

Crimes Related to Intellectual Property: the Experience of Uzbekistan and Kazakhstan

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Abstract

This article offers a comprehensive comparative analysis of criminal liability for intellectual property (IP) offences in Uzbekistan and Kazakhstan. It conceptualizes criminal law as the ultimate and most coercive instrument within the broader system of legal protection of intellectual property, complementing civil and administrative remedies. Drawing on constitutional provisions, criminal codes, and judicial interpretations in both jurisdictions, the study examines the scope, structure, and categorization of IP-related crimes, including infringements of copyright and related rights, patent rights, trademarks, geographical indications, trade secrets, and other protected subject matter.

The analysis demonstrates that while both states ensure criminal-law protection for all major IP objects, they differ significantly in legislative classification, degree of social danger, and severity of sanctions. In Uzbekistan, most IP crimes are treated as offences against constitutional rights and are generally regarded as less socially dangerous, with comparatively lenient penalties and incentive-based provisions encouraging voluntary compensation. In contrast, Kazakhstan classifies such offences primarily as crimes against property and economic activity, imposing stricter sanctions and broader grounds for prosecution. The article also explores procedural aspects of investigation and identifies key similarities and divergences in qualifying elements, including damage thresholds and aggravating circumstances. Overall, the study highlights divergent policy approaches to criminal enforcement in the IP sphere.

Keywords: Legal protection, crimes in the field of intellectual property, comparative analysis, criminal punishment, preventive measures.

Introduction

The protection and safeguarding of intellectual property is one of the important tasks of legislation in the field of intellectual property. In this regard, legislation provides for various levels of protection of intellectual property rights. These levels include both civil law protection and public law protection. The application of this civil liability does not exclude the possibility of applying administrative or criminal liability measures for these violations. The latest and toughest level of protection is criminal law protection. Based on the essence of the legal protection of intellectual property, it can be stated that the establishment of criminal liability for crimes violating intellectual property rights is a preventive measure within the framework of legal protection.

The United Nations Office on Drugs and Crime (UNODC) underscores the significance of criminalizing intellectual property (IP) offences due to the extensive economic and societal harm these crimes generate. Intellectual property crime, encompassing the manufacturing, distribution, and sale of counterfeit and pirated goods without the rights-holder's consent, represents a substantial segment of the global illicit economy. Estimates indicate that the global trade in counterfeit and pirated products reached hundreds of billions of dollars annually, surpassing several other major illicit markets. This scale of criminal activity attracts organized criminal groups, which derive considerable revenue from IP infringement and related illicit trade. In some cases, such revenue streams have been linked to financing of other serious crimes, including terrorism and smuggling. Establishing robust criminal liability serves both to punish offenders and to deter participation in these economically damaging and socially disruptive activities. Criminal enforcement, therefore, is not only a mechanism for protecting rights-holders, but also a critical component of wider efforts to disrupt organized crime networks, safeguard legitimate markets, and protect public welfare from the broader harms associated with counterfeit goods [8].

In Uzbekistan and Kazakhstan, legislation also considers criminal protection of intellectual property rights as part of legal protection. In Uzbekistan, there is a constitutional norm according to which intellectual property shall be protected by law [1]. The resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated 06/23/2023 No. 19 "On certain issues of consideration of cases related to intellectual property" provides that the legal protection of intellectual property includes:

- 1) recognition of intellectual property status in accordance with the legislation;
- 2) granting by the state of exclusive rights to the author and (or) copyright holders;
- 3) provision of appropriate opportunities for intellectual property protection [6].

The regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated December 25, 2007 No. 11 "On the application by courts of certain norms of legislation on the protection of copyright and related rights" also indicates that the magnitude of the damage, the magnitude of the damage, the presence of major damage or a large amount when establishing the fact of violation of copyright and related rights, entail criminal liability [7].

Consequently, criminal legal protection acts as an extreme opportunity to protect one's intellectual property rights by bringing the violator to criminal responsibility.

Comparative analysis of the legislation of Uzbekistan and Kazakhstan

The establishment of criminal liability for crimes in the field of intellectual property follows from the objectives of criminal legislation.

Articles 2 of the Criminal Codes of Uzbekistan [2] and Kazakhstan [3] explicitly provide that the objectives of criminal legislation are:

- protection of the individual, his rights, freedoms and legitimate interests;
- protection of property;
- protection of the rights and legitimate interests of organizations;
- protection of public order and security;
- environmental protection;
- protection of peace and security,
- protection of the legally protected interests of society and the State;
- crime prevention.

The protection of intellectual property can be classified as the protection of individual rights, namely intellectual property rights.

An analysis of the Criminal Codes of Uzbekistan and Kazakhstan shows that despite the similar tasks of criminal legislation, the measures of criminal responsibility and the characteristics of crimes have certain distinctive properties.

Types of crimes related to intellectual property

In Uzbekistan and Kazakhstan, intellectual property crimes are not included in any single chapter; instead, they are located in different chapters of the Criminal Code.

In Uzbekistan, intellectual property crimes can be classified as:

- violation of the author's personal non-property rights (Article 149 of the Criminal Code);
- violation of copyright and related rights (Article 149¹ of the Criminal Code);
- illegal use of someone else's trademark, service mark, geographical indication, appellation of origin or confusingly similar designations in relation to similar goods (services) or illegal use of someone else's brand name (Article 149² of the Criminal Code);
- violation of the rights to an invention, utility model, industrial design, topology of an integrated circuit and a selection achievement (Article 149³ of the Criminal Code);
- illegal collection, disclosure or use of information (Article 191 of the Criminal Code).

Separately, there is a violation of customs legislation (Article 182 of the Criminal Code regarding parallel imports) and a violation of the rules of trade or provision of services (Article 189 of the Criminal Code regarding the sale of counterfeit copies of products) [2].

In Kazakhstan, crimes in the field of intellectual property are:

- infringement of copyright and (or) related rights (Article 198 of the Criminal Code);
- infringement of rights to invention, utility models, industrial designs, selection achievements or topologies of integrated microcircuits (Article 199 of the Criminal Code);
- illegal use of a trademark, service mark, trade name, geographical indication and appellation of origin of goods (Article 222 of the Criminal Code);
- illegal acquisition, disclosure or use of information, constituting commercial or banking secret, tax secret, obtained in the course of horizontal monitoring, the secret of providing microcredit, the secret of collection activity, as well as information related to the legalization of property (Article 223 of the Criminal Code - in terms of know-how) [3].

The main similarity lies in the fact that Uzbekistan and Kazakhstan provide criminal protection to all intellectual property assets under their legislation (objects of copyright and related rights, objects of patent law, means of individualization, etc.).

Characteristics of crimes in the field of intellectual property

In Uzbekistan, intellectual property crimes are classified as:

- crimes against the constitutional rights and freedoms of citizens (Articles 149, 149¹, 149², 149³ of the Criminal Code);
- crimes against the foundations of the economy (Article 182 of the Criminal Code);
- crimes in the sphere of economic activity (Articles 189 and 191 of the Criminal Code) [2].

In Kazakhstan, intellectual property crimes belong to the group of criminal infraction against property (Articles 198 and 199 of the Criminal Code) and criminal infraction in the scope of economic activity (articles 222 and 223 of the Criminal Code) [3].

The main difference is that Uzbekistan considers the main part of crimes in the field of intellectual property as crimes **against the constitutional rights and freedoms of citizens**, while in Kazakhstan these crimes belong to the types of crimes against **property and in the sphere of economic activity**.

According to the degree of public danger, crimes in the field of intellectual property (with the exception of violations of customs legislation) in Uzbekistan are assessed as crimes that do not pose a great public danger. That is, for these crimes, as a rule, penalties are imposed that are not related to imprisonment. At the same time, the maximum penalty for these crimes is imprisonment for up to three years [2].

In Kazakhstan, the degree of public danger for crimes in Articles 198, 199, 223 of the Criminal Code is high. They are considered as crimes of moderate severity, and in the case of a criminal group – serious crimes. At the same time, Article 222 and parts one and two of Articles 198 and 199 of the Criminal Code are a criminal offense [3].

Based on the characteristics, it can be stated that in Kazakhstan, penalties for crimes in the field of intellectual property are strict compared to Uzbekistan. For example, large-scale copyright infringement by a criminal group in Kazakhstan can result in up to *six years* in prison, while in Uzbekistan, up to *three years* in prison is provided for a similar crime (that is, two times less than in Kazakhstan).

Peculiarities of qualification of crimes in the field of intellectual property

In Uzbekistan and Kazakhstan, violation of personal non-property rights is classified as a crime regardless of the damage caused. This is one of the similar features of the criminal legislation of Uzbekistan and Kazakhstan.

In Uzbekistan, the main part of the crime in the field of intellectual property requires damage to qualify the act as a crime. In particular, a prerequisite under articles 149¹, 149², 149³, and part two of Article 191 of the Criminal Code is that the violator causes major damage (damage ranging from 300 to 500 basic estimated values, about 10-16 thousand US dollars), under Article 189 of the Criminal Code – especially major damage (damage equal to 500 or more basic estimated values, 17 thousand US dollars or more). Without major damage, these acts are classified as administrative offenses under articles 177, 177¹, 177² of the Code of Administrative Responsibility [2].

In Kazakhstan, infringement of copyright and (or) related rights, infringement of rights to inventions, utility models, industrial designs, breeding achievements or topologies of integrated circuits, illegal receipt, disclosure or use of information constituting a trade secret does not require prejudice in order to qualify a crime. The only case where major damage is necessary is a crime

in the form of illegal use of a trademark, service mark, trade name, geographical indication and designation of the place of origin of the goods. Major damage under the legislation of Kazakhstan amounts to 200 monthly calculation indices (about 1,700 US dollars) in respect of citizens or 2,000 monthly calculation indices in respect of organizations and enterprises (about 17,000 US dollars) [3].

When qualified, the criminal laws of Uzbekistan and Kazakhstan provide for a number of similar aggravating circumstances.:

- committing a crime repeatedly;
- commission of a crime by prior agreement by a group of persons;
- use of official position in the commission of a crime.

In Kazakhstan, an aggravating case is separately prescribed in the form of a crime committed by a criminal group. In Uzbekistan, it is possible to single out as an aggravating case the violation of copyright and related rights using mass media or telecommunication networks, as well as the worldwide information network Internet.

Another distinctive feature of the criminal legislation of Uzbekistan is the presence of special incentive provisions in articles providing for crimes in the field of intellectual property. For example, in articles 149, 149¹, 149², 149³, a person who has committed a crime for the first time is released from liability if he has compensated for the material damage caused within thirty days from the date of detection of the crime. In addition, in the case of compensation for material damage caused for 1) violation of copyright and related rights; 2) illegal use of someone else's trademark, service mark, geographical indication, appellation of origin or confusingly similar designations in relation to similar goods (services) or illegal use of someone else's brand name shall not be punishable by restriction of liberty or imprisonment [2]. There are no similar norms in the Special Part of the Criminal Code of Kazakhstan, but there are general incentive norms in the General Part of the Code.

Investigation of crimes related to intellectual property

The issues of crime investigation in Uzbekistan and Kazakhstan are regulated by the criminal procedure legislation.

In Uzbekistan, intellectual property crimes are investigated by the following authorities:

- Prosecutor's offices (Articles 149, 149¹, 149², 149³ of the Criminal Code);
- Department for Combating Economic Crimes at the Prosecutor General's Office of the Republic of Uzbekistan (Articles 189 and 191 of the Criminal Code);
- State Security Service (Article 182 of the Criminal Code).

Criminal proceedings by the Prosecutor's Office and the State Security Service are conducted in the form of a preliminary investigation, and by the Department for Combating Economic Crimes at the Prosecutor General's Office of the Republic of Uzbekistan in the form of an inquiry [4].

In Kazakhstan, intellectual property crimes are investigated by the following authorities:

- internal affairs bodies or the Economic Investigation Service, depending on who initiated the pre-trial investigation (parts three and four of Articles 198 and 199 of the Criminal Code);
- The Economic Investigation Service (Articles 222, 223 of the Criminal Code).

The first and second parts of Articles 198 and 199 of the Criminal Code are considered to be cases of private or public-private prosecution, and the proceedings are conducted by the prosecutor [5].

Conclusion

Thus, crimes in the field of intellectual property in Uzbekistan and Kazakhstan are a legal form of legal protection of intellectual property. In both countries, the Criminal Code includes provisions providing for criminal liability for violations of personal non-property and intellectual property rights. At the same time, there are differences in public danger (in Kazakhstan, criminal sanctions are stricter than in Uzbekistan), crime categories (Uzbekistan classifies the majority of crimes as crimes against the constitutional rights and freedoms of citizens, while Kazakhstan classifies economic crimes) and crime investigation agencies. Uzbekistan's legislation is characterized by a more liberal approach, providing for incentive norms.

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