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TÍTULO: Resolución de conflictos de derecho internacional en la lucha contra el narcotráfico como condición para garantizar los derechos humanos.

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RESUMEN: El problema del tráfico ilícito de drogas es un problema mundial cada vez más transnacional. Para contrarrestar el delito transnacional de drogas, ahora es necesario eliminar los conflictos de derecho internacional en la lucha contra este delito. El presente artículo aborda esta problemática.

PALABRAS CLAVES: drogas, tráfico ilegal, distribución ilegal, crimen, derecho internacional.

TITLE: Resolution of conflicts of international law in the fight against drug trafficking as a condition to guarantee human rights.

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ABSTRACT: The problem of illicit drug trafficking is a global problem that is increasingly transnational in nature. In order to counter transnational drug crime, it is now necessary to eliminate conflicts of international law in the fight against this crime. The article addresses this issue.

KEY WORDS: drugs, illegal trafficking, illegal distribution, crime, international law.

INTRODUCTION.

The problem of combating drug use can be solved only by identifying ways and means that ensure the trafficking of drugs, in which the criminal structures of many states are involved. In this regard, the problem of combating the trafficking of narcotic drugs has been given attention by many international organizations, including the United Nations.

The regulatory framework for drug trafficking should be comprehensive, including international, regional and local levels.

In the middle of the 20th century, the problem of combating drug trafficking acquired international legal meaning and required the combined efforts of states in the field of counteracting this universal act.

DEVELOPMENT.

Research of methodology.

In the process of cognition of state-legal phenomena, based on the approach of S.A. Komarov, general scientific methods were used (formal-logical, sociological, systemic, structural-functional, concrete-historical, statistical, ascension from abstract to concrete, etc.); general logical methods of theoretical analysis (analysis, synthesis, generalization, comparison, abstraction, analogy, modeling, etc.); private scientific methods (comparative law, technical and legal analysis, concretization, interpretation, etc.) [Komarov S.A. (2019), p. 33].

Study results.

The New York Conference, which was held from January 24 to March 25, 1961, adopted the Unified Convention on Narcotic Drugs (hereinafter - the 1961 Convention). For the first time, this Convention set the task of combating drug trafficking for all states that are members of the United Nations, and it was also planned to solve many problems that arose during that period in the uniformity of mechanisms used in the process of combating drug trafficking by various states.

Due to the fact that there were already existing multilateral treaties on the fight against narcotic drugs (for example, the Paris Convention of 1931), the 1961 Convention was to replace them all with a single document and therefore reduce their number. In order to more effectively combat drug trafficking, the task was to streamline and simplify international control over drug trafficking, which, in turn, should lead to a reduction in international regulatory bodies in this area, as well as to the creation of an effective system of control over the production of drug-containing products (opium poppy, raw opium, coca leaves and cannabis).

The 1961 Convention marked the beginning of the fight against drugs around the world and resolved disputes arising between states over the conceptual framework, and also banned activities that led to the production of drugs. So, after its adoption, it was forbidden to use opium, coca leaves and hashish for non-medical purposes. This has led to a strengthening of the control system for the cultivation of hemp bushes and cocaine bushes. In this regard, it was decided to create an International Special Committee that would take control of the cultivation of hemp bushes and cocaine bushes [Alexandrov R.A. (2015), p. 120].

In addition, the 1961 Convention introduced a very important criterion, which placed all drugs in certain lists [4], which facilitated the control of drugs and also allowed to determine their public danger.

The most dangerous and harmful substances for use began to be contained in the first list, slightly less dangerous - in the second. The substances listed are subject to the most stringent control measures. Control over substances on the third list is much milder. And the substances listed in the fourth list are often found in the treatment of certain diseases. Of course, their leave from pharmacies and use in medical institutions should be carried out in accordance with the prescription of a doctor according to his prescription. Unfortunately, many criminals and cybercriminals specifically use this loophole as a recipe to take advantage and purchase a drug.

In 1972, there was a need to supplement the 1961 Convention with certain amendments. This was due to the fact that by this time a lot of new substances and preparations had arisen that in their properties belonged to narcotic drugs. The lists were expanded, and only, mainly, the third and fourth, in which new drugs were listed, fortunately, not so life-threatening as those on the first and second lists.

The same amendments established new rules, according to which each signatory of these additions should annually submit to the International Committee a preliminary assessment of the estimated total requirements for all controlled substances in its territory. The point, of course, is that these narcotic substances will be used only for medical and scientific purposes, for the manufacture of other substances, for stocks and additives to them [2, p. 25].

In addition, each state that has acceded to and ratified the 1961 Convention had to independently determine its own state body, which was entrusted with the control prescribed by the said Convention within its own country. In the Russian Federation, such a body is currently one of the units of the Ministry of the Interior.

Any import and export of narcotic drugs, in accordance with the 1961 Convention, must also be authorized by the governments of the countries of both importing and exporting drugs, indicating their type and quantity, as well as accurately determining the delivery time.

The system for the creation, manufacture, processing, transportation of licit drugs must also be regulated, and any activity related to the illicit manufacture of drugs must be suppressed. A criminal who has been caught for one of these illegal types of drug activities is subject to extradition under any extradition treaty or on any other grounds.

The 1961 Convention provides only general provisions on the criminality of certain acts, the specific elements of crimes are determined, prosecuted and punished in accordance with the internal law of each of the contracting parties. There are also gaps in such agreements established between states, and because of this, disputes between law enforcement agencies of different states often arise.

Another international document relevant to the fight against drug trafficking is the 1971 Convention on Psychotropic Substances (hereinafter referred to as the 1971 Convention). It refers to the illegal consumption of psychotropic substances, the use of which in the 60s and 70s becomes especially popular, while not always according to the doctor's prescription and in its effect, it is close to narcotic substances.

The 1971 International Convention was supposed to regulate and monitor new drugs and psychotropic substances that appeared [5]. Among them are such as hallucinogens, symptomatic amphetamine-type drugs, barbiturates, as well as sleeping pills, tranquilizing and analgesic drugs. Some of these substances are prohibited for use, others are given only by prescription.

It is also worth noting that, starting from the 1961 Convention, many countries have switched to the treatment of those people who have undergone narcotic diseases. And the 1971 Convention already contained norms that obliged some people to compulsory treatment.

A little later, another Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 was adopted, which played a large role in the fight against trafficking in narcotic substances (hereinafter referred to as the 1988 Convention). It was adopted by a special UN conference in December 1988 and entered into force in November 1990. The main motive for its

adoption was the need to strengthen and supplement the measures provided for by the two previous UN Conventions [7].

The 1988 Convention, like its predecessors, was designed to control and regulate the trafficking of narcotic substances. And by this time, it was already clear that it was practically impossible to control or even completely ban the circulation of narcotic substances. In this regard, additional steps have been taken with the goal of weakening the circulation of narcotic substances. As the main means of solving this problem, it was proposed to conclude international agreements between states aimed at ensuring the fight against drugs and the use of psychotropic substances for non-medical purposes.

The lists of psychotropic and narcotic drugs that appeared in those years and already constituted a potential social danger were also expanded.

In the 1988 Convention, the main focus in the fight against drug trafficking was not on the activities of the regulatory body of the Committee, as it was in the 1961 Convention, but on the resumption of interstate relations between bodies whose main goal was to combat drug trafficking.

Now the parties that signed as parties to this Convention had to provide each other with broad legal assistance, help resolve specific disputes, and help protect against trafficking in narcotic substances.

Under the 1988 Convention, states agreed to amend their national laws to facilitate the confiscation of proceeds from drug trafficking. In addition, it provided the opportunity to allow the courts to disclose bank secrecy during the investigation of drug cases, facilitate the extradition and prosecution of accused drug dealers, facilitate the use of the “controlled delivery” method, trace and intercept illegal drug consignments, and prevent illegal mailings of drugs.

In the Criminal Codes of the States that acceded to the Convention, new offenses were introduced.

Among them are such as the manufacture, transportation or other activities with equipment intended for the manufacture of narcotic substances, organization, financing and other assistance in the implementation of illicit drug trafficking, withholding or hiding the genuine sources of manufacture

of narcotic drugs, as well as generating income from this turnover, conversion or transfer of property, if it is known that this property was obtained from the money received from the sale of narcotic drugs. Also, as a form of punishment, the 1988 Convention provided for the possibility of imposing various sanctions: imprisonment, including imprisonment, penalties, confiscation of property.

An important innovation was the identification of circumstances aggravating responsibility for committing a crime relating to drug trafficking. To such aggravating circumstances, the 1988 Convention includes participation in offenses by an organized criminal group which includes the offender, the offender's participation in other types of international organized criminal activity or other illegal activities that contributed to the commission of this offense, the use of violence or weapons by the offender the process of committing a crime, as well as other circumstances listed in paragraph 5 of Art. 3 of the 1988 Convention.

One of the innovations, the purpose of which was to put under international control the activities of law enforcement agencies of various states in the fight against drugs, was article 12 of the 1988 Convention. It established that its participants should provide the Committee with the following information in the prescribed form and in the prescribed manner on the appropriate forms:

- The amount of seized substances included in tables No. 1 and 2 of the Convention, and, when known, their origin.
- Information on any substance that is not included in tables No. 1 and 2, but which, according to reports, was used in the illicit manufacture of narcotic drugs or psychotropic substances, and which, in the opinion of the party, represents a rather serious problem that deserves the attention of the Committee.
- Types of leaks and methods for the illicit manufacture of substances.

The considered main international legal acts regulating the issues of combating drug trafficking at the international level allow us to talk about the existence of a uniform approach in the different countries to the problem of combating drug use. However, many issues remained unresolved regarding the punishment of criminals. So, the conflict remains the issue of criminalizing drug distributors of any one group, whose members are in different countries [6, p. 140]. So, in order to increase the number of drug users, such drug business participants are increasingly using the Internet, which allows not only to apply increased security measures, but also to carry out an operational search for sellers and buyers, organize the so-called “regional marketing” [Turyshv A. D. (2014), p. 85].

During the monitoring of the Internet space, the work of a significant number of Internet resources promoting drugs and distributing narcotic drugs is detected and suppressed. However, online stores continue to attract potential customers by conducting special marketing campaigns to attract new and retain regular customers (free delivery of “probes”, discounts, etc.). Most of these sites are registered on foreign domains, which does not allow to fully suppress their work and prosecute the organizers of the drug business, including due to the collision of criminal law norms of different countries [Grishko A. Ya. (2014), p. 67].

Until recently, the main body controlling drug trafficking in our country was the Federal Drug Control Service of the Russian Federation. It was a federal executive body, carrying out functions on the development of state policy, legal regulation, control and supervision in the sphere of trafficking in narcotic drugs, psychotropic substances and their precursors, as well as in the field of combating their illicit trafficking.

On April 5, 2016, by Decree of the President of Russia Vladimir Putin, the Federal Drug Control Service was abolished, and its functions and powers were transferred to the system of the Ministry of Internal Affairs of the Russian Federation from June 2016. A joint main department for drug trafficking control of the Ministry of Internal Affairs of the Russian Federation was established.

Given the scale of the drug trafficking problem, a number of regulatory measures have recently been adopted in Russia. Thus, criminal liability has been introduced for the illegal production, sale or transfer of narcotic drugs, psychotropic substances and their analogues using the media or electronic or information and telecommunication networks (including the Internet).

But it is impossible to solve the problem with one control over internal trafficking; therefore, the Russian Federation focuses on these Conventions and other international multilateral and bilateral treaties in the fight against drug trafficking.

In January 1998, the Russian Federation joined the Memorandum of Understanding and Cooperation in the Fight Against Drug Trafficking between Turkmenistan, Uzbekistan, Kazakhstan, Kyrgyzstan and Tajikistan under the United Nations Drug Control Program (hereinafter - UNDCP). Russia also participates in various programs to control the turnover of narcotic substances in the countries of Central Asia.

In 1998, the Government of the Russian Federation and the UN Secretariat concluded an Agreement on the provision of urgent technical assistance in the field of drug control and organized crime.

Currently, under the auspices of UNDCP, work is underway to create a telecommunication automated information system that combines the information resources of not only regional units, but also interacting departments. These are agencies such as INTERPOL, the FSB of Russia, which allow centralizing information of an operational nature with a view to further using it in operational and analytical work by employees in the fight against drug trafficking.

Law enforcement agencies use a data bank that stores all data on violations in the field of drug trafficking. Therefore, a central collection was created, which includes all the main narcotic drugs, and every year later this list only increases [Osmonaliyev K. M. (2014), p. 43].

As noted in the 1988 Convention, it is impossible to completely stop drug trafficking in the near future, but it is entirely within our power to suspend it.

In order to improve the work of employees involved in this task, an exchange of experience with other departments from other states, the study of statistical information, methodological literature, regulatory documents [Federyuk S. Yu. (2012), p. 107].

At the request of the Ministers of the Interior of the countries of the Commonwealth of Independent States, the Ministry of Internal Affairs of Russia provides assistance in the training and advanced training of employees of units to combat drug trafficking at the All-Russian Institute for Advanced Studies of employees of the Ministry of Internal Affairs of Russia in Domodedovo. It should be clarified that it is there that the opening of the International Center for Training Specialists in the Field of Combating Drug Trafficking is planned, which will allow for the training of law enforcement officials of the countries of the Central Asian region and the CIS countries as a whole.

And, of course, we need to clarify that Russia is constantly interacting with INTERPOL. He, in turn, informs countries about new ways of transporting or hiding drugs, about new types of drugs that have appeared. All this information is published by INTERPOL in its specialized publications. Since the 1988 Convention secured the advantage in the field of ensuring the safety from drug trafficking for bilateral agreements, such agreements are actively concluded. In addition, working contacts are developing [Turyshv A. D. (2014), p. 68].

However, as you know, no one is immune from mistakes, including experts. Thus, in the United States, due to incorrect examination, 20,000 thousand drug sentences were canceled. Annie Duhan, a chemical expert at the Massachusetts lab, has faked test results for years. Because of this, the courts overturned nearly 20,000 false drug sentences.

Everything was revealed when in 2011 one of the employees of the same laboratory informed the management that Annie Duhan had violated the analysis procedure of almost a hundred samples. After that, she was suspended from her duties. Then the police became interested in this issue, an investigation began, which led to an unexpected result.

It turned out that E. Duhan deliberately added drugs to the “clean” samples or might not have done the analysis at all and issued a conclusion. The expert also forged the necessary signatures of officials on them. She has been doing this for more than 9 years, from 2003 to 2012, conducting up to 500 tests every month, being considered a “leader” because, on average, one employee does about 100 tests a month. During the investigation, it suddenly turned out that she did not even have a chemist's education.

There is no evidence that E. Duhan did this out of selfish motives: she received bribes or bonuses. When she was detained, she took the blame on herself, but could not explain why she did everything. Nevertheless, the laboratory was closed for verification.

In 2013, she was sentenced to three years in prison, in 2016 she was released. This case has no precedent in US history.

“We finally achieved the triumph of justice. This is a huge victory for thousands of people who have been unjustly convicted of drug trafficking”, said Matthew Segal, director of the American Civil Liberties Union affiliate in Massachusetts.

This case demonstrated that in the fight against drugs it is necessary to be extremely careful, and the staff who deal with this problem should be honest and honest.

International cooperation in the field of drug control is being strengthened. In 2003, the necessary domestic procedures were implemented to include the service as the competent authority for the implementation of the cooperation agreement of the participating states. This is the Commonwealth of Independent States in the fight against illicit trafficking in narcotic drugs, psychotropic substances and precursors.

Memoranda of understanding were signed with the Agency for Drug Control under the President of the Republic of Tajikistan and the Agency of the Kyrgyz Republic for Drug Control.

Memoranda of cooperation in the control of narcotic drugs and psychotropic substances were also signed between the service and the competent authorities of Iran and Vietnam. Working contacts are being established with the competent departments of Argentina, China and other states.

Over the past years, law enforcement officials have noted a steady increase in criminal "professionalism" and the organization of participants in drug trafficking in a non-contact way.

Drug traffickers are well aware of the methods of work of law enforcement agencies, and, in particular, of the tactics of conducting such an organizational search action as "test purchase".

Trying to protect themselves, they are developing new drug distribution schemes via the Internet, which significantly complicate the work of law enforcement officials in identifying, recording and proving the fact of sale.

Despite the fact that the Russian Federation is a party to all international conventions on the fight against drug trafficking, it has signed many international treaties and agreements on the fight against drug trafficking, including through the distribution of drugs in a non-contact way, the problem of combating drugs in our country remains on the agenda today.

CONCLUSIONS.

Summarizing the above, it is necessary to state that success in combating drug trafficking can only be achieved by combining the efforts of law enforcement agencies of various countries to eliminate conflicts of law in their legislation aimed at combating drug trafficking and drug trafficking, including contactless by way.

Conflict of interest.

The authors confirm the absence of a conflict of interest.

BIBLIOGRAPHIC REFERENCES.

(In Russian).

1. Aleksandrov R.A. (2015) Sostoyaniye nezakonnogo oborota narkotikov v Rossii / R.A. Aleksandrov. - M.: Statut, 2015.
2. Venskaya Konventsiya OON o bor'be protiv nezakonnogo oborota narkoticheskikh sredstv i psikhotropnykh veshchestv ot 20.12.1988 // Sbornik dokumentov. - M.: BEK, 1990.
3. Grishko A. Ya. (2014) O nezakonnom oborote narkotikov. Rossiyskiy kriminologicheskiy vzglyad / A.Ya. Grishko. - M.: Yurist", 2014.
4. Gunaris R. G. (2015) Nezakonnyy oborot narkoticheskikh sredstv: ugolovno-pravovoy i kriminologicheskiy aspekty / R.G. Gunaris. - M.: Statut, 2015.
5. Yedinaya konventsiya o narkoticheskikh sredstvakh 1961 goda s popravkami, vnesennymi v neye v sootvetstvii s Protokolom 1972 goda o popravkakh k Yedinoy Konventsii o narkoticheskikh sredstvakh 1961 goda (s izmeneniyami na 25 marta 1972 goda) // Sbornik dokumentov. - M.: BEK, 1975.
6. Yedinaya konventsiya o psikhotropnykh veshchestvakh ot 21.02.1971 // Sbornik dokumentov. - M.: BEK, 1974.
7. Ivanov S. A. (2017) Preduprezhdeniye mezhdunarodnoy narkoticheskoy prestupnoy deyatel'nosti na primere protivodeystviya beskontaktnym sposobam sbyta narkotikov v Rossiyskoy Federatsii // V sbornike: Obespecheniye bezopasnosti v mezhdunarodnom i natsional'nom prostranstve: Materialy mezhdunarodnoy nauchno-prakticheskoy konferentsii. 4 aprelya 2017 g. / Pod red. k.yu.n., k.i.n. Pirozhkovoy I.G., k.yu.n. I.S.Iskevich. - Tambov, 2017. - S. 137-141 s.
8. Osmonaliyev K. M. (2014) Ugolovno-pravovyye sredstva bor'by s korruptsiyey/ K.M. Osmonaliyev. - M.: Yurayt, 2014.

9. Torgovchenkov V. I., Ivanov S. A. (2016) Osobennosti preduprezhdeniya beskontaktnykh sposobov sbyta narkoticheskikh veshchestv v Rossiyskoy Federatsii // Zakony Rossii: opyt, analiz, praktika. - 2016. - № 12. - S. 84-88.
10. Turyshev A. D. (2014) Kriminologicheskiye aspekty subkul'tury nesovershennoletnikh pravonarushiteley/ A.D. Turyshev. - M.: Yurist", 2014.
11. Federyuk S. YU. (2012) Problemy ugolovno-pravovoy reglamentatsii otvetstvennosti za nezakonnyy oborot narkoticheskikh sredstv i psikhotropnykh veshchestv/ S.YU. Federyuk. - M.: Yurayt, 2012.

(in English).

1. Alexandrov R.A. (2015) The state of drug trafficking in Russia / R.A. Alexandrov. - M.: Statute, 2015.
2. Vienna Convention of the United Nations on the fight against illicit trafficking in narcotic drugs and psychotropic substances from 12/20/1988 // Collection of documents. - M.: BEK, 1990.
3. Grishko A. Ya. (2014) On drug trafficking. Russian criminological view / A.Ya. Grishko. - M.: Lawyer, 2014.
4. Gunaris R. G. (2015) Illicit trafficking in narcotic drugs: criminal law and criminological aspects / R. G. Gunaris. - M.: Statute, 2015.
5. The Single Convention on Narcotic Drugs of 1961, as amended in accordance with the Protocol of 1972 on amendments to the Single Convention on Narcotic Drugs of 1961 (as amended on March 25, 1972) // Collection of documents. - M.: BEK, 1975.
6. Unified Convention on Psychotropic Substances of 02.21.1971 // Collection of documents. - M.: BEK, 1974.

7. Ivanov S. A. (2017) Prevention of international drug crime by the example of counteracting non-contact methods of drug trafficking in the Russian Federation // In the collection: Security in the international and national space: Materials of an international scientific and practical conference. April 4, 2017 / Ph.D. Pirozhkova I.G., Ph.D. I.S. Iskevich. - Tambov, 2017. -- S. 137-141 p.
8. Komarov S.A. (2019) General theory of state and law: a textbook for undergraduate and graduate studies / S. A. Komarov. - 9th ed., Rev. and add. - (Series: Bachelor and Master. Academic Course). - M.: Publishing House "Yurait". - 506 p.
9. Osmonaliev K. M. (2014) Criminal legal means of fighting corruption / K.M. Osmonaliev. – M.: Yurayt, 2014.
10. Torgovchenkov V.I., Ivanov S.A. (2016) Features of the prevention of non-contact ways of selling narcotic substances in the Russian Federation // Laws of Russia: experience, analysis, practice. - 2016. - No. 12. - S. 84-88.
11. Turyshev A. D. (2014) Criminological aspects of the subculture of juvenile delinquents / A.D. Turyshev. - M.: Lawyer, 2014.
12. Federyuk S. Yu. (2012) Problems of the criminal law regulation of liability for illicit trafficking in narcotic drugs and psychotropic substances / S.Yu. Federyuk. - M.: Yurayt, 2012.

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