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Models of the state control and international legal base countering a proliferation and use of narcotic drugs

Abstract: The relevance of this article is caused by increasing of problems associated with a proliferation and using of narcotic drugs and psychotropic substances in the European Union, and as a result, a development of cooperation between countries of the European Union in the fight against drugs, and insufficient study of the topic. In the present study is examined various strategies of state control in the field of drugs and the UN International Convention on combating drugs, which constitute a single international legal framework to combat a proliferation and trafficking of illegal drugs and psychotropic substances.

Keywords: narcotic drugs and psychotropic substances, anti-drug policy, European Union, United Nations Single Convention on Narcotic Drugs of 1961, the Convention on Psychotropic Substances of 1971, the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, the fight against drug trafficking.

Solution to the problem of abuse of narcotic drugs and psychotropic substances and its trade and distribution is one of the priority tasks not only to nation states, but also to the international community. Besides the fact that drugs are harmful to human health, they are also associated to organized crime, an illegal trade, the destabilization of a state as a whole.

Primarily, under the drug control is meant, creation of measures to overcome the drug dependence and prevention of illegal trade in narcotic drugs and psychotropic substances. The main directions of countering a proliferation of drug abuse are: combating illicit trade in narcotic drugs and a control of legal drug trafficking.

Many European countries have recognized that the criminal justice system exacerbates the problems associated with drug use. A holistic approach for the

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prevention of using of narcotic drugs and psychotropic substances are worked out in the UN countries. Each Member State has developed its own policy regarding the using of certain types of drugs, with varying degrees of tolerance for the drug users¹.

Some EU countries have revised its approach in combating narcotic drugs and psychotropic substances, which resulted in a drug user began to consider not as an addict, but as a responsible citizen. From this point all efforts of European countries have been directed to study the factors and causes of the social environment that impel people to use drugs.

State anti-drug policy is a strategy of a state, which aimed at achieving two basic goals - reducing drug use among the population and eradicating illicit trade in narcotics². It should be divided on the state and social measures against drug abuse and illicit trafficking.

The main approaches of the state drug control are repressive (prohibitive, a strategy of the “War on Drugs”), liberal (non-prohibitive and incentive strategy of “Harm Reduction”), restrictive (prohibitive and restrictive).

State repressive approach to drug control is aimed at the eradication of illicit traffic in narcotic drugs and psychotropic substances, an introduction of strict controls and sanctions, compulsory treatment of drug addiction, attitude to drug addicts as asocial, “sick” men. There is no difference in applying this approach in terms between drug dependants and drug users. Drug abuse and illicit trafficking was temporary, which can be eliminated by the introduction of repressive measures. The drug addiction problems and illicit trafficking is temporary, which can be eliminated by introduction of repressive measures.

As for a liberal approach in the drug, it often uses by the EU member states. Some European countries, as for example Portugal, the Netherlands, Spain, Belgium, the Czech Republic consider that a criminalization of drugs does not solve the problem, and on the contrary, it makes the victims of repressive policies of the young, poor men and immigrants.

The two main principles of a liberal approach are: recognition of drug dependant man as a victim of predisposition to a drug or a victim of external circumstances (society, education) and a partial or full legalization of drugs in order to reduce crime and reduce illegal drug trafficking.

Consumption of drugs, according to a liberal approach to drug control is a free choice of each person. The main method of struggle to drug dependence is to help

¹ Gatto C. European Drug Policy: Analysis and Case Studies. NORML Foundation. 1999.
<http://norml.org/component/zoo/category/european-drug-policy-analysis-and-case-studies>

² Boekhout van S. T. Drugs and Decision-Making in the European Union. CEDRO. University of Amsterdam. 2002. p.7

addicted individuals: medical treatment, preventive work with various groups, psychological and social support.

Fundamental provisions of restrictive anti-drug approach are the following: drug addicts are a threat to society and it must apply administrative and criminal measures to them, a provision of medical, social and psychological assistance to people abusing drugs. The main purpose of a restrictive approach is to help drug addicts. States applying restrictive approach does not consider the use of drugs as a criminal offense. One of the key components of a restrictive policy is to carry out preventive work to explain the dangers of drugs. At the same time, it should be strictly controlled an illegal trafficking in narcotic drugs and psychotropic substances.

Choice of approach of state control in the drugs varies in different countries, because the choice of drug policy depends on various factors: a tolerance of society to abuse of narcotic drugs and psychotropic substances, the historical aspect of drug abuse. As a rule, the repressive measures in a control of drug trafficking are used in countries in which drug abuse is higher. Thus, it should take into account particularly attitude to narcotic drugs and psychotropic substances in a country and compare historical national and international experience of efficiency of anti-drug approach³.

Now, many EU countries are debating on legalization and decriminalization of “soft” drugs, in particular, it is discussed an issue of reducing a damage from the drug using. For example, the Netherlands, Denmark, Portugal conduct a policy of “high tolerance” in respect to the drug using. Nevertheless, many public non-profit organizations and institutions form at the population negative attitudes to drugs and drug trafficking (in particular, promote healthy lifestyles and affect a value orientation of young people), as well as take a counteraction measures and prevention of drug abuse. For example, there are international non-profit organizations such as the European Opiate Addiction Treatment Association (EUROPAD), the International Harm Reduction Association, the Eurasian Harm Reduction Network, whose main purpose is to develop approaches to reduce the harm from drug use and involvement of civil society and drug dependent people to a development of drug policy, the International AIDS Society, etc.

At international level, a proposal for the control of narcotic drugs was first announced at the international meeting of the Opium Commission in Shanghai (the Shanghai Opium Commission) in 1909. The purpose of the commission was to develop strict international prohibitionist drug policies. The outcomes of the Committee were the international agreements that had regulated a legal sale of drugs,

³Dmitriyeva T.B., Klimenko T.V., Kozlov A.A. Anti-drug policy: Foreign and national experience. State Anti-Drug Committee. 2009. <http://stratgap.ru/pages/strategy/3662/3887/4253/print.shtml>

which included drugs, as well as prohibited the use of opium⁴. In December 1911 in The Hague, it held the first conference on opium and had adopted the first International Opium Convention, then in 1925 it was adopted the second International Opium Convention, the main objective of which was to control a drug trade internationally.

The provisions of these agreements were subsequently consolidated and expanded to three international conventions of the United Nations: Single Convention on Narcotic Drugs of 1961⁵, the Convention on Psychotropic Substances of 1971⁶ and the United Nations Convention Against Illicit Trade in Drugs and Psychotropic Substances of 1988⁷. The provisions of the conventions are a legal basis for the international control of narcotic drugs and psychotropic substances. The basis requirements of these conventions were as follows: control of production and distribution of drugs, a fight to drug dependence and a fight against drug trafficking. The main purpose of a signing of the conventions had contained in the common desire of various countries to prohibit a production, cultivation, possession, sale and distribution of illegal drugs. These conventions are introduced control measures to limit a use of drugs for medical and scientific purposes, a punishment for crimes related to drugs⁸. It should be noted that under the Conventions, a use of drugs is permitted only for medical and scientific purposes.

The European policy of counter-narcotics is largely focused around the provisions set out in the Single Convention on Narcotic Drugs, 1961. Convention was signed by twelve European countries: Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and the UK. Signatories Parties have pledged to take coordinated and universal measures in combating drug addiction and illicit international drug trade. The Single Convention on Narcotic Drugs of 1961 was aimed at regulating a legal use of drugs (e.g., for medical purposes), and had developed a preventive measure illegal use of more than 100 kinds of drugs.

Each signatory country of the UN Convention of 1961, developed its own national strategy against drug consumption, but, along with it, observed the

⁴UNODC. This day in history: The Shanghai Opium Commission. 1909. <http://www.unodc.org/unodc/en/frontpage/this-day-in-history-the-shanghai-opium-commission-1909.html>

⁵ UN Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961. http://www.un.org/ru/documents/decl_conv/conventions/pdf/single1961.pdf

⁶ UN Convention on Psychotropic Substances of 1971. http://www.un.org/ru/documents/decl_conv/conventions/pdf/substances1971.pdf

⁷ The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. http://www.un.org/ru/documents/decl_conv/conventions/pdf/illicit_drugs.pdf

⁸ UN. Combating drugs. <http://www.un.org/ru/development/progareas/global/narcotics.shtml>

requirements established by the Single Convention on Narcotic Drugs. Measures of supervision and inspection measures to combat drug trafficking, measures to combat drug abuse were presented in the Convention. In accordance with Article 35 of the UN Convention on Narcotic Drugs, the Parties “work out measures at the national level as well as cooperate closely with each other for a joint campaign to combat illegal drug trafficking at the interstate level”⁹.

According to measures of supervision and inspection, the national governments, manufacturers, researchers, hospitals were required to keep records showing the number of drug manufactured and its use. States, if they deem it appropriate, provide the International Committee on Drugs and the Commission on Narcotic Drugs with the statistical information about illegal activities involving drugs. In accordance with Article 36 of the Single Convention, “a cultivation, production, manufacture, supply, import and export of narcotic drugs contrary to the provisions of this Convention and any other action will be punishable offenses when committed intentionally, and that serious offenses shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty”¹⁰. According to Article 38 of the Single Convention on Narcotic Drugs, in combating drug abuse “the parties shall take all feasible measures to prevent the abuse of drugs and for the early detection, treatment and education of individuals and social reintegration of persons”¹¹.

Thus, proceeding from provisions of the Convention, trade in narcotic drugs is prohibited. However, in sphere of using of drug substances the provisions of the Convention is ambiguous: the Parties must “take some form of action”. These provisions are due to different domestic policy and a various national legislation to combating the proliferation of drugs. The Convention provides the different relations of countries to the use of drugs. States issue its own laws on combating drugs, provided that these laws are in accordance with the Single Convention¹².

This Convention classifies drugs into four categories. Particularly dangerous to human health drugs are listed in the first list. Cannabis, coca leaf, cocaine, opium, morphine, heroin, methadone, which are presented as “hazardous substances” and subjects to strict degree of control are included in the first list. Codeine and salt of drugs are included in the second list. Preparations of codeine, ethyl morphine, norkodeina etc. are listed in the third list. Especially dangerous to human health

⁹ UN. Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961. Art. 35. p. 48. http://www.incb.org/pdf/e/conv/convention_1961_ru.pdf

¹⁰ UN. Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961. p. 49-50, http://www.incb.org/pdf/e/conv/convention_1961_ru.pdf

¹¹ Ibid, p. 52

¹² Gatto C. European Drug Policy: Analysis and Case Studies. NORML Foundation. 1999. <http://norml.org/component/zoo/category/european-drug-policy-analysis-and-case-studies>

drugs, such as heroin, desomorphine, ketobemidone and coca leaf and cannabis are included in the fourth list. Thus, the most dangerous to human health drugs are listed in the first and fourth lists (some drugs are duplicated in the list I and IV), but for drugs in the fourth list can be applied more strict control measures. Should take into account that the main factors, on which one or another drug or a preparation is distributed in a specific list, are perceptible therapeutic value of preparation, a risk of drug addiction, a threat to health, a degree of control. Each list is determined by the appropriate degree of control over its production, import, export and trade.

The Protocol Amending of 1972 to the Single Convention on Narcotic Drugs of 1961 takes into account the need for the introduction of measures to treatment and rehabilitation of drug dependent individuals¹³. The Protocol Amending of 1972 to the Single Convention on Narcotic Drugs of 1961 widens the provisions set out in 1961 and included in the Convention on Psychotropic Substances of 1971. The Parties were instructed to take "all possible measures to prevent the abuse of psychotropic substances and for the early identification, treatment, education, rehabilitation and social reintegration"¹⁴. This provision was not provided criminal penalties.

The 60-s of XX century in the European countries in connection with wide proliferation of new drugs (stimulants and hallucinogens) the question arose about the introduction of these substances in the Convention for a purpose of control and regulation.

Convention on Psychotropic Substances adopted by the UN in 1971, divided the drugs into several categories: hallucinogens, stimulants and sedative-hypnotics. Criteria on which were drawn up lists of psychotropic substances had been potential therapeutic value of drugs and the potential risk associated with the use. Substances with a high degree of habituation, which may be "the most serious threat to public health" (in particular, hallucinogens - LSD, psilocybin, mescaline) are in the first group. This category of substances is strictly controlled: total prohibition it using except for scientific and controlled medical purposes. Psycho-stimulants (amphetamines and amphetamine-type stimulants) are the second group – they have risks of injury, but they are used for therapeutic purposes and are less of a threat than the first group of substances.

It should be noted that the countries which have signed the Convention on Psychotropic Substances of 1971, are required to provide statistical data to the International Narcotics Control Board on the quantity of drugs manufactured, exported and imported two of these categories. The third group includes substances that are available for medical purposes, but represent a certain threat to public health,

¹³ UN. Combating drugs.

<http://www.un.org/ru/development/progareas/global/narcotics.shtml>

¹⁴ UN. Convention on Psychotropic Substances of 1971. Art.20, §.1.p. 31

such as barbiturates (sleeping pills substances with sedative and narcotic effects). The fourth group is represented by a light sedative substances - tranquilizers (e.g., methaqualone), which are the least threat to public health¹⁵. Preparations of the fourth group are less strictly controlled, but a state also needs to record the quantity of manufactured, exported and imported. The Convention establishes a system of international legal control over various types of psychotropic substances, introduces control over the turnover of synthetic chemicals, and extends a classification of drugs, introduced measures to restrict the export and import of drugs and determine an order of using of psychotropic substances for medical purposes.

The purpose of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 is to promote cooperation among the participating States in combating illicit trafficking in narcotic drugs and psychotropic substances. It should be noted that the Convention has established control over the precursors (substances used in the illicit manufacturing of narcotic drugs or psychotropic substances)¹⁶. The Convention is also described the provisions in which are the actions that aimed at combating illegal drug trafficking. Considering Article 12 of the Convention (“substances frequently used in the illicit manufacturing of narcotic drugs or psychotropic substances”), the European Community has developed two documents, the main objective of which is to control over the precursors. Regulations 1990 with additions in 1992 and 1997, was aimed at combating with selling precursors outside the Community. Directive of 1992, with amendments in 1993 and 2001, was created to control precursors within Common internal market¹⁷.

It can be concluded that the UN Convention of 1961, 1971 and 1988 constitute a single legal framework for combating illegal drug trafficking and consumption, introduce a control of narcotic drugs and psychotropic substances are threat to public health, and also provide the basis for international cooperation of police departments.

¹⁵ UN Convention on Psychotropic Substances of 1971. Annex (list of substances included in the list i, ii, iii, iv).

¹⁶ The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. p. 37.

¹⁷ Potyomkina O.Yu. Space of freedom, security and justice of the European Union. M. 2011. p.192.

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