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## Measures for countering drug trafficking in Russia and Germany

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### Abstract

The aim of this research was to develop a coherent theoretical proposal for counteracting drug trafficking in Russia and Germany. The methodological basis of the research is the dialectical and worldview approach. The latter determined the application of the general principles of cognition to study the current situation of drug abuse in Russia and Germany. Among the results stands out the fact that, previously tested forms of preventive work require careful restructuring and adjustment on the example of the implementation of the Strategy of the State Anti-Drug Policy of the Russian Federation until 2030, which implies the involvement of various actors in the organization of preventive work. In addition, the scientific results of the research include a critical analysis of the legislation on drug trafficking, trends in the drug situation and criminological study of persons involved in drug trafficking. In conclusion, the authors provided a legal formulation of certain areas of the fight against drug trafficking in the Russian Federation and Germany.

**Keywords:** drug use prevention; narcotics trafficking; psychotropic substances; illicit trafficking; comparative legislation.

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## Medidas para combatir el narcotráfico en Rusia y Alemania

### Resumen

El objetivo de esta investigación fue desarrollar una propuesta teórica coherente para contrarrestar el tráfico de drogas en Rusia y Alemania. La base metodológica de la investigación es el enfoque dialéctico y de cosmovisión. Este último determinó la aplicación de los principios generales de la cognición para estudiar la situación actual del abuso de drogas en Rusia y Alemania. Entre los resultados destaca el hecho que, las formas de trabajo preventivo previamente probadas requieren una reestructuración y ajuste cuidadosos en el ejemplo de la implementación de la Estrategia de la Política Estatal Antidrogas de la Federación Rusa hasta 2030, lo que implica la participación de varios actores en la organización del trabajo preventivo. Además, los resultados científicos de la investigación incluyen un análisis crítico de la legislación sobre narcotráfico, las tendencias en la situación de las drogas y el estudio criminológico de las personas involucradas en el narcotráfico. En conclusión, los autores proporcionaron una formulación legal de ciertas áreas de lucha contra el narcotráfico en la Federación Rusa y Alemania.

**Palabras clave:** prevención del consumo de drogas; tráfico de estupefacientes; sustancias psicotrópicas; tráfico ilícito; legislación comparada.

### Introduction

The current drug situation should be understood as the situation in the field of drug trafficking, as well as countering illegal trafficking, preventing non-medical drug use, treatment and medical and social rehabilitation of drug addicts. The dynamically changing situation of the growing availability of drug use creates new challenges for scientists and practitioners of preventive work.

The total number of officially registered drug addicts is, according to statistics, about 600 thousand people. This figure has not changed significantly over the past five years. According to sociological surveys, about seven and a half million people use drugs. Illicit trafficking in synthetic drugs and new psychoactive substances is on the rise.

The number of people using drugs worldwide will increase by 11% by 2030. From 2010 to 2019, the number of people using drugs increased by 22%, partly due to global population growth, and last year stood at approximately 275 million people. Last year, about 5.5% of the population aged 15 to 64 took drugs at least once.

Preventive anti-drug measures should be adjusted, and researchers should develop a complex systematic approach to transforming the forms and methods of drug use prevention. To introduce the best innovative practices in this field, experts should propose a new algorithm for interdepartmental interaction of all official bodies and change the current criminal legislation.

The measures aimed at countering drug addiction are part of the preventive programs that are introduced without prior analysis of their impact on the psyche, values, and mentality of the Russian youth. As a result, young people lose their virtues and become tolerant to drug use.

Imitation substitutes real preventive measures, and the formal indicators of the growing number and range of preventive measures replace the real effectiveness of their implementation.

The specificity of the German criminal law is that the criminal law establishing liability for illegal drug trafficking is not contained in the Special Part of the Criminal Code of the Federal Republic of Germany. Instead, it is contained in the federal law on drug trafficking as of 28 July 1981 as amended by the publication as of 01 March 1994, which refers to the so-called additional criminal law, implying a number of novels.

Considering the critical importance and global nature of this problem, Russia similarly to Germany, has been part of the international system of combating illicit drug trafficking for a long time. The importance of conducting this study stems from the fact that the counteraction to drug abuse is in the center of attention not only of scientists, but also of the public, and the recent publications note that this area requires further research. Accounting for the German experience will help develop and implement an anti-drug policy more competently and effectively, taking into account national, socio-cultural, economic-geographical and other features.

## 1. Literature review

Many international researchers (Kamradt-Scott and McInnes, 2012; Legleye *et al.*, 2014; Linklater, 2011; MacNicol, 2017) have been exploring the problem of drug trafficking. MacNicol (2017) focused on the neurobiological mechanisms underlying psychoactive substance abuse and dependence, with particular emphasis on mechanisms that promote continued use and repeated offence. Ahmed *et al.*, (2020) examined non-drug determinants of drug use and dependence. Golubovskiy *et al.*, (2021) studied the issues of international cooperation of countries aimed at the prevention of drug trafficking. Kleimenov (2021) examined various social and legal issues determined by future threats, including those associated

with economic crime and drug situation.

In Russian science, leading legal scholars Luneev (1999) and Kleimenov (2005) analyzed various aspects of counteraction to illicit trafficking in narcotic drugs and psychotropic substances, including criminal policy and counteraction improvement. Modern legal scholars Golubovsky (2019), Zhbankov *et al.*, (2016) investigated the link between drug addiction and organized crime.

Russian scientists Kunts and Golubovskiy (2015, 2017) considered the modern drug situation abroad from the perspective of interethnic and religious relations. In her dissertation, Shchurova (2017) investigated illicit trafficking in narcotic drugs and their analogues using computer technologies (the Internet). The interdisciplinary aspect of this problem was studied by Golubovskiy and Kunts (2019), Burlakov and Matveeva (2017), Antonov *et al.*, (2017).

Given that this problem is transnational, we would like to mention some recent publications by Weinstein (2017), Sutherland *et al.*, (2017), Tam *et al.*, (2018), Vaz Ferreira and Costa Morosini (2013), Chevtaeva *et al.*, (2017) Chevtaeva *et al.*, (2018).

All over the world, the number of drug addicts will increase by 11% by 2030. From 2010 to 2019, the number of drug addicts increased by 22%, partially due to global population growth, and estimated approximately 275 million in 2020. About 5.5% of the total population, aged 15 to 64, took drugs at least once. An estimated 36.3 million of people (13.3% of all drug users) suffer from drug use diseases and disorders. Opioids are still responsible for most of these diseases.

At the same time, dynamic changes in the social environment and illicit drug trafficking lead to an increasing discrepancy between criminal reality and the reactions to it from society and the state, which is confirmed by the lack of special studies on this problem.

## **2. Materials and methods**

The methodological basis of the research includes the dialectical approach, a set of general scientific methods of cognition, and specific sociological methods of studying social phenomena and processes. We used the method of statistical analysis to examine the state, structure, and dynamics of illicit trafficking in narcotic drugs and psychotropic substances and to identify its development trends. We applied the historical method to establish patterns of response to drug trafficking over different periods.

The methods of systemic, structural, and comparative legal analysis allowed us to identify gaps in the legislation on combating illicit drug trafficking and to determine the directions of its improvement. We used specific sociological methods such as studying documents (criminal cases, sentences, and reports) to explore empirical material and to identify the shortcomings of preventive measures. The wide variety and great range of the methods used allowed us to conduct interdisciplinary research, which helped us overcome the conventions of each particular method and its limitations. This approach to research methodology ensured the most efficient achievement of the research goal.

### 3. Results

Having carried out the study, we established that the number of drug addicts has been decreasing over the last few years. The number of registered and newly diagnosed persons increased in 2005-2008. However, there was a decrease after 2008, which accelerated after 2015. At the same time, according to the federal statistical data, the number of patients with mental disorders connected with drug use registered by the addiction treatment service decreased by 25% since 2010. In 2020, this figure amounted to 505,600 people, or 344.5 per 100,000 people.<sup>4</sup> At the beginning of 2020, the number of people who used drugs by injection decreased by 31.8% and estimated 229,900 people.

The number of patients with opium addiction is also decreasing (192,400 people at the beginning 2020 compared to 223,700 a year before). In contrast, the number of people with addiction to new psychoactive substances, mainly synthetic drugs, is growing (63,400 people at the beginning of 2020 compared to 48,900 people at the beginning of 2016 and 26,400 people at the beginning of 2011). The number of people dying from drug abuse is also gradually decreasing (4,100 people in 2020; 4,200 people in 2019; 4,500 people in 2018; 4,800 people in 2017, and 3,750 people in 2011).<sup>5</sup>

Experts have given a general description of drug users in Russia. A sharp increase in the use of narcotic drugs began after 1991, with the opening of borders, the development of the Northern Route of drug trafficking, and an increase in the production and procurement of narcotic drugs in the CIS countries. The most significant growth occurred after 2000, when Russians got access to drugs sold on the world market due to an increase in their

4 Statistics of drug addiction in Russia for 2020-2021. (2021). Retrieved from <https://narcorehab.com/articles/statistika-narkomanii-v-rossii-2020-2021/#2> Consultation date: December 26, 2021).

5 Report of the State Anti-Drug Committee of the Russian Federation "On the drug situation in the Russian Federation in 2019". Moscow: StateAnti-DrugCommittee, 2020.

income. Out of 144.5 million Russians, 13 million people (9%) occasionally take these substances and 5 million people (3.5%) – systematically.

Considering the age structure of drug addicts, about 20% of them are young people under 14 years old, 60% – 16-24 years old, and 20% are 25 years old and older. People are most likely to try drugs for the first time at the age of 15-17 (about 50%). Of those who died from drug poisoning, 30% were 18-24 years old, 25% were 25-29 years old, and 45% were 30-49 years old. The average lifespan of drug addicts is 15-20 years after the moment they started taking drugs, which is due to the harm to the body, its vital functions, and the risks of death from an overdose. Overdose is the main cause of death for drug addicts. A large number of HIV-positive people (about 60% in Russia) are addicts who inject drugs.

The increasing use of synthetic drugs has become a pressing issue over the last few years. These types of drugs tend to be more addictive than weak herbal drugs. Their price is lower than that of the weak drugs of the opium group, hashish, or cocaine. However, their effect is much stronger, as well as the damage to health for those who take such drugs.

As far as the criminal policy is concerned, experts note that a larger volume of criminal cases are considered by the courts under Article 228 of the Criminal Code of the Russian Federation compared to Article 228.1 of the Criminal Code of the Russian Federation. The courts tend to give more lenient sentences under Article 228 of the Criminal Code of the Russian Federation (only 22.3% receive real imprisonment, and this percentage has decreased since 2016), and more severe punishment under Article 228.1 of the Criminal Code of the Russian Federation (91.8% of convicts receive a real jail time).

**Table 1. Consideration by courts of criminal cases related to drug trafficking (Articles 228 and 228.1 of the Criminal Code of the Russian Federation), thousand people**

Articles of the Criminal Code of the Russian Federation	Convicted	Justified	Imprisonment	Probation	Other punishments
<b>2016</b>					
Art. 228 of the CC of the RF	79.6	0.0	23.7	34.0	21.8
Art. 228.1 of the CC of the RF	21.3	0.0	19.5	1.8	0.1

2020					
Art. 228 of the CC of the RF	53.0	0.0	11.8	22.3	18.9
Art. 228.1 of the CC of the RF	14.0	0.0	12.8	1.1	0.0

Source: Judicial statistics data (Judicial Department at The Supreme Court Of The Russian Federation, 2022).

In the first half of 2021, 37,375 people were sentenced to imprisonment for committing crimes under Art. 228-2341 of the Criminal Code of the Russian Federation.

The approach to planning, organizing, and conducting preventive anti-drug activities is often formal. This leads to disregard of official propaganda and unwillingness of young people to participate in the anti-drug activities conducted. In addition, various organizations demonstrate poor coordination of preventive activities. They cannot set the common criteria for effective anti-drug measures or actively and consistently apply best practices when organizing preventive work.

Considering their public danger, crimes related to illicit trafficking of drugs and psychotropic substances are much more serious than the gravest crimes. For example, terrorist acts cause harm once, whereas the illegal use of narcotic drugs and psychotropic substances harms the life and health of not only those their consumers, but also entails negative consequences for their children, that is, creates a threat to national security.

Anti-drug policy in Germany is comprehensive. It includes prevention, counselling, treatment, harm reduction and measures aimed at reducing the supply of narcotic drugs. Prevention activities target the school environment, including innovative drug prevention projects in the form of Internet consultations, telephone consultations, and projects that specifically target ethnic minorities. According to the German law, unauthorized possession of drugs is a criminal offence. However, if drug use is not related to sale, is not burdened with aggravating circumstances, then instead of initiating criminal prosecution and sentencing the person involved to imprisonment, preference is given to measures related to administrative, medical and social impact.

The court may not impose a sentence of imprisonment if the perpetrators keep drugs in small quantities only for personal consumption; or the execution of the punishment may be postponed for the guilty person for up to 2 years, if the crime committed is punishable by deprivation of liberty for



up to 2 years. Such a rule applies only on the condition that the expected term of imprisonment for the crime committed does not exceed two years. Also, in the German legislation in the 1990-2000s, additions were made that relate to the fight against the “laundering” of funds that were obtained because of drug crimes. The so-called “light proof rule” was introduced, which expanded the possibilities for law enforcement to confiscate property that was obtained by criminal means.

### Discussion

Having studied the materials of current judicial practice on criminal cases related to illicit trafficking of narcotic drugs and psychotropic substances, we established that Russian criminal legislation contains a number of crimes with criminal liability provided. Consequently, the very characteristics of drug offenders may vary depending on a particular crime. However, the crimes themselves have common features. Therefore, people who commit such crimes must have some common features.

For instance, about 91% of drug offenders are men. It is also known that in a group of persons that committed a crime related to drug trafficking by prior conspiracy, 86% are men and 14% are women; as part of an organized group: 86% are men and 14% are women; as part of criminal gangs: 83% are men and 17% – women. Having analyzed criminals’ age, we established that minors make up 2% of the total number of drug offenders. At the same time, the age of most people ranges from 18 to 29 (42%). The statistics for older persons are as follows: 30–34 years old make up 20%; 35–39 years old – 16%; and 40 years and older – 20%. We also grouped these people based on their citizenship. The citizens of the Russian Federation commit 96.8% of drug-related crimes. As for the level of education, 9.8% of people convicted of drug crimes have higher professional education, 36.8% – secondary vocational education, 37.5% – secondary general, and 15.9% – basic general, primary, or no education. In illicit drug trafficking, women are more likely to commit crimes in a group.

As for the age of drug offenders, it correlates with the statistics on the number of people who take drugs. Most drug users are young people. In addition, most people committing crimes related to drug trafficking have secondary education.

The age structure of drug offenders varies depending on the crime they committed. Drug trafficking crimes involving the use of the Internet are committed mainly by persons aged from 18 to 30 (80%). As for the age and gender structure of the Internet users in Russia, according to research data, in 2016, there were slightly more male Internet users than female ones: according to various research companies, males make up about 51% of the total number of Internet users.

According to statistics, drug offenders using the Internet are of the same age as the average Internet user. This may be because at this age young people do not have their own family and have more free time to regularly use the Internet. The larger share of males can be explained by the fact that, in general, there are more males among drug offenders than females. As for their educational level, the majority of drug offenders (including those who use the Internet to commit drug crimes) have secondary or specialized secondary education.

The features of a drug offender may vary depending on their function in drug trafficking. For instance, according to the function performed, we can identify the following categories: 1) organizers and leaders of criminal groups and criminal communities; 2) drug sellers; 3) producers and manufacturers; 4) drug thieves; 5) drug runners; 6) organizers and keepers of drug-involved premises; 7) drug users.

Most drug addicts are males, although the number of female drug addicts is also increasing. As practice shows, neglected children and troubled adolescents tend to become drug addicts. Children from disadvantaged families are also susceptible to the negative influence of the environment: they are left to their own devices, live in an unfavorable environment, which negatively affects the formation of their personality. In addition, drug addicts are often those living in poverty, unemployed, or those who suffered from a mental trauma or overprotection in their families.

The main features of a drug addict are selfishness, weak will, negative attitude towards their relatives and people around, deceitfulness, and secrecy. The systematic use of drugs contributes to the formation of reasonless aggression, anger, anxiety, and various fears. Drug addicts seldom have a permanent job, and they often suffer from such chronic diseases as hepatitis or HIV infection. These people often commit thefts, robberies, and other crimes in order to get money for drugs. If one commits a crime while intoxicated, the court may consider this as an aggravating circumstance.

Therefore, drug offenders have both common features typical of this category and specific characteristics of a particular type of a drug offender. For instance, approximately 85-90% of all drug offenders are men. At the same time, in drug trafficking, women are more likely to commit crimes in a group. The age of drug offenders correlates with the statistics on the number of drug addicts. What is more, the overwhelming number of persons committing crimes related to drug trafficking have secondary or secondary vocational education.

Considering specific features, we should focus on the function a person performs in drug trafficking. For example, the leaders of organized drug trafficking groups have the same traits as other criminal leaders.

Having analyzed the features of drug manufacturers and producers, we concluded that the latter are more professional due to their profound knowledge of chemistry. This requires higher education in this field. At the same time, this knowledge is helpful not only for drug manufacture, but also for the arrangement of the laboratories.

We share the position of Eliseeva (2019) that the practice of criminal prosecution under Article 228<sup>1</sup> of the Criminal Code of the Russian Federation of those stashing drugs should be revised, since it does not ensure efficient counteraction to drug crimes. It punishes people representing the lowest level of organized criminal communities, whose guilt is much smaller than that of wholesale dealers and drug lords. At the same time, criminal liability begins from the age of 16, which is quite early. Obviously, considering this fact, it is necessary to change the criminal policy regarding the lowest level of such crimes, especially involving minors, and to apply suspended sentences.

In addition, it is possible to apply Part 1 of Article 64 of the Criminal Code of the Russian Federation, which states that “if a member of a crime group actively participates in solving this crime, the punishment may be below the lowest limit provided for by the relevant article of the Special Part of this Code, or the court may impose a milder type of punishment than provided for by this article.” This also should refer to Paragraph i) of Part 1 of Article 61 of the Criminal Code of the Russian Federation (“actively contributing to solving and investigating a crime and assisting in finding and prosecuting other accomplices in the crime). In other words, if during the investigation the person who worked for a drug dealer and stashed drugs, assists in finding the drug dealer, their contacts, or other concealed information, the court should apply the most mitigating circumstances to them.

This will both contribute to the spread of drugs and increase the risks for drug dealers in involving young people, including minors, in this criminal business. That is, justice should not aim to punish harshly those who committed their first crime, stashing drugs and working at the lowest level of the criminal network. These people, hoping for a mitigation of punishment, will be interested in helping to identify, arrest, and persecute their employers.

Effective preventive measures imply working with people who do not use drugs yet. This implies effective interaction between government agencies and public associations in the field of countering drug abuse, which will help reduce the number of prospective drug addicts. In addition, it is necessary to find gaps in interdepartmental interaction and communication with public associations, as well as to identify and disseminate innovative forms of preventive anti-drug measures among the public.

In the process of analyzing German legislation, it was found that the list of acts related to illegal drug trafficking, which are recognized as criminal, has been expanded. Despite the proposals of German jurists and the points of view actively discussed in the media on the need to decriminalize the consumption of so-called “soft” drugs (for example, cannabis), this position was not supported by the German legislator.

The penitentiary authorities were given the opportunity, with the consent of the court, instead of executing a sentence of imprisonment for a term of not more than two years in cases related to the conviction of drug addicts, to rehabilitate such a person by placing him in a special medical and therapeutic institution (Art. 35, 36 of the Law).

In the case of a conviction of a person with drug addiction, if it is only in connection with this addiction that he has committed a criminal act and if a sentence of imprisonment for a term of not more than two years can be imposed for its commission, the prosecution authorities, with the consent of the relevant court, may generally refuse to maintain state prosecution.

This is possible only if the circumstances of the case indicate that it is more expedient for the accused, taking into account his drug addiction, to appoint a stay in a special medical and therapeutic institution. In practice, the application of these legislative requirements often encounters certain difficulties. The problem lies, first, in the fact that in the German penitentiary system there are not enough special medical and therapeutic institutions to accommodate people suffering from drug addiction and having committed criminal acts in connection with this. This leads to the fact that persons wishing to undergo such treatment are often not placed in such institutions in a timely manner or cannot be placed there at all due to the lack of a sufficient number of such institutions.

## **Conclusion**

Having examined the complex nature of the problem of illicit trafficking in narcotic drugs and psychotropic substances and the resulting need for a comprehensive systematic response to it, we drew some conclusions that have theoretical and practical significance.

In Russia, drug trafficking began to increase in the 1990s with the opening of the external market and borders, after the collapse of the USSR and the worsening crime situation, which included the production of narcotic drugs in the CIS countries and intensified drug trade.

To improve the situation, researchers and bodies responsible for anti-drug measures should systematically transform the forms and methods of drug use prevention.

The main development directions of the criminal policy regarding the counteraction to illicit drug trafficking should include changing the sentencing practice. This implies giving milder punishment including suspended sentences, if there was no repeated offence under Article 2281 of the Criminal Code of the Russian Federation to persons detained while stashing drugs and who do not own these drugs, but only help to sell them. This should be done if they help to investigate and solve a group crime, as well as to arrest a drug dealer or the leader of a criminal organization. In addition, police investigators should be able to use open information published by criminals more actively.

The German law on the circulation of narcotic drugs defines the elements of criminal acts related to the illegal circulation of narcotic drugs in Germany. The law establishes a wide range of criminal offenses related to drug trafficking. A feature of the application of this Law is, first, that actions related to the illegal possession of narcotic drugs de facto often do not entail the imposition of punishment. This can be explained by the fact that the German legislator has established wide limits of judicial discretion in imposing punishment for criminal acts related to drug trafficking. These legislative provisions make it possible to prosecute not those persons who store narcotic drugs in small amounts for their own consumption, but members of organized criminal groups involved in the drug business. This approach is contrary to Russian experience.

The research results, conclusions, and proposals expand the theory of criminology and criminal law. They can act as the methodological and theoretical basis for further research of the drug situation, improving the counteraction to it, both in Russia, and in Germany. The practical significance of the study includes the possibility of using its results for law making and law enforcement.

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