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**ADMINISTRATIVE AND LEGAL MEANS OF COMBATING
AGAINST NON-MEDICAL DRUG CONSUMPTION
IN THE RUSSIAN FEDERATION**

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Gives the critical historical analysis of the Russian Federation legislation in part of the application administrative measures to drug users. Provides examples of the negative impact of legislative indulgence in part of the liability for non-medical consumption of drugs, including the exclusion of compulsory treatment of drug addicts. States the need for such a legal regulation in which the law norms can operate effectively in relation and aggregate, i.e. in correlation with other norms of law.

Keywords: non-medical consumption of drugs, combating against drug addiction, administrative liability for drug consumption, administrative and legal measures.

Russian Federation Law «On Safety» defines safety as a state of protection of the vital interests of an individual, society and the state from internal and external threats (article 1). In the field of its ensuring the law distinguishes strategic issues of state, economic, social, defense, information, environmental and other types of safety, protection of population health, prediction, prevention of emergency situations and overcoming their impacts, ensuring stability and the rule of law. In its turn, the World Health Organization considers the health as the state of complete physical, mental and social well-being and not merely the absence of disease or physical handicap.

Today, speaking of drug addiction and illegal drug trafficking in the Russian Federation, it is regrettable that in the past few years, and the last decade, the drug situation in the country has been becoming worse. Every year in Russia tens of thousands of people become victims of drug addiction, dying from a drug overdose or from «low-quality» drugs. Hundreds of thousands of people survive,

continue to consume narcotic drugs and psychotropic substances, but become disabled or criminals.

Among the main objectives listed in the Strategy of state anti-drug policy of the Russian Federation until 2020 [5] (hereinafter - the Strategy) was introduced the task to create a state system of prevention of non-medical consumption of drugs with priority measures of primary prevention, and also the development and implementation of national set of measures to prevent the illegal distribution of drugs in the territory of the Russian Federation. The strategic aim of preventing non-medical drug consumption is the reduction of the scope of non-medical consumption of drugs, the formation of negative attitudes towards illicit trafficking and consumption of drugs and significant decline in demand for them.

Back in 1994, A. Sergeev in his article "On the Legalization of Drugs" said: "Today, Russia faces a terrible prospect of losing a whole generation, as nearly 70% of drug addicts - are young people" [12, 3]. This is confirmed by other studies, which, in particular, noted that persistent drug addiction formed, usually under age of 18 [11, 9], as well as by the author's study conducted in a group of authors of Research Center No. 2, All-Russian Scientific Research Institute of the MIA RF in 2005 year. Meanwhile, the prevention of non-medical consumption of drugs and preventing its illegal trafficking has been being just declared for many years.

Our analysis of the development of the legislation aimed to combat non-medical consumption of narcotic drugs and psychotropic substances, showed that in our country for the past twenty years preference is given to so-called "medical-pedagogical approach", the essence of which is the categorical rejection of the application of legal responsibility measures to people who consume drugs and psychotropic substances. The most common argument of proponents of this approach is a thesis that persons who consume drugs are sick, and patients need to be treated rather than punished.

Legal responsibility for non-medical consumption of drugs in the form of administrative sanction was firstly established by the Decree of the Presidium of the Supreme Soviet of the USSR from 25 April 1974 "On strengthening combating against drug addiction" of domestic anti-drug legislation. Paragraph 10 of the normative legal act provided for an administrative fine of up to 50 RUR. In 1984, this norm was enshrined in article 44 of the adopted Code on Administrative Offences of the RSFSR.

In June 1987, the Decree of the Presidium of the Supreme Soviet of the USSR "On amendments and additions to some legislative acts of the USSR" increased legal liability for non-medical use of drugs. It was expressed, first of all, in tightening of administrative penalties - amount of the fine was increased to 100 RUR.

In addition was introduced a punishment in the form of corrective labor for a period from one to two months with retention of 20% of salary or administrative arrest for up to 15 days. Secondly, was introduced criminal liability for consumption of narcotic drugs with an administrative prejudice: a person was brought to criminal responsibility for the second drug consumption without a doctor's prescription in the course of the year after the imposition of an administrative penalty for the same actions. For the consumption of drugs was also envisaged criminal liability. Article 224 of the Criminal Code of the RSFSR "Illegal purchase or storage of drugs in small amounts or consumption of narcotic drugs without a prescription", envisaged punishment by imprisonment for a term not exceeding two years, or correctional labor for the same period, or a fine of up to three times the minimum monthly wage.

However, in accordance with the Law of the RSFSR from December 05, 1991 "On Amendments and Additions to the Criminal Code of the RSFSR, the Code of Criminal Procedure of the RSFSR and the Code on Administrative Offences of the RSFSR" criminal and administrative responsibility for the use of narcotic drugs without a medical prescription in Russia was abolished [4].

Six years later, in 1998, the Federal Law "On Narcotic Drugs and Psychotropic Substances" in article 40 "Prohibition of the Consumption of Narcotic Drugs or Psychotropic Substances without a Medical Prescription" enshrined: "In the Russian Federation is prohibited to consume narcotic drugs or psychotropic substances without a medical prescription".

In 2001, in the Code on Administrative Offences of the RF was enshrined article 6.9 "Consumption of narcotic drugs or psychotropic substances without a medical prescription".

Thus, for 25 years, from the Decree of 1974 "On strengthening combating against drug addiction" till adoption on December 20, 2001 by the State Duma of the Code on Administrative Offences of the RF legal regulation of relations connected with drug consumption for non-medical purposes, was changing in considerable, sometimes radical, way.

Now we can say that the ten and a half years, following the abolition of legal responsibility (from December 05, 1991 to July 01, 2002, when the new «administrative» code came in force) have led to an unprecedented increase in drug trafficking and spread of drug addiction in Russia [8, 43-45].

It should be noted that with the growth of key indicators which show negative development of the drug situation in the country over the past few years has significantly reduced the number of revealed administrative offenses related to drug trafficking (in 2010 - 128,192 offenses (- 32.1%). In in 2009 the figure was 188,806 (- 43.1%), and in 2008, 331,829 offenses were detected). In 2010, a 6.5% decline in

the number of persons brought to administrative responsibility for offenses related to drug trafficking. It amounted to 126,588 people (against 135,363 people in 2009, and 144,048 people in 2008). As follows from the statistics, the only exception is 2010, in which some of the indicators (the total number of revealed drug-related crimes, including those relating to the sale; committed by organized groups and criminal associations) that characterize the drug situation in the Russian Federation, though slightly, but declined.

Occurred in December 1991 decriminalization of drug consumption, has been evaluated by several authors [10, 172] as the actual legalization of drugs, that, from our point of view, is not so. Other authors rightly pointed out that the appearance of the Law of December 05, 1991 has raised the question of the existence of drug lobby in Russia: «The theme of drug lobby is fairly new for us and has not been explored. But due to the adoption of the law on the legalization of drug consumption from December 05, 1991, it has become extremely topical” [7, 53].

It is interesting to note the arguments expressed in those years in favor of abolishing compulsory treatment of drug addicts. In particular, one of these arguments can be found in the Conclusion of the Committee of Constitutional Supervision [6], in which was said that after 1985 “normative acts governing the compulsory treatment of drug addicts, ceased to consider violation by them of the public order, labor discipline and rules of socialist community as one of the essential reasons for the direction of such persons to the medical-labor and medical-educational dispensaries”. Logic dictates that such practices had to be suppressed, while preserving the institution of mandatory treatment for drug consumers who disturb others’ living.

Proponents of this position, referring to the Constitution of the Russian Federation, in particular to article 2: “Man, his rights and freedoms are the supreme value”, and part 1 of article 17: “In the Russian Federation recognition and guarantees shall be provided for the rights and freedoms of man and citizen according to the universally recognized principles and norms of international law and according to the present Constitution”, for some reason do not see part 3 of the same article 17, which states that “The exercise of the rights and freedoms of man and citizen shall not violate the rights and freedoms of other people”, and corresponding to this norm part 3 of article 55: “The rights and freedoms of man and citizen may be limited by the federal law only to such an extent to which it is necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defense of the country and security of the State”. They also do not notice article 5 of The Universal Declaration of Human Rights, which states that “the law shall not have the right to prohibit anything other than actions *harmful* to the society”.

Comparison with the legislations of other states indicates unsatisfactory, from our point of view, legal regulation of the fight against non-medical drug consumption in Russia. And it's not because Russian sanctions are significantly softer. The problem is that the legislative norms for consumption of narcotic drug are essentially "non-working".

Three articles of the Code on Administrative Offences of the Russian Federation establish responsibility for consumption drugs without a medical prescription: article 6.9, part 3 article 20.20 and article 20.22. If we remember that prior to December 05, 1991 "administrative" Code envisaged responsibility for that deed only in article 44, it seems to be possible to speak about the desire of the legislator to strengthen fight against this offence by administrative means.

Part 3 of article 20.20 establishes responsibility for consumption of drugs in public places. Thus, article 6.9 provides for responsibility for their consumption out of so-called public places, that is, without a public demonstration, and part 3 of article 20.20 - for the same acts committed in public places. In fact, the separation occurs on some features of the objective side of committing a tort, and it would be logical if attracted tougher sanctions in respect of an offense under part 3 of article 20.20, as more socially harmful. However, the sanction under part 3 of article 20.20 is limited to a fine of one to one and a half thousand rubles, but the sanction of article 6.9 provides, along with a fine of between four and five thousand rubles, also administrative arrest of up to 15 days. We conclude that if under article 44 of the "administrative" Code of the RSFSR (until December 1991) the penalty for consumption, including public one, could be appointed as arrest, according to the new law, public drug consumption is even more "profitable" for offenders, because entails less punishment. Article 20.22 provides for administrative responsibility (in the form of an administrative fine in the amount of 300 to 500 rubles) of the parents or other legal representatives of a minor who is under 16 years for the consumption by him narcotic drugs and psychotropic substances.

Thus, firstly, the Russian Federation Code on Administrative Offenses in comparison to the same code of the RSFSR, in fact, weakened the administrative methods of influence to drug consumers which were in force prior to the Act of December 5, 1991. Secondly, while assessment of legislative innovations it is necessary to consider that legal norms can only operate effectively in interconnection and aggregate. No matter how perfect is this or that norm, it would not act without correlation to other norms of law. In our opinion, in order that the norms of «administrative» code start to «work», we must return the criminal liability for drug consumption with administrative prejudice. Only being conscious of the prospect of criminal responsibility, the consumer of narcotic drugs and psychotropic

substances will probably refrain from reoffending. With that, of course, we should not forget that to criminal responsibility with administrative prejudice must be brought persons who are not in the painful depending on the drug. Persons in drug dependence should be subject to criminal liability for refusal to voluntary treatment or systematic violation of its regime.

Meanwhile, analysis of the Federal Law No. 162 of December 08, 2003 allows us to conclude that the legislature thought works in the other direction. Just so is possible to estimate changes made by this legal act to article 97 of the Criminal Code of the Russian Federation. Mentioned norm established the basis of application by court coercive medical measures to persons who “committed a crime and were recognized to be in need of treatment for alcoholism or drug addiction”. The Law of December 08, 2003, cancelled paragraph “g” part 1 of article 97 of the Criminal Code of the Russian Federation. Consequently, condemned person who are addicted to drugs and do not want be voluntary treated, can become distributors of illicit drug consumption in prisons.

To sum up, we want to note that ignoring the requirements of international conventions, one of participants of which is Russia, one-sided interpretation of certain norms of the Constitution of the Russian Federation led today to the fact that existing measures of combating non-medical consumption of narcotic drugs and psychotropic substances are of the limited and formal nature and do not give law enforcement agencies effective legal means of restriction and prevention of these offences.

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