

Peculiarities of Investigating Criminal Offenses Related to Illegal Turnover of Narcotic Drugs, Psychotropic Substances, Their Analogues or Precursors: Criminal Law Aspect

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ABSTRACT

The article highlights the legal regulation of peculiarities concerning investigation of criminal offenses related to the illegal turnover of narcotic drugs, psychotropic substances, their analogues or precursors. Main content. It has been established that effectiveness of pre-trial investigation in criminal proceedings on the facts of illegal sale of substances excluded from free circulation using the Internet and other telecommunication technologies is complicated by the need to identify the user under a nickname. Methodology: The methodological basis of the research is presented as comparative-legal and systematic analysis, formal-legal method, interpretation method, hermeneutic method as well as methods of analysis and synthesis. Conclusions. It has been established that in today's conditions, against the background of the global IT development of society and the active introduction of the latest technologies in all spheres of human life, the forms of sale of narcotic drugs, psychotropic substances, their analogues or precursors are also changing. While using the assets of modern technologies criminals constantly improve their criminal activities, change directions of interaction with the aim of committing offenses. In Ukraine, as well as in the world in general, drug crimes are actively carried out through smartphones via the "Internet" network using messengers and special applications for the distribution of psychoactive substances, narcotic drugs and their analogues.

Keywords: pre-trial investigation, narcotic drugs, psychotropic substances, their analogues or precursors, investigative actions, criminal proceedings, inspection of the scene, forensic examination, legal regulation.

ABSTRAK

Pasal tersebut menyoroti kekhususan pengaturan hukum dalam penyidikan tindak pidana yang berkaitan dengan peredaran gelap narkoba, psikotropika, analog atau prekursoranya. Isi utama. Telah ditetapkan bahwa efektivitas penyelidikan pra-persidangan dalam proses pidana atas fakta penjualan ilegal zat-zat yang dikecualikan dari peredaran bebas menggunakan Internet dan teknologi telekomunikasi lainnya diperumit oleh kebutuhan untuk mengidentifikasi pengguna dengan nama panggilan. Metodologi: Landasan metodologi penelitian disajikan dalam bentuk analisis hukum komparatif dan sistematis, metode hukum formal, metode interpretasi, metode hermeneutika, serta metode analisis dan sintesis. Kesimpulan. Telah diketahui bahwa dalam kondisi saat ini, dengan latar belakang perkembangan masyarakat TI global dan aktifnya pengenalan teknologi terkini di semua bidang kehidupan manusia, bentuk-bentuk penjualan obat-obatan narkoba, psikotropika, analog atau prekursoranya adalah juga berubah. Saat menggunakan aset teknologi modern, penjahat terus meningkatkan aktivitas kriminal

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mereka, mengubah arah interaksi dengan tujuan melakukan pelanggaran. Di Ukraina, serta di dunia pada umumnya, kejahatan narkoba secara aktif dilakukan melalui telepon pintar melalui jaringan "Internet" menggunakan messenger dan aplikasi khusus untuk distribusi zat psikoaktif, obat-obatan narkotika dan analognya.

Kata kunci: penyidikan praperadilan, narkotika, psikotropika, analog atau prekursorinya, tindakan penyidikan, proses pidana, pemeriksaan tempat kejadian, pemeriksaan forensik, peraturan perundang-undangan.

INTRODUCTION

In modern conditions, illegal production and distribution of narcotic drugs or psychotropic substances has become a shadow commercial industry with a multi-billion dollar turnover, which has a negative impact on both humanity as a whole and each individual who is in a state of drug addiction (Dymko, 2017). The level of crime related to the distribution of narcotic drugs and psychotropic substances in Ukraine has remained stably high in recent years with an increase in the share of offenses committed for the purpose of sale (from 2,293 in 2016 to 7,287 in 2022).

This trend has also become dangerous in view of the use of the latest technologies by criminals (Sukma & Zulheldi, 2021), which allowed to expand sales markets by means of making purchase of substances excluded from free circulation available to a wide range of the population, including the most vulnerable group of young people. The transition of drug crimes into the cyberspace is one of the greatest threats to national security, since the number of criminal offenses committed in this way is growing in proportion to the number of users of computer networks and electronic means of communication.

The constant improvement of technologies, availability of modern programs aimed to ensure anonymity of users, the possibility of using information resources regardless of the user's location, expansion of logistics routes are the factors that ensure a high level of latency of these criminal offenses committed using the latest technologies. Modern telecommunication technologies have not only simplified the process of communication, but also due to the available encryption of network Internet resources (DarkNet), the use of anonymous network connections, which make it difficult to track the user and his/her identification, uncontrolled use of mobile operator cards contributed to the departure from the traditional way of selling narcotic drugs and psychotropic substances "from hand to hand" and moving to "contactless sale" using the latest information technologies.

RESEARCH METHOD

The methodological basis of the research is a set of methods and techniques of scientific knowledge. The main role in this system belongs to the general scientific dialectical method of cognition, which makes it possible to investigate problems in the unity of their social content and legal form, to carry out a systematic analysis, legal regulation of peculiarities concerning investigation of criminal offences related to illegal turnover of narcotic drugs, psychotropic substances, their analogues or precursors. With the help of the logical-semantic method, the conceptual apparatus was deepened determined were the general principles of legal regulation of investigating criminal offenses related to the illegal circulation of narcotic drugs, psychotropic substances, their analogues or precursors. Systemic-structural and comparative-legal methods made it possible to investigate the concept and content of investigating criminal offenses related

to illegal circulation of narcotic drugs, psychotropic substances, their analogues or precursors, as well as the problems of activities performed by entities ensuring counteraction to the illegal turnover (trafficking) of narcotic drugs and psychotropic substances. The historical-legal method was used to study the state and general nature of investigating criminal offenses related to illegal circulation of narcotic drugs, psychotropic substances, their analogues or precursors. The formal legal method was used to research the content of legal norms which provide for peculiarities of investigating criminal offenses related to illegal turnover (trafficking) of narcotic drugs, psychotropic substances, their analogues or precursors.

RESULTS AND DISCUSSION

The use of modern telecommunications and other technologies has influenced the process of organizing criminal activity in illegal trading in prohibited means and substances. Criminal groups formed in cyberspace are characterized by being unified into an organized group of participants who do not know each other personally and live in different settlements, and group management with the use of closed communication channels and network technologies facilitates avoidance of personal contacts between them. To achieve the goal, such groups involve both IT specialists (for creation and administration of relevant Internet resources) and persons with long-term experience of drug use as couriers carrying out stashes of such substances.

The activity of selling narcotic drugs or psychotropic substances with the use of the latest technologies covers several components. First of all, such components include creation of a special Internet resource for drug marketing, or for placement of relevant announcements, offers or advertisements on an existing website on the Internet, on a web-page in a social computer network, or creation of a chatbot in the "Teiedgat" messenger. This leads to appearance of "computer" or electronic traces of crimes. However, there is also the need to physically hand over such goods to the buyer, which is often associated with the implementation of "stashes" as the main form of distribution of small batches of narcotic drugs or psychotropic substances. A "stash" of drugs can be defined as a place of hiding drugs in various uninhabited or hidden from human attention places, including the following: a mailbox, a heating battery, an electric or fire panel in the entrance of a multi-story residential building, a flowerbed near residential buildings or in parks (squares), building elements, etc.

At the same time, all coordination of actions and exchange of information between co-participants, as well as with the customer, is carried out by using telecommunication networks and mobile applications, such as "Telegram", "Viber", "WhatsApp", "Jabber", "Skype" and etc. and less often by using e-mail or cellular communication (Korneyko, 2020).

Very often, drug dealers encrypt personal e-mails so that outsiders or law enforcement officers cannot read them. As a rule, the PGP standard is used for this; and we will describe the algorithm of this standard.

PGP (Pretty Good Privacy) encryption program/library. It is often used to encrypt e-mail, but it can also be used to encrypt files. For example, Edward Snowden, used PGP to communicate with journalists.

Symmetric encryption. Encryption takes place with the same key. I.e. if a file was encrypted with the key "A" the same key "A" is needed to decrypt this file. If you imagine a box with a built-in lock, then you put your letter there. You lock this box with a key and forward the box to your addressee. The addressee has a copy of this key that can open this box.

Asymmetric encryption. In this case, a pair of two keys is generated: “private key” (a secret key exclusively for you) and “public key” (a public key, accessible to all).

Now imagine that a person has one key and many identical locks with the following functions: 1) the lock automatically closes (slams) without a key; 2) the name of the owner is written on each lock; 3) one key can open all locks. Only the owner has this key.

Next, let’s assume that we have three people who want to communicate privately with each other. Let’s call them “A”, “B” and “C”. Each of them has generated a pair of keys for himself, that is, he has many identical locks and one key that can open these locks. Keep in mind; each of our characters has his/her individual locks and keys.

For the purpose of private communication, “A” gives his locks to “B” and “C”. “B” and “C” act in the same way. They all exchange their locks. See figure 1.

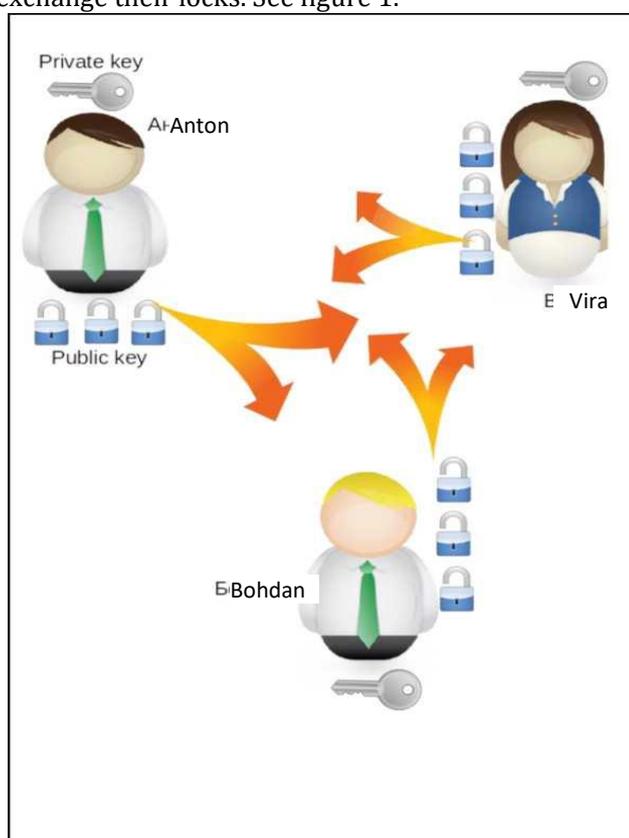


Figure 1. Communication Simulation 1

After that, for example, in addition to his key and locks, “B” also has locks from “A” and “C”. “B” decided to write a private letter to “C”. He writes an ordinary letter and puts it in a box. And he closes the box with a lock from “B”. The lock got closed. That’s all, only the owner of the lock can open it. “B” takes this closed box and sends it by regular mail. During the shipment, the interested parties see the lock on the box and understand that they cannot get to the contents of the box without the key. Having received the box “C” opens it with his key and reads the message (Manzhula *et al.*, 2017).

Now, if she wants to answer to “B”, she writes a letter. He puts it in a box, hangs the lock “B” on the box from and sends the box to “B”. Now only “B” will be able to open and read what is written there. “Public key” is the lock, and “private key” is the “Key” (Ishkhanian *et al.*, 2019).

So, when "A" writes a letter to "B", he encrypts the message using public key from "B". And "B", after receiving a message from Anton, decrypts it with his private key. See figure 2

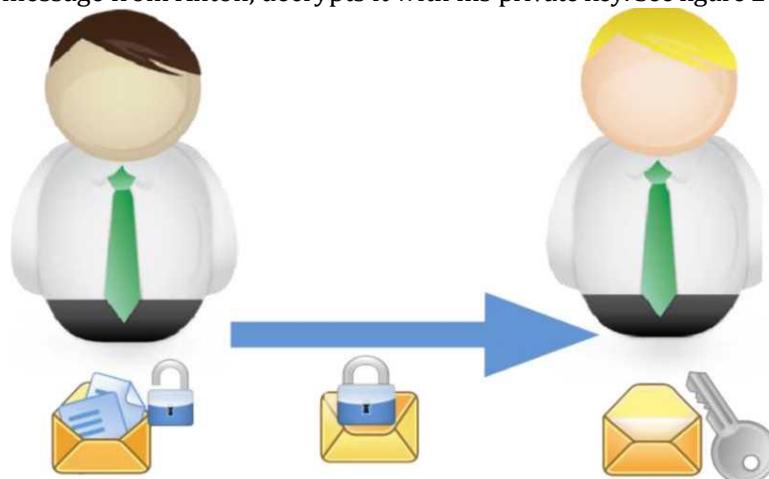


Figure 2. Communication Simulation 1

Therefore, when investigating relevant cases, investigators (if possible) should obtain keys from the relevant persons in order to access the e-mails of the suspects (accused persons).

The application called "Mailvelope" installed in Chrome and Mozilla browsers can be indicative of the use of this encryption method. See figure 3.

<h3>Chrome Extension</h3> <p>Mailvelope can be installed from the Chrome Web Store.</p>  <p>available in the chrome web store</p>	<h3>Firefox Addon</h3> <p>A Firefox version of Mailvelope is available at download.mailvelope.com.</p>  <p>Firefox</p>
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Figure 3. applications and add-ons

Therefore, you should check all the applications and add-ons installed by the owner in the properties of these browsers, and if they are available you should get the keys for decrypting e-mail sendings from these people.

Contactless sales of narcotic drugs or psychotropic substances are characterized by prepayment, which can be made by topping up the account of the phone number specified by the seller, sending the secret code of the account top-up voucher in the form of a 5M5 message, bank transfer to the bank account specified by the seller or phone number using a bank card, use of electronic means of payment (for example, «QIWI», «PayPal»), including those with undetermined status (cryptocurrency) (Leheza *et al.*, 2023).

Given the regularities of the existing practice of investigating illegal acts related to the distribution of narcotic drugs, psychotropic substances, their analogues or precursors, the following investigative situations are distinguished in modern conditions:

1. *The fact of committing such a criminal offense is revealed during the pre-trial investigation of another criminal offense (for example, on the facts of the purchase of drugs for personal consumption, traffic accidents, illegal handling of weapons or explosives, smuggling of narcotics, etc.), which gives an opportunity to establish certain information about the person involved to the sale of prohibited substances.*

Organization of a pre-trial investigation in these criminal proceedings involves taking measures typical for the investigation of any crimes related to illegal drug trafficking. At the same time, carrying out such investigative actions as inspection, search will be associated with the need to inspect contents of information available on a computer or other telecommunications device, web pages and to fix this information with the help of appropriate software. The subject of questioning of witnesses and suspects is conditioned by the same features. The possibilities of covert investigative (research) actions are also widely used, including primarily retrieval of information from electronic communication networks and electronic information systems.

In addition, it is advisable to consider the issue of appointing a computer-technical or (and) telecommunications expertise regarding computers, smartphones, and other devices seized during the arrest and search, used by the suspects to search on the Internet for information about drug sales, in order to establish a connection and communication with drug dealers regarding the acquisition of narcotic drugs, psychotropic substances and precursors.

2. *In the absence of any information about the person who carries out sales on the Internet or by placing messages on the objects of the city infrastructure in the form of inscriptions with offers to sell drugs ("meth", "phen", "klad", etc. . with the addresses of Internet sites or the names of closed channels in popular messengers), i.e. available data that testify to the systematic sale of narcotic drugs or psychotropic substances using the latest telecommunication technologies.*

The peculiarity of the pre-trial investigation in this investigative situation consists in the need to record information posted or transmitted using the Internet or other modern technologies, as well as in establishing and documenting information that identifies the virtual seller of narcotic drugs and psychotropic substances as a specific person.

In practice, during illegal activities we have to face the association of various services. For example, information is received from the page of an online store with account of the social network FaceBook used to get registered in this online store; payment is made through online banking Privat24, and information is sent to a member of the group or the buyer through a message to "Teiedgat" or 5M5.

Therefore, information important for a pre-trial investigation, such as electronic mailboxes, domain names, IP addresses, phone numbers, the number of a special account of an electronic wallet, is owned by various providers; and such information can be obtained using both available software products and procedural means specified in the Criminal Procedure Code of Ukraine.

In particular, the "Whois" system or other software can be used to search for information about the registrar of the domain name of the Internet site, the provider, the location of the site (its IP address), the site administrator.

However, taking into account the fact that criminals can use protected messengers and web resource anonymization services to hide the real IP address used to carry out administration of this

web resource (Sambo, 2023), it is advisable to initiate procedural actions (in compliance with the requirements of Chapter 43 of the Criminal Procedure Code of Ukraine) in the order of international cooperation. So, in many cases, to ensure the anonymity of the Internet page owner, the hosting capabilities of an American “Cloudflare” company are used (Tatsia, 2013).

For the same purpose, the prosecutor should direct the investigator to prepare requests to the investigating judge for granting permission for temporary access to information about the subscriber (information held by operators and telecommunications providers) as well as to use the capabilities of operational units, including those concerning conduct of undercover investigations (detective) actions, by means of sending relevant orders in accordance with Article 40 of the Criminal Procedure Code of Ukraine (Vasylenko *et al.*, 2022).

Inspection of the scene of the incident is aimed at direct perception, investigation of the situation and the nature of the crime event, the delay in carrying out of such an investigation may lead to disappearance of traces of the criminal offense, objects that can become material evidence as well as to changes in the situation, etc. Instead, it is inadmissible to carry out a search under the guise of an inspection of the scene of the incident in order to find means and substances seized from free circulation (*resolutions of the the Criminal Cassation Court within the Supreme Court in cases No. 310/4839/17, No. 740/5066/15-k, No. 754/5978/16-k*) (Vasylenko *et al.*, 2022: 14).

A typical example of such a violation is the police checking the internal parts of a person's clothing under the pretext of conducting a superficial check of this person, under the guidance of the Article 34 of the Law of Ukraine “On the National Police” (Law of Ukraine, 1995). The latter presupposes passing over the surface of a person's clothing with a hand, a special device or means, a visual inspection of the thing, as well as an independent demonstration of the contents of one's personal belongings or their voluntary delivery. In this case, the surface inspection can be part of the inspection of the scene, which is carried out in accordance with the requirements of Article 237 of the Criminal Procedure Code of Ukraine (Leheza *et al.*, 2023).

It is appropriate to pay attention to cases of seizure performed by investigators during their inspection of the scene of the incident, contrary to the requirements of Part 5 Article 237 of the Criminal Procedure Code of Ukraine, as well as on handwipes of persons to detect particles of means or substances. Examination of a person's body for the purpose of identifying traces of a criminal offense is an independent investigative action - it is an examination to be carried out in a different manner, defined in Article 241 of the Criminal Procedure Code of Ukraine (*resolution of the the Criminal Cassation Court within the Supreme Court dated 19 March 2020 in the case No 127/3712/17*) (Vasylenko *et al.*, 2022: 15).

Certain difficulties in the investigation of criminal offenses of this category are caused by the vagueness of the legislative regulation of grounds and conditions for conducting *a personal search* for the purpose of detection and seizure of a narcotic drug or psychotropic substance that a person keeps with him/her (On the approval of tables of small, large and especially large sizes narcotic drugs, psychotropic substances and precursors that are in illegal possession circulation, 2000).

As stated in the decision of the Supreme Court dated 15 June 2021 in case No. 204/6541/16-k, a personal search is a component of the detention process and, thus, legal detention in itself provides grounds for conducting a personal search. Moreover, it should be taken into account that a personal search of a detained person is necessary both to record evidence of a crime and to ensure safety of persons conducting the detention as well as safety of other persons, including the detained person himself/herself (Leheza *et al.*, 2019). Therefore, a personal search, as a rule, is carried out

immediately after detention. Since the law gives law enforcement authorities the power to detain without prior judicial authorization (under certain conditions) it means that the legislator shall recognize the unpredictability of circumstances that lead to such detention. Therefore, presence or absence of information in the Unified Register of Pretrial Investigation about the offense the detention is connected with (at the time of the detention and personal search) cannot be considered a condition of legality of this detention (Vasylenko *et al.*, 2022: 17).

When assessing the results of a personal search, the prosecutor must take into account that the involvement of a lawyer in the said investigative action shall be carried out at the request of the person being searched. Therefore, investigator's explanations of person's right to a defense attorney, the absence of a clearly expressed request by this person to involve an attorney, as well as the immediate investigator's sending a notification to the free-of-charge legal aid center after the detention of the person testify to compliance with the norms of the procedural law on ensuring the right to defense (*resolution of the Criminal Cassation Court within the Supreme Court dated 04 March 2021 in the case No 742/3853/19*) (Vasylenko *et al.*, 2022: 19).

From a tactical point of view, the suspect *should be interrogated* immediately after the arrest. The suddenness of the detention and subsequent interrogation does not allow the interrogated person to consider answers, which increases the probability of receiving a reliable and complete statement of the circumstances of the event and this will also help to correctly plan the course of the pre-trial investigation, regardless of the subsequent change of the person in his/her testimony (On the approval of the Instructions on the organization of cooperation of pre-trial investigation bodies with other bodies and units of the National Police of Ukraine in the prevention of criminal offenses, their detection and investigation, 2017).

At the beginning of the interrogation, it is necessary to find out whether the interrogated person is in a state of drug intoxication or abstinence syndrome. Although clarification of this issue requires the special knowledge of a narcologist, presence of visible traces of injections on the person's body, along with inadequacy of his/her reaction to the behavior of the investigator/prosecutor may indicate impracticality of the interrogation (On the approval of the Instructions on the organization of cooperation of pre-trial investigation bodies with other bodies and units of the National Police of Ukraine in the prevention of criminal offenses, their detection and investigation, 2017).

Since the channels of suspects' access to narcotics are subject to mandatory investigation, one should not be limited to receiving formal explanations from the suspect that the drugs were found by him/her or that that was one-time purchase of them from unknown persons. By means of giving instructions the prosecutor should direct the course of the pre-trial investigation to obtain comprehensive information about the suspect's circle of acquaintances, investigate their identities and possible involvement in illegal drug trafficking (Korneyev *et al.*, 2018).

For the same purpose, it is advisable to apply the practice of concluding plea agreements with the suspect, including specifying the suspect's duties regarding cooperation in the detection of a criminal offense committed by another person (Yuhno, 2018: 34).

Forensic examination may be included in mandatory investigative search actions during the pre-trial investigation of criminal offenses in the sphere of circulation of narcotic drugs, psychotropic substances, their analogues or precursors. In criminal proceedings on the crime of trafficking in narcotic drugs, psychotropic substances, their analogues or precursors, within a day after the seizure of narcotic drugs, the investigator shall issue a resolution on the appointment of

an expert examination and this resolution shall be sent with the relevant attachments to the state specialized institution engaged in forensic expert activities, and the investigator shall ensure referral of materials necessary for conducting a forensic examination to this expert institution (Leheza *et al.*, 2022).

Undoubtedly, this applies to scheduling the examination of narcotic drugs, psychotropic substances, their analogues and precursors; the tasks of this examination include solving a number of classification tasks (belonging of substances to narcotics, psychotropic substances, precursors, determining the mass of the narcotic active substance and the method of manufacture, etc.) and identification tasks (establishing a single total separated masses, volumes, determination of the source of origin of the provided objects, the possibility of manufacturing (synthesis) of narcotics in the manner specified by the suspect) (Leheza *et al.*, 2023; Qiram, 2022).

At the same time, taking into account the circumstances of the offense and the range of tasks that need to be solved, during the investigation in such criminal proceedings it is advisable to schedule the following examinations:

1. forensic drug examination, which allows establishing the fact of a person's illness due to alcoholism or drug addiction, the need or absence of contraindications for forced treatment of such a person, as well as which narcotic drugs are taken and in what way the person takes them;
2. forensic biological examination, which can help to determine whether the investigated plant belongs to the number of narcotics and whether it grew in a certain area/location;
3. forensic pharmaceutical examination aimed at establishing whether substances belong to medicinal products, determining their names, compliance of the content and other parameters with the requirements of the State Pharmacopoeia, determining the order of dispensing for medical purposes, as well as forms and the maximum quantity of dispensing per one prescription (Strategy of the state policy on drugs for the period up to 2030, 2022).

CONCLUSION

Thus, illegal turnover (trafficking) of narcotic drugs destroys the economy, the social sphere, increases the level of crime, destroys the moral foundations of society, it has a negative impact on young people, and provokes conflicts. It can be considered as a threat to the national security of Ukraine. Particular concern in Ukraine consists in the fact that the number of people who illegally use narcotic drugs or psychotropic substances is replenished mainly at the expense of young people. This opinion is confirmed by the results of research conducted in recent years in Ukraine by various public organizations.

It should be noted that one of the most important tasks of reforming the law enforcement agencies of Ukraine consists in implementation of a systematic response to crimes that pose a public danger for the entire country. One of these types of socially dangerous phenomena includes crimes related to the illegal production, manufacture, acquisition, storage, transportation, forwarding for the purpose of sale, as well as the illegal sale of narcotic drugs, psychotropic substances or their analogues. Quick and prompt implementation of investigative (search) and covert investigative (search) actions based on the facts of the commission of such offenses is a guarantee of restoration of social relations disturbed by the crime,

bringing guilty persons to strict liability, as well as further implementation of preventive measures in this area.

Thus, effectiveness of pre-trial investigation in criminal proceedings on the facts of illegal sale of substances excluded from free circulation using the Internet and other telecommunication technologies is complicated by the need to identify the user under a nickname. Establishing real user data in the cyberspace, properly documenting information obtained from electronic resources, requires knowledge of modern hardware and software technologies, skills in their use which determine the choice of tactics and methods of investigation of criminal offenses.

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