Ashdin Publishing
Journal of Drug and Alcohol Research
Vol. 14 (2025), Article ID 175307, 7 pages
DOI: 10.4303/JDAR/236468

Research Article

Administrative, disciplinary and criminal liability for offenses in the field of circulation of narcotic, psychotropic substances and their precursors (foreign experience)

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Received: 28 November 2025; Manuscript No: JDAR-25-175307; **Editor assigned:** 01 December 2025; PreQC No: JDAR-25-175307 (PQ); **Reviewed:** 15 December 2025; QC No: JDAR-25-175307; **Revised:** 22 December 2025; Manuscript No: JDAR-25-175307 (R); **Published:** 29 December 2025; DOI: 10.4303/JDAR/236468

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Abstract

Aim: The article presents a comprehensive study of foreign approaches to bringing to administrative, disciplinary and criminal liability for offenses in the sphere of trafficking in narcotic drugs, psychotropic substances and precursors.

Methods: The methodological basis of the study is a complex of general scientific and special legal methods that provide a comprehensive, systematic and objective analysis of foreign experience in bringing to administrative, disciplinary and criminal liability in the field of trafficking in narcotic drugs, psychotropic substances and their precursors. The combination of methods provided a comprehensive, balanced, and scientifically sound analysis of foreign mechanisms of legal liability in the field of drug trafficking. This allowed us to form scientifically reliable conclusions and develop practical proposals for improving Ukrainian legislation.

Results: Comparative analysis allows us to identify the following key trends: Differentiation of responsibility: Decriminalization of consumption in most European Union (EU) countries and increased criminal prosecution of organized drug trafficking; administrative measures: Increased control over the pharmaceutical market, frequent inspections, fines for violations of licensing conditions; expansion of disciplinary liability: Emphasis on personal liability of medical and pharmaceutical workers; enhanced control of precursors: Introduction of electronic tracking systems (EU, USA).

Conclusion: Foreign countries demonstrate various approaches to responsibility in the field of drug trafficking, but the key ones are: A multi-level response system, differentiation of offenses, strict criminal punishment for dangerous crimes and developed mechanisms for controlling the medical use of narcotic drugs. Ukraine has the opportunity to adapt the best practices of the EU and North America, ensuring a balanced combination of repressive and preventive measures. Ukraine can implement: Mechanisms of administrative responsibility for improper storage of medicinal narcotic drugs; mandatory disciplinary standards for medical workers; systems for electronic control of the movement of precursors according to the EU model.

Keywords: Drug crime, Prevention, Ethical standards, International experience, Law, Law enforcement agencies, Police activities, Professional ethics

Abbreviations: UNODC: United Nations Office on Drugs and Crime; EMCDDA: European Monitoring Centre for Drugs and Drug Addiction; WHO: World Health Organization

Introduction

The problem of illicit trafficking in narcotic drugs, psychotropic substances and their precursors has become global in the 21st century and has become one of the key challenges for the system of international security, health and criminal justice. According to the United Nations Office on Drugs and Crime, more than 296 million people in the world used narcotic drugs at least once a year, and the scale of illicit production and trade shows a tendency to grow every year [1]. In these conditions, states are forced to constantly improve legal mechanisms for combating drug crime, adapting them to new forms of illicit trafficking, the emergence of synthetic drugs and fentanyl analogues, the development of crypto markets and transnational criminal networks.

Ukraine, which is in the process of adapting its legislation to the standards of the European Union and international UN conventions, is also faced with an increase in the number of offenses related to drug trafficking, including the use of modern technologies (online trading, cryptocurrencies, "bookmarks", etc.). One of the key areas of improving national policy in this area is the study and implementation of foreign experience in legal liability for relevant offenses.

After all, different countries use different response models-from harshly repressive (Singapore, Indonesia) to humanized, health-oriented (Portugal, Czech Republic, Canada), which allows for a comprehensive assessment of their effectiveness and relevance for Ukrainian realities.

In modern science, there is a tendency to differentiate legal liability for offenses in the field of drug trafficking. Most foreign legal systems form a multi-level response system, which includes: administrative liability for minor violations-possession of small quantities of drugs, violation of license conditions, failure to comply with storage rules; disciplinary liability of employees of sectors that have legal access to narcotic drugs (medical, pharmaceutical, law enforcement); criminal liability for illegal trafficking, smuggling, manufacturing of narcotic drugs, especially in large quantities or as part of organized groups. The issue of disciplinary liability is of particular relevance, since it is the abuse of doctors, pharmacists or law enforcement officers that often leads to the leakage of narcotic drugs into illegal circulation. In many countries, in particular the USA, Canada, Great Britain, there are developed disciplinary mechanisms for controlling medical professionals who prescribe or store controlled substances. In contrast, EU countries have clearly regulated administrative procedures related to licensing, precursor control and electronic accounting.

At the same time, foreign countries demonstrate significant differentiation in criminal policy. The European Union is focused on unifying the categories of crimes and harmonizing sanctions in accordance with Council Framework Decision 2004/757/JHA and Directive 2017/2103 [2]. The USA, by contrast, applies severe federal penalties for drug trafficking, especially synthetic opioids, in response to the opioid crisis. Southeast Asian countries maintain strict criminal regimes that provide for life imprisonment or the death penalty (Singapore, Malaysia, Indonesia).

The presence of a significant number of regulatory models, their different effectiveness and specific socio-legal consequences determine the need for a thorough scientific study of foreign experience and the possibility of its adaptation to the Ukrainian legal field. Ukraine needs to rethink approaches to combating illicit drug trafficking, in particular in terms of optimizing administrative liability, expanding disciplinary mechanisms in the fields of medicine and pharmacy, as well as increasing the effectiveness of criminal prosecution of organized forms of drug trafficking.

Thus, the relevance of the study is due to: The need to increase the effectiveness of state policy in the field of combating drug crime; the imperatives of European integration and harmonization of national legislation with EU law; the increase in the danger from synthetic drugs and precursors that are rapidly changing; the need to apply foreign experience to form a modern, balanced, scientifically based model of legal liability.

A comprehensive study of administrative, disciplinary and criminal law approaches in foreign countries will identify their advantages, disadvantages and potential for implementation in Ukraine. In turn, this will create a theoretical basis for improving the national model of responsibility in the field of illicit trafficking of narcotic drugs, psychotropic substances and precursors and will contribute to improving the level of security and public health.

Methods

The methodological basis of the study is a complex of general scientific and special legal methods that provide a comprehensive, systematic and objective analysis of foreign experience in bringing to administrative, disciplinary and criminal liability in the sphere of trafficking in narcotic drugs, psychotropic substances and their precursors.

Dialectical method: The dialectical approach allowed us to consider the legal regulation of the circulation of narcotic drugs as a dynamic system that changes under the influence of social, economic, political and security factors. Thanks to this method, the evolution of the approaches of different states was analyzed-from strict repressive models to systems focused on decriminalization and humanization of responsibility.

Comparative legal method: Comparative analysis (comparative studies) was key in the study of regulatory legal acts of different countries (EU, USA, Canada, Japan, Singapore). It made it possible: To distinguish models of administrative, disciplinary and criminal liability; identify similarities and differences in substantive and procedural approaches; classify foreign legal systems by degree of repressiveness and preventiveness; formulate proposals for the implementation of individual institutions in domestic legislation.

Formal-legal method: The formal-legal method was used to analyze the content of international conventions, EU directives, and national laws of foreign states (for example, Controlled Substances Act, Misuse of Drugs Act, BtMG). This method revealed the legal nature of offenses, sanctions, licensing regimes, liability procedures, and control mechanisms.

Systemic-structural method: This method allowed us to consider institutions of liability in connection with other elements of state policy in the field of drug trafficking, in particular: The public health system; law enforcement; precursor control; pharmaceutical regulation.

Thanks to this, a comprehensive vision of multi-level mechanisms for responding to violations was formed.

Legal modeling method: The modeling method was used to formulate possible directions for reforming Ukrainian legislation, taking into account relevant foreign practices. In particular, potential mechanisms for decriminalizing minor

acts, optimizing administrative sanctions, and introducing expanded disciplinary procedures in the medical and pharmaceutical sectors were modelled.

Analysis and synthesis method: The use of analysis made it possible to dismember the legal systems of foreign states into separate elements (compositions of offenses, licensing procedures, control mechanisms). The synthesis provided the formation of generalized conclusions, trends, and recommendations for improving the domestic approach.

Historical and legal method: Historical analysis allowed us to trace the formation and transformation of anti-drug policies in different countries, to identify the reasons for the transition from punitive systems to more flexible regulatory models based on a medical and social approach.

Statistical method: The statistical method was used to process data from UNODC, EMCDDA, WHO, and national law enforcement agencies. This made it possible to: Support the conclusions with empirical data; assess the effectiveness of different models of responsibility; identify correlations between legislative policy and the level of drug crime.

Sociological method (documentary analysis and content analysis). An analysis of reports, reviews, policy briefs of international organizations and governments of foreign countries was carried out, which made it possible to determine social trends and practical consequences of the application of different types of responsibility.

The combination of these methods provided a comprehensive, balanced and scientifically based analysis of foreign mechanisms of legal responsibility in the field of drug trafficking. This allowed to form scientifically reliable conclusions and develop practical proposals for improving the legislation of Ukraine.

Results and Discussion

In EU countries, the decriminalization model with administrative sanctions for possession of small quantities of drugs for personal use prevails. An example is Portugal, where since 2001 possession of small quantities of drugs is not a criminal offense and entails administrative sanctions: Fine, prescription for treatment, restriction of activity [3].

In the Czech Republic, "small quantities" of drugs are defined, entailing administrative fines of up to 15,000 CZK [4].

Administrative liability for violations of the rules on the circulation of narcotic drugs and psychotropic substances in the Czech Republic is established in the following acts: Act No. 167/1998 Coll. "On Narcotic Drugs and Precursors"; Act No. 250/2016 Coll. "On Liability for Administrative Offences" [5].

Violation of the rules on the circulation of precursors, in particular: Improper maintenance of documentation; lack of accounting or improper storage; untimely notification of a suspicious transaction. Violation of licensing conditions for entities entitled to work with narcotic drugs (pharmacists, medical institutions, laboratories, enterprises). Illegal handling of legal narcotic drugs in the health sector [6].

Sanctions: Fines from CZK 10,000 to CZK 1,000,000, depending on the type of offense; temporary restriction of the right to engage in activities related to the circulation of narcotic drugs or psychotropic substances; administrative seizure of substances. Disciplinary sanctions are applied to medical and pharmaceutical professionals who have access to narcotic drugs and psychotropic substances [7].

Bodies conducting disciplinary proceedings: Czech Medical Chamber (Česká lékařská komora), Czech Pharmaceutical Chamber (Česká lékárnická komora), Czech Nursing Chamber.

Typical disciplinary violations: Incorrect record-keeping of narcotic drugs; unjustified or excessive prescription of drugs; violation of the rules for the storage and protection of narcotic drugs; negligence leading to the loss or theft of drugs [8].

Disciplinary sanctions: Warning or reprimand; fine of up to CZK 100,000 (for medical chambers); temporary suspension of membership in a professional chamber; temporary deprivation of the right to practice professional activities. Criminal liability is regulated by the Criminal Code of the Czech Republic-Act No. 40/2009 Sb [9].

Main crimes: Illicit production and trafficking of narcotic drugs and psychotropic substances (Art. 283); Illicit possession of narcotic substances in quantities exceeding a small amount (Art. 284); Illicit cultivation of plants containing narcotic substances (Art. 285); production and illegal trafficking of precursors (Art. 286); incitement to use narcotic substances (Art. 287). Sanctions: Up to 5 years of imprisonment for illegal possession of a significant quantity; up to 10 years of imprisonment for production or distribution; up to 18 years of imprisonment in case of serious circumstances (organized group, large quantities, death of the victim); fine, confiscation of property, deportation for foreigners. For crimes related to precursors, a penalty of up to 8 years of imprisonment is provided [10].

The Czech Republic has formed a multi-level system of liability for offenses in the field of trafficking in narcotic drugs, psychotropic substances and precursors, which includes: Administrative-aimed at controlling legal trafficking and activities of subjects. Disciplinary-for professional medical and pharmaceutical workers. Criminal-with strict sanctions against illegal trafficking, manufacturing and storage.

In the Netherlands, a "tolerance" policy is applied to cannabis, where administrative measures are aimed at controlling commercial venues ("coffee shops") and preventing illegal retail turnover [11].

The legal regulation of the circulation of narcotic drugs, psychotropic substances and precursors in the Kingdom of the Netherlands is based on the provisions of the Opiumwet (Opium Act of 1928), which divides narcotic drugs into two main categories: List I (hard drugs-heroin, cocaine, MDMA, methamphetamine, etc.) and List II (soft drugs, in particular cannabis). Law enforcement practice in this area is characterized by a multi-level system of responsibility, which includes administrative, disciplinary and criminal measures of influence on offenders [12].

Administrative responsibility is aimed at regulating the legal circulation of controlled substances in the medical, pharmaceutical and commercial spheres. Entities working with narcotic drugs and precursors are obliged to strictly comply with licensing conditions, rules for maintaining documentation, storing substances and reporting on their movement. A special place is occupied by the administrative regulation of the activities of so-called coffee shops, where the retail sale of small quantities of cannabis is allowed under the strict conditions of the "AHOJ-G" policy. Violation of these conditions, in particular sales exceeding the permitted limit of 5 g, serving minors or the presence of drugs from Schedule I in the establishment, entails fines, temporary suspension of activities or complete closure of the establishment. Administrative sanctions can reach 45,000 euros and also include the cancellation of licenses, restrictions on the implementation of activities and the seizure of drugs and precursors [13].

Disciplinary liability in the Netherlands applies to representatives of the medical professions working with narcotic drugs included in the state register BIG. Supervision of compliance with professional standards is carried out by regional and central disciplinary courts for health care (Tuchtcolleges voor de Gezondheidszorg). Grounds for disciplinary proceedings include negligent handling of narcotic drugs, failure to comply with accounting and storage requirements, prescribing potent psychotropic drugs without medical justification or improper documentation. Sanctions range from a warning or reprimand to temporary or full disqualification from professional activity, as well as exclusion from the BIG register, which effectively means a ban on practicing medicine [14].

Criminal liability in the field of illicit trafficking in narcotic drugs and precursors is regulated by the provisions of the Opiumwet and the Dutch Criminal Code (Wetboek van Strafrecht). Illegal manufacture, sale, transportation or export of substances from List I is punishable by imprisonment for a term of up to 12 years, and in aggravating circumstances-up to 16 years. Illegal transactions with substances from List II are punishable by up to 4 years in prison. Aggravating circumstances include participation in an organized criminal group, the international nature of the crime, significant amounts of seized substances or the use of minors. An important element of criminal policy is the fight against illegal "grower factories" and laboratories for synthetic drugs, which is particularly relevant in connection with the spread of MDMA and methamphetamine in the European Union. Criminal fines can reach 90,000 euros, and confiscation of property, deportation of foreigners and criminal liability of legal entities are also applied [15].

Although the Netherlands is known for its liberal policy on cannabis, the legal system clearly distinguishes between tolerance (tolerantiebeleid) and legalization. The sale of cannabis under regulated conditions is allowed, but its cultivation, large-scale circulation, export, as well as any actions related to hard drugs are severely punished. Such a system allows you to combine control over the legal segment of the market with tough counteraction to organized drug crime [16].

Portugal (liberal policy/Depenalization)

Feature: Since 2001, Portugal has decriminalized the possession and use of all drugs for personal use (up to a 10-day supply).Liability for possession/use: Administrative: No criminal liability. The person is referred to the Drug Addiction Prevention Commission (CDT). CDT sanctions: Fine, mandatory treatment (rarely), community service, or simply a warning. The goal is not punishment, but medical care and social reintegration. Liability for trafficking/sale: Criminal (strict, imprisonment).

Germany (strict control with flexibility)

Feature: Criminal liability for illegal trafficking, but the prosecutor's office has the right to drop criminal prosecution for possession of small quantities for personal use without a public interest in prosecution (so-called Geringe Menge principle) [17].

Administrative/criminal limit: Not clearly set at the federal level, but most states have internal guidelines (e.g. up to 6-10 grams of cannabis). "Small amount": The case may be closed (decriminalized), but the record of the offense may still be kept.

Singapore (harsh policy)

Feature: One of the strictest anti-drug policies in the world.

Criminal liability: Extremely strict. Illegal transportation (trafficking) of more than 500 grams of cannabis or 15 grams of heroin can be punishable by death.

Consumption/possession: Strict prison terms even for small amounts. The law stipulates that a person who has traces of drugs in their body, even if it occurred abroad, can be found guilty of use [18] (Table 1).

In the USA, regulation varies from state to state: In a number of states, cannabis consumption is decriminalized and punishable by a small fine (New York State-up to $50) [19].

In Canada, administrative sanctions are applied for violations of licensing rules for medical or recreational cannabis, as well as for violations of transportation and storage standards [20].

East Asian countries (Singapore, Japan, South Korea) are characterized by a strict administrative regime: Fines for storage, violation of license conditions and failure to comply with precursor requirements can reach significant amounts (for example, in Singapore-up to 10,000 SGD) [21].

Disciplinary liability in the field of drug and precursor trafficking. Disciplinary liability is key in areas where drugs are used legally: Medicine, pharmaceuticals, scientific research, law enforcement. Medical and pharmaceutical professionals [22].

In the USA and Canada, disciplinary panels of medical associations apply strict measures-withdrawal of license, restriction of practice, mandatory completion of rehabilitation programs in case of improper access to drugs or violation of opioid prescribing rules [23].

In the UK, the General Medical Council (GMC) conducts disciplinary proceedings for the incorrect prescription of controlled drugs under the Misuse of Drugs Regulations 2001 [24].

In Germany and France, police disciplinary codes provide for severe penalties up to and including dismissal for improper handling of seized drugs or violation of rules on the preservation of evidence [25].

Table 1: Comparative table of liability for offenses in the field of drug trafficking (Foreign experience).

Criterion	"Harsh policy" (e.g. Singapore, Indonesia)	"Strict control" (e.g., USA, Germany, Poland)	"Liberal policy" (e.g. Portugal, Netherlands)
Basic approach	Complete eradication of drugs through maximum deterrence.	Fight against trafficking; differentiation of responsibility depending on quantity and purpose.	Medico-social approach; fight against organized crime, decriminalization of consumption.
Disciplinary liability	Applies in full, especially to civil servants, military, athletes (depending on internal regulations).	Applicable, may include suspension from work/sports events, especially for public positions.	Applies to certain professional groups or in sports (for doping).
Administrative liability (AB)	May not have a separate type for possession/use, as such actions can be immediately criminalized or qualified as offenses with severe sanctions.	Usually provided for small possession (up to a set limit) without the purpose of sale, or for use in public places.	Main type of liability for possession/consumption of small doses. Often in the form of a fine, mandatory treatment, or warning.
Criminal Liability (CL)	Very severe for all crimes, including sales, production, smuggling. For large amounts-the death penalty or life imprisonment.	Strict for trafficking (sale, production, smuggling). Possession for personal use may be subject to KV, but often with the possibility of substitution for probation or treatment.	Strict only for large circulation, production, and smuggling. Possession for personal use (within limits) decriminalized or replaced by AB.
Example of sanctions for possession of "small quantity"	Long prison sentences (e.g. up to 10-20 years).	Fine, probation, conditional imprisonment, or imprisonment (depending on quantity and previous convictions).	Fine, referral to a commission/doctor, mandatory treatment (Portugal), or simply confiscation (Netherlands).

Criminal liability for illicit trafficking and drug trafficking. In the EU, drug-related criminal offences are defined by Directive 2017/2103 and Council Framework Decision 2004/757/JHA [2]. The following are mainly provided: Imprisonment from 5 to 15 years for illegal trafficking; qualifying features: Activity as part of an organized group, cross-border nature, involvement of minors. For example, in Germany, § 29 BtMG establishes a penalty of up to 15 years of imprisonment for illegal trafficking of drugs in significant quantities [26].

The federal Controlled Substances Act (1970) provides for severe sanctions: Up to 20 years of imprisonment for illegal trafficking of Schedule I–II drugs, and from 10 years to life imprisonment for trafficking of heroin or fentanyl in large quantities [27].

The increase in criminal liability is also caused by the opioid crisis-since 2017, separate qualifying compounds have been introduced for the illegal manufacture of fentanyl analogues [28].

Singapore, Malaysia and Indonesia adhere to a “zero tolerance” policy: Smuggling or manufacturing of narcotics is punishable by life imprisonment or the death penalty (e.g., Misuse of Drugs Act Singapore) [29].

A comparative analysis allows us to identify the following key trends for Ukraine: differentiation of responsibility: Decriminalization of consumption in most EU countries and increased criminal prosecution of organized drug trafficking; administrative measures: Increased control over the pharmaceutical market, frequent inspections, fines for violations of licensing conditions; expansion of disciplinary

responsibility: Emphasis on personal responsibility of medical and pharmaceutical workers; enhanced control of precursors: introduction of electronic tracking systems (EU, USA) [30].

Ukraine can implement: Mechanisms of administrative responsibility for improper storage of medicinal narcotics; mandatory disciplinary standards for medical workers; systems of electronic control of the movement of precursors according to the EU model [31].

Conclusion

Foreign countries demonstrate various approaches to responsibility in the field of drug trafficking, but the key ones are: A multi-level response system, differentiation of offenses, strict criminal punishment for dangerous crimes, and developed mechanisms for controlling the medical use of narcotic drugs. Ukraine has the opportunity to adapt the best practices of the EU and North America, ensuring a balanced combination of repressive and preventive measures.

As a result of the analysis of foreign experience of administrative, disciplinary and criminal liability for offenses in the sphere of circulation of narcotic drugs, psychotropic substances and their precursors, a number of important conclusions can be drawn. First, a characteristic feature of the legal systems of most countries is a multi-level structure of liability, which includes administrative, disciplinary and criminal mechanisms. Such an approach allows to provide comprehensive control over the legal circulation of narcotic drugs, the professional behavior of medical and pharmaceutical workers, as well as to effectively counteract the illegal production and circulation of drugs.

Administrative liability is focused on the control of licenses, accounting and storage of narcotic drugs and precursors. Its main tools are fines, cancellation or temporary restriction of the right to carry out activities, administrative seizure of substances. Foreign examples, in particular the Czech Republic and the Netherlands, indicate the effectiveness of such mechanisms in preventing the leakage of legal narcotic drugs into illegal circulation.

Disciplinary liability is designed to ensure professional control over the activities of medical and pharmaceutical workers. The introduction of clear disciplinary procedures, including warnings, reprimands, temporary or complete deprivation of the right to professional activity, allows minimizing the risks of improper prescription or distribution of narcotic drugs.

Criminal liability remains the main mechanism for combating organized drug crime, smuggling and illegal production of drugs in large volumes. The severity of penalties varies from several years of imprisonment for minor offenses to 12-18 years or life imprisonment in serious cases.

Liberal approaches to consumption, typical of the Netherlands and Portugal, are combined with strict sanctions for the production and trafficking of drugs in large volumes, which ensures a balance between public health protection and public safety.

For Ukraine, the application of foreign experience to improve the system of liability is relevant. This includes strengthening administrative control, introducing effective disciplinary procedures for medical and pharmaceutical workers, optimizing criminal policy on illicit drug trafficking, and using electronic systems for accounting and control of potent drugs and precursors.

Acknowledgement

None.

Conflict of Interest

Authors have no conflict of interest to declare.

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