ukraine and EU [1]. In this regard, there is need to adapt national legislation in the field of control of narcotic drugs, psychotropic substances and precursors with EU requirements. From 2013 in Ukraine operating strategy of drug

policy [2], which adapts the national legislation to the EU requirements within associate membership. However, the implementation of its provisions is too slow and in some areas even ineffective. But activities to adapt this legislation should be carried out as a component, an integral part of legislative activity of the executive and the legislature, the President of Ukraine and other bodies vested with law-making function.

Relevance of the research topic. In modern conditions there is a steady trend towards rapid increase in the



total number of legal acts adopted in the system of legislative and executive branches, resulting in inconsistencies and shortcomings in the field of control of narcotic drugs, psychotropic substances and precursors. National legislation still regulations that are not formally and in which there are often gaps unrelated provisions, some of them even formulated incorrectly used terms and concepts, and some require the latest entry in the legislation. There is a need to bring the legislation regulating state control of narcotic drugs, psychotropic substances and precursors in a clear system, eliminating conflicts through modification and additions, as well as the drafting of new laws and regulations.

Status of the study: Harmonization of legislation on state control have been addressed as Ukrainian and foreign scientists: V.B. Averyanov, V.M. Garashchuk, V.M. Horshenov, M.S. Studenikin, I.B. Shah and others. Regarding the study of certain aspects of the State Drug Control: V.A. Tymoshenko investigated criminological problems of ecological focus state drug control [3]; V.M. Yudin defined legal principles of formation and activity of control over drug trafficking [4]; O.I. Abramov defined features improve the mechanism of regulation of narcotic drugs and psychotropic substances [5] A.V. Nasonov features found administrative and legal regulation of drugs [6]. Unfortunately, the concept and the peculiarities of the areas of harmonization of legislation on state control of narcotic drugs, psychotropic substances and precursors in the scientific literature in modern conditions have not been considered in detail.

The task and aim of articles is to establish the concept and priority areas of harmonization of legislation on state control of narcotic drugs, psychotropic substances and precursors.

Statement of the main material. First, consider the content of the legal structures of "optimization legislation state control of narcotic drugs, psychotropic substances and precursors". In legal research sources, the term "optimization legislation" is understood as a system complex process aimed at improving the existing regulatory framework specific areas of legislation by choosing the best (among possible) option functioning legislation that will achieve maximum results (objective law) on

existing real conditions (limiting factors) to develop the concept of the development strategy of the legislation in this field [7, p. 16]. Named approach can be applied to this study.

Given the above it can be concluded that the optimization of law state control over narcotic drugs, psychotropic substances and precursors can be defined as a system complex process carried out by authorized state bodies and their officials within the authority provided by law, and which aims to improve the existing regulatory legal framework by selecting the best (among possible) option of its operations for the purpose of effective state control.

Important components of the optimization process of legislation on state control include its object, subject, and these basic guidelines, as purpose, principles and objectives of the control [8, p. 96]. The main subjects of the optimization of such legislation is the Supreme Council of Ukraine, the President and the Cabinet of Ukraine [9, p. 81], and the object is acting legislation, the optimization process which is relevant to the purpose, principles and objectives of state control in this area.

Further, it dwell on such areas as the harmonization and adaptation. Among jurists it is believed that the harmonization and adaptation of legislation – a form of optimization. However, we support the position of those scholars who consider them to optimize areas [7, p. 16; 8, p. 96]. First, find out the contents of design "harmonization of state control of narcotic drugs, psychotropic substances and precursors". In Glossaries term "harmonization of legislation" is treated as a reduction legislation States Member and countries in compliance with EU regulations on the basis of the organization. This may take the form of adapting legislation implementing its provisions, standardization norms, etc [10].

For example, in 2007 the Action Plan Ukraine – EU Justice, Freedom and Security established a number of agreed objectives and areas of cooperation and implementation of illegal narcotic drugs, psychotropic substances and precursors, namely: 1) promote international and internal efforts coordination of actions to combat the global threat of displacement and consumption of drugs, substances and

precursors, including through the signing and ratification of relevant international agreements; 2) strengthening cooperation to combat trafficking these drugs, substances and their precursors under the strategic agreement between Europol and Ukraine; 3) implementation of the national strategy to combat narcotic drugs, psychotropic substances and precursors, including the development of a balanced approach, according to the Strategies to combat drug abuse and Action Plan EU – Ukraine, taking into account the damage to them and the need to reduce their supply and demand; 4) enhancing cooperation in preventing the production and trafficking of synthetic drugs and the prevention of proliferation of precursors [11].

Among scientists an ongoing discussion about the term "harmonization of legislation". Note that some scientists see it as a synonym of adaptation, others consider it a component of the latter, or vice versa. According to S.K. Dudar, during harmonization process should be understood consistency and balance legal system within a legal space [12, p. 12]. M.V. Trubina notes that the process of harmonization of legislation has taken place among the founders of the EU. In the future candidates for EU membership, first performed adapt their national legislation to EU standards, then, acquiring full membership in the organization, they are given the right to jointly pursue the further development of the rule of law [13, p. 37]. Y.I. Kapitsa believes that harmonization could mean reaching a certain identity and the law of the Member States by adopting its regulations and setting goals common to these countries through the organization of directives [14, p. 19]. I.A. Yakovyuk indicates that involves a process of harmonization of common, coordinated development of national legislation, eliminate existing contradictions between them and the formation of minimum legal standards through the establishment of common legal principles or the adoption of specific legal solutions to the convergence of legal systems [15, p. 30].

We are convinced that under the harmonization of legislation of state control of narcotic drugs, psychotropic substances and precursors should understand harmonization of the laws of the Member States and countries in compliance with the EU on the basis of



regulations of the organization in order to create a unified system of legal norms include standardized set of relevant basic concepts and categories in the field of control of narcotic drugs, psychotropic substances and precursors.

Thus, the model law on trafficking drugs, psychotropic substances and their precursors defined structure “lawful narcotic drugs, psychotropic substances and precursors” [16] In addition, the term provided for in some CIS countries [17]. But this concept in national legislation is not defined, although this structure it operates [18]. This approach shifts the focus unduly law-making and law enforcement and jurisprudence in the direction of illegal narcotic drugs, psychotropic substances and precursors [6, p. 39]. In order to eliminate terminological confusion offer to enter into official circulation in Ukraine legal structure “lawful narcotic drugs, psychotropic substances and precursors” as permitted by law and controlled activity related to the cultivation of plants containing narcotic substances, development, production, manufacture, storage, delivery, sale, purchase, transfer (forwarding and transportation, including import and export), use, distribution, transmission and destroyed samples Yam drugs, psychotropic substances and their precursors in order to meet the medical, industrial, scientific, educational, expert and other needs of society and the state. Examining the definition given design should complement the provisions of Art. 1 according Law of Ukraine “On narcotic drugs, psychotropic substances and precursors”.

In order to establish common principles that could be acceptable to all States, formed a complete legal system control under the Single Convention in 1961 [20] Convention, 1971 [21] and the Convention in 1988 [22]. Named UN Convention became almost universal character of Parties 94% of the members of this international organization. These figures are among the highest compared to all multilateral regulations adopted in the UN [23, p. 24]. Note that the convention focuses on the legal settlement of narcotic drugs and psychotropic substances, mainly for medical and scientific purposes.

Later find out construction “Approximation of state control of narcotic drugs, psychotropic substances

and precursors” that no law nor scientific legal literature is not defined and therefore require interpretation and clarification of the legal relationship with related terms. In English the term “adaptation” (“adaptation”) means “adaptation”, “processing” [24, p. 22]. Scientists, lawyers concept of “legal approximation” is understood as an adaptation of existing national legislation to the new international obligations undertaken by the state [25, p. 114]. The law defines this category of Ukraine the process of bringing domestic laws and other regulations in accordance with the *acquis communautaire*, as a process of gradual convergence and harmonization of national legislation of Ukraine in compliance with EU legislation [26]. Investigated design “adaptation of legislation on state control of narcotic drugs, psychotropic substances and precursors” can, in our opinion, be understood as a process of bringing the laws of Ukraine and other regulations in the field of control of narcotic drugs, psychotropic substances and precursors in compliance with the *acquis communautaire*.

The forms in the legal adaptation of the scientific literature include: a) approximation as the process of making law, amending or canceling them to align the provisions of national law the provisions of the law of another State, group of States or the international community as a whole; b) implementation as law-making activities of the state to comply with and implement recent commitments made under international law; c) transposition as the process of adoption, modification or cancellation of law to achieve identity with relevant donor regulations. Transposition can also mean copying text legal document verbatim into national law or a direct link to the international final act; d) the coordination as the process of harmonization of national legislation and its application on which transpose approximation or is impossible or unnecessary. By the law of adaptation is sometimes referred unification and harmonization [27]. The above forms can be used in the process of adapting legislation on state control of narcotic drugs, psychotropic substances and precursors.

Concerning about “*acquis communautaire* (*acquis*)”, then in accordance with Section II of the Law “On the National Program of Adaptation of Ukraine to the European Union” of 18

March 2004 – is the legal system of the EU, which includes legislative acts of the organization (but not limited to) taken within the European Community, the Common foreign and security policy and cooperation in justice and home affairs. The same law provides that the adaptation of Ukraine to the EU legislation is a priority component of the process of Ukraine’s integration into the EU, which, in turn, is a priority for Ukrainian foreign policy. The goal of this same adaptation is to achieve compliance with the legal system of Ukraine *acquis communautaire* on the criteria that apply to this states that intend to join it [28].

So adapt legislation on state control of narcotic drugs, psychotropic substances and precursors needed to the legal system of the EU, which includes legislative acts of the organization adopted within the European Community, the Common Foreign and Security Policy and Cooperation in Justice and Home Affairs to control the trafficking of drugs, psychotropic substances and precursors.

Conclusions. Optimization of law state control of narcotic drugs, psychotropic substances and precursors can be defined as a system complex process carried out by authorized state bodies and their officials within the authority provided by law, and which aims to improve the existing legal framework by selecting the best (among possible) option of its operations for the purpose of effective state control. Important components of it include its object, subject, and these basic guidelines, as purpose, principles and objectives of the control. The main actors are the Parliament of Ukraine, the President and the Cabinet of Ukraine. Its areas include adaptation and harmonization. Under the harmonization of legislation of state control of narcotic drugs, psychotropic substances and precursors, in our opinion, should be understood to bring the laws of the Member States and countries in compliance with the EU on the basis of regulations of the organization in order to create a unified system of legal norms include standardized set of relevant basic concepts and categories in the field of control of narcotic drugs, psychotropic substances and precursors. In adapting legislation the state control over narcotic drugs, psychotropic substances and precursors can be understood as a process of bringing the laws of Ukraine and other



regulations in the field of control of narcotic drugs, psychotropic substances and precursors in line with the acquis communautaire.

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