

Contradictions between the Practice of Operational Search Activities and the Objectives of Criminal Legislation (on the Example of Countering Drug Trafficking)

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Keywords: Operational-investigative activity; criminal legislation tasks; national security of Russia; drugs; counteraction to illegal drug trafficking.

Abstract: The article analyzes the tasks of the Criminal Code of the Russian Federation and the practice of operational investigative activities in order to reveal the contradictions between them. The objective of the work is a comprehensive analysis of criminal legal means of countering crimes committed in the field of illicit drug trafficking, through the prism of the practice of their implementation in the activities of departments of internal affairs agencies in the implementation of operational search activities (ORD). To achieve this goal, the authors set the main tasks that follow from the peculiarities of the current practice of the ORD; specifically, identifying contradictions between the practice of the ORD and the task of preventing crimes in the field of drug trafficking specified in the Criminal Code of the Russian Federation. The use of the method of comparative analysis in conjunction with general scientific methods allowed us to confirm the hypothesis put forward by the authors that there are contradictions between the tasks of the Criminal Code of the Russian Federation and the practice of the ORD in the realm of countering drug trafficking. In the course of the study there was an attempt to show the ineffectiveness of countering drug trafficking due to the imbalance between the norms of the current criminal legislation and the police practice in this area. The article also substantiates the need for a balanced relationship between the norms of the Criminal Code of the Russian Federation and the practice of the Criminal Code of the Russian Federation to improve the quality of comprehensive counteraction to this type of crime; necessary measures are suggested to be taken. The results of the study allow us to expand the knowledge of the science of operational-search activities, and contribute to improve the effectiveness of the operational departments of the internal affairs agencies related to countering illicit drug trafficking.


1 INTRODUCTION

According to Article 2 of the Criminal Code of the Russian Federation (hereinafter - the Criminal Code of the Russian Federation), the tasks of criminal legislation are the protection of human rights from criminal encroachments as well as the prevention of crimes. In order to carry out these tasks, the Criminal Code of the Russian Federation defines which acts being dangerous to the person, society or the state are recognized as crimes; and what types of punishments

and other measures of a criminal legal nature are established for their commitment.

According to Article 2 of the Federal Law of 12.08.1995 No. 144-FZ «Operational search activities», besides detecting, suppressing, disclosing crimes, revealing and identifying persons who prepare them, commit or have committed crimes, etc., the task of operational search activities is also crime prevention.

Despite the existence of a single task-for criminal law and operational - search activities-in the form of crime prevention, an assumption is possible to be

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made that nowadays there is a contradiction between the tasks of the Criminal Code of the Russian Federation and the established practice of operational-search activities in the field of countering illicit drug trafficking. We will try to test this hypothesis in this article.

2 MATERIALS AND METHODS

This study was based on the generalized materials of criminal cases on drug trafficking proceeded in the Railway City Court of the Moscow region from 2004 to 2020, including those that were examined by one of the authors of this article.

The methodological basis was based on a dialectical approach to the disclosure of legal phenomena and processes using general scientific (system, logical, analysis and synthesis) and private scientific (formal - legal, linguistic - legal, comparative-legal) methods. The use of a combination of these methods allowed us to determine the main directions of the state's activities to improve the effectiveness of countering drug trafficking, as well as to propose specific primary steps to eliminate the contradiction between the objectives of the Criminal Code of the Russian Federation and the established practice of operational search activities in this area.

3 RESULTS AND DISCUSSION

Modern science identifies various causes and consequences of drug abuse (Salas-Wright, Vaughn, González, 2016). Different PA States apply different approaches to the trafficking of these substances. Starting from their ban (Melissa A. Logue, 2017), to official authorization (Seddon, Floodgate, 2020).

In Russia and the CIS countries the responsibility for illegal drug trafficking is indicated in criminal legislation (Banaeva, 2016).

An analysis of the Criminal Code Amendments of the Russian Federation, which establish responsibility for illegal drug trafficking, allows us to state a significant tightening of responsibility for this type of crime since January 01, 2013. These amendments were introduced in accordance with Federal Law No. 18-FZ of 01.03.2012 "On Amendments to Certain Legislative Acts of the Russian Federation". So, if before January 01, 2013, for illegal possession without the purpose of selling narcotic drugs on a particularly large scale, liability was provided in the

form of imprisonment for a period of 3 to 10 years, after the date mentioned above – from 10 to 15 years. If the sale of narcotic drugs in the purchased amount was previously punishable by 5 to 12 years of imprisonment, then after the specified date - from 10 to 20 years. Therefore, if the sale of a particularly large amount was previously punishable by imprisonment for a term of 8 to 20 years, now it is punished from 15 to 20 years.

Such a significant increase in the terms of imprisonment had an objective to strengthen the role of the Criminal Code of the Russian Federation in preventing the illegal sale of narcotic drugs and was directed against drug dealers, i.e. against persons who deliberately imported drugs into the territory of Russia or distributed them on a professional basis.

This is confirmed by the list of convicts under Article 2281 of the Criminal Code of the Russian Federation for the period from 2004 to 2012 that preceded these amendments. Thus, all the examined verdicts under Article 2281 of the Criminal Code of the Russian Federation for a particular district during this period show that 21.10 % of those illegal drug sales were convicted by foreign citizens who permanently reside in the republics of Central Asia and arrived in Russia for the purpose of illegal distribution of narcotic drugs. Moreover, according to the examined criminal cases materials, only 2% of those persons used drugs. Among the other convicts, 43.28% of the ones used drugs. As a rule, convicted foreign citizens did not have registration on the territory of the Russian Federation. Also, these individuals did not have a permanent legal source of income and did not have stable social ties in Russia. In addition, in the vast majority of cases, the materials of criminal cases had information about the purchase of other drug dealers from foreign citizens.

The research based on the same parameters of similar criminal cases in the same area in the period from January 1, 2013 to October 2020, i.e., for almost the same period of time, determined the following. Only 7.36 % of those convicted of illegal drug sales were foreign citizens permanently residing in the republics of Central Asia and arrived in Russia for the purpose of illegal distribution of narcotic drugs. Among these individuals, 57.14% had already used drugs. Among the other convicts, more than 90.0% used drugs. 42.86% were registered on the territory of the Russian Federation. The same number had an official source of income. 14.29 % were assimilated in Russia and had stable social ties (married to Russian citizens, had children who were Russian citizens).

A comparison of the statistics mentioned above indicates a significant decrease in foreign citizens convicted of illegal drug sales (three times), an increase in drug addicts (25 times), and the assimilation of these foreign citizens into Russian society. Also, these data record a general increase in several times of drug addiction among those convicted of illegal sale of narcotic drugs.

The criminal cases mentioned above were also studied regarding the type of narcotic drugs (psychotropic substances) that are the object of crimes. The research revealed that it was heroin from 2004 to January 1, 2013, 73.28% (the rest - hashish, marijuana, amphetamine, methadone, MDMA, etc.); after that Butanoyl-1-methylindole (1-(1-methyl-1H-indole-3-yl)butane-1-one) and its derivatives (the so-called "spice") come first from January 1, 2013, 3; and then – mephedrone and the so-called "salts"-N-methylephedrone, etc., and their derivatives. Nowadays, mephedrone and "salts" have practically displaced all other types of narcotic drugs and psychotropic substances from the illegal market of the country.

The delivery options of these drugs to Russia are also different. Thus, heroin was brought mainly from the Central Asian republics (Tajikistan). "Spice" requires special production conditions and came to our country from China. The bulk of mephedrone and "salts" are currently delivered to Russia from China, some of them from African countries (Kenya); these drugs are also produced in Russia; and the volume of this production is currently growing; nevertheless, it is not competitive with the drug coming from China due to the cost and the volume of production.

Now let come up to the main feature of the modern situation with drugs trafficking which is considered to be the way of it. Earlier heroin and other drugs were distributed by the means of selling from a salesman to a customer, approximately since 2010-2013, according to the criminal case mentioned above, sales have begun to be done by means of «zakladki»/«drug stash», i.e. secret places where drugs are hidden after online payments with the subsequent texting of the exact coordinates to a customer. This way of drug distribution is determined to be safe since a seller does not have any direct contact with a customer, which causes difficulties in making an operational search event (hereinafter referred to as the ORM) "verification purchase" in order to prevent crimes. Online stores, where these days drug trade is carried out, were organized in these last years. The most famous of them are "Thor" and "Hydra". Currently, almost all drug sales, with rare exceptions (meaning the sale of drugs between

previously familiar drug addicts), are carried out through «zakladki»/ «drug stash».

These criminal case researches indicate that wholesale, as well as a small part of retail trade, is carried out by the same foreign citizens (as a rule, accounts and phone numbers are registered in the Republic of Tajikistan). The most part of the retail trade is done by drug addicts themselves (Pankratov, Sadrislamov, 2020), who work as so - called "kladmen" – persons who buy drugs on a large or especially large scale, sometimes packaging them and making «zakladki»/ «drug stash» for direct consumers at the price from 500 rubles-depending on the type and size of the drug or psychotropic substance.

Here we ought to refer to the practice of operational-search activities for the suppression of drug trafficking. Hence, earlier, until about 2013, the most common and effective type of OPM in this area was "verification purchase" (Pomelov, 2019), now it is "surveillance" (Abramochkin, 2016).

In order to prevent the illegal narcotic drug selling, the ORM "verification purchase" was carried out and is carried out according to the standard scheme: obtaining information from operational sources about the person selling narcotic drugs - find a buyer trusted by a seller, - reach an agreement between the buyer and the seller about the place of sale – hand the buyer money-the sale itself under the control of operational officers-detain the seller at the scene of the crime.

These days, the suppression of illegal sales is mostly carried out according to the following approximate scheme: obtain operational information about the places most intensively used for «zakladki»/ «drug stash». Then the ORM "surveillance" of the specified area is carried out. Arrest of suspicious persons in this territory. Their body and a mobile phone search for the presence of narcotic drugs. In case of narcotic drugs detection, check, with the consent of the detainee, the correspondence in the phone of the detainee, which later allows you correctly to qualify the crime committed – as illegal acquisition and possession of drugs or as an attempt to illegally sell them.

Applying the above-mentioned scheme in modern ORM practice, a drug addict, who earn for a dose by means of «zakladki»/ «drug stash» (Shulzhenko, 2019), is mostly detained, but not a professional drug dealer.

Therefore, the change in the method of sale-through online stores has led a significant change in the list of the persons committing these crimes.

And nowadays real drug dealers, who provide the flow of drugs to Russia through couriers; these ones bring drugs in a particularly large amount and make a large «zakladki»/ «drug stash», have reduced to a minimum the probability of stopping their criminal activities. Only the wholesale drug courier as well as in most cases those persons, who are recruited via the Internet for making «zakladki»/ «drug stash» (kladmen), are at risk of being detained.

According to the practice wholesome drug couriers are detained extremely rarely. It happens due to the methods of conspiracy they have developed in recent years and the price of so-called «zakladki»/ «drug stash» in the amount of millions and tens of millions rubbles, this causes a relevant drug courier recruitment and training.

The only ones who left are so-called "kladmen", who are drug addicts themselves in the vast majority of cases. These persons suffering from this disease are under ORM "surveillance", which is carried out in convenient places to make "«zakladki»/ «drug stash». As a result, people from this category of dealers are likely to be wound up in court

These are exactly those drug addicts to whom severe criminal penalties are currently applied which were worked out at the turn of 2010 regarding to the persons being real dealers without being drug addicts themselves.

That is, the authors of the amendments in Criminal Code of Russia indicated above, enlarging the sentence term did not take into account and could not take into account the fact that the vast majority of drug dealers will become drug addicted themselves.

Herewith, the fact should be taken into account that there were not such a significant proportion of drug addicts among drug dealers before the tightening of the law indicated above. This is confirmed by the data of investigated criminal cases as well as their statistics.

In this part of the article it is very important to point out that in 1953 The World Health Organization (WHO) admitted drug addiction (as well as alcoholic addiction) a progressing, incurable and fatal disease.

The tenth revised edition of the International Statistical Classification of Diseases and Related Health Problems (ICD-10) includes Section V, which contains a detailed classification of more than 300 mental and behavioral disorders.

This section includes mental and behavioral disorders due to the use of psychoactive substances. These particularly include mental and behavioral disorders resulting from the use of alcohol (Code F10 according to ICD-10), opioids (F11), cannabinoids

(F12), cocaine (F14), other stimulants, including caffeine (F15), hallucinogens (F16), etc.

According to the WHO recommendations, an addict is considered a person whose condition is characterized by periodic or constant intoxication; an increase in the dose of a substance to obtain the desired narcotic effect; a distinct mental and physical addiction to the drug being injected, which is revealed in an irresistible craving to the drug; an irresistible desire to obtain the drug by any means.

Thereby, nowadays as a result of the operational search activities operational departments of the police prevent the criminal activities of drug-dependent distributors, i.e., people who are sick and need treatment.

Moreover, as practice depicts and the incessant flow of drugs into our country shows, modern methods of carrying out operational and investigative activities are unable to suppress the actions of persons who directly make excessive profits from this type of criminal activity.

This ORD practice is contrary to the tasks of Criminal Code of Russia since it is unable to suppress the commitment of new crimes related to illicit drug trafficking.

This is due to the facts that, firstly, the persons organizing supply of drugs to Russia, including so-called «operators», are unreachable for operational departments of law enforcement agencies; secondly, new synthetic drugs (mephedrone, "salts") enable to generate psychological addiction from the first use, they have affordable price, and the most important issue is the availability of acquisition and availability on the Internet, in the streets, as well as active advertising of drugs.

Moreover, with regard to the last condition, namely, the transition of drug trafficking to the "Internet", its main victims are the most active users of the world wide web – minors and young people, for whom this web has become not only a communication background but also work one; a place of purchasing goods, studying, and spending leisure time. Due to the peculiarities of puberty, the distribution of drugs has now acquired an avalanche-like character among minors.

Thus, the change of environment and means of drug trafficking has led to the contradictions between ORD practice and the tasks of Criminal Code of Russia in the realm of countering illicit drug trafficking.

Besides the conclusions mentioned above this one is proved by the fact that the operational search measures carried out by the police departments prevent the criminal activity of the lower level of drug

trade, which participants - due to their dependence - are interchangeable and inexhaustible as long as the society exists.

Meanwhile, -based on the peculiarities of the perception of the surrounding reality by drug addicts and the previously listed signs that characterize such patients - long term sentence of drug addicts is respectively unable to affect the prevention of new crimes by both drug-dependent convicts and other persons.

Everything outlined above indicates that the current situation in this realm threatens the national security of the Russian Federation as contemporary police operation practice is incapable neither to influence to some extent on drug flow entering Russia nor on growing drug distribution.

4 CONCLUSIONS

Summarizing everything presented in this article, the following primary steps are considered to be suggested in order to eliminate the contradictions in the name of the article.

First, operation police departments ought to be mobilized to elaborate and implement new methods of detecting and suppressing the supply of drugs to the Russian Federation. This is a priority task, the implementation of which affects the national security of Russia.

Second, to exclude by all means any technical possibility of obtaining information from the Internet, promoting the use of psychoactive substances, as well as information about their acquisition and manufacture. According to the author of the article this task is also crucial since it affects the national security of Russia, since potential victims of drug usage are the most active users of the Internet are minors, who make up the country's gene pool.

Third, to minimize any possibility of obtaining information promoting the usage, production and acquisition of drugs from any other sources besides the internet.

Fourth, to develop real cooperation with the operational departments of foreign law enforcement agencies in terms of countering the illegal supply of drugs to Russia, as well as countering participation in the distribution of drugs on the territory of Russia by the so-called foreign "operators". This is especially true about the countries through which the main drug supplies are currently flowing to our country.

All listed measures refer just to eliminate the contradiction between the tasks and the practice of crime prevention in this realm. The problem of drug

addiction in the country is global and requires the immediate undertaking a set of proactive measures in all social spheres, including both the prevention of drug trafficking and drug addicts treatment with subsequent lifelong rehabilitation.

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