

Issues of Criminal Liability for the Illegal Manufacture, Acquisition, Possession, and Other Acts Regarding Narcotic Drugs, their Analogues, or Psychotropic Substances with Intent to Distribute, as Well as for their Illegal Distribution

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Abstract:

This article discusses the issues of criminal liability for the illegal manufacture, purchase, possession and other actions for the purpose of distributing narcotic drugs, their analogues or psychotropic substances, as well as their illegal distribution. In particular, a comprehensive analysis of the constituent elements of this crime, a scientific clarification of qualification issues, a comparative analysis with international standards and problems in the practice of law enforcement are studied in detail. It also sets out substantive proposals and conclusions on criminal liability for the illegal manufacture, purchase, possession and other actions for the purpose of distributing narcotic drugs, their analogues or psychotropic substances, as well as for their illegal distribution.

Keywords: Crime, drug addiction, analogues, psychotropic substances, population, precursors, drug, preparation, acquisition, storage, transportation or shipment, transfer.

Introduction

Chapter XIX of the Criminal Code of the Republic of Uzbekistan is devoted to crimes involving illegal trafficking in narcotic drugs or psychotropic substances, and criminal liability for "illegal preparation, acquisition, storage and other actions with the aim of trafficking narcotic drugs, their analogues or psychotropic substances, as well as their illegal trafficking" is established in Article 273 of this code.

Indeed, illicit trafficking in narcotic drugs and psychotropic substances is one of the most transnational, highly latent and socially dangerous types of modern crime. These crimes, along with harming the health of the population, are inextricably linked to such dangerous social phenomena as organized crime, corruption, human trafficking and financing of terrorism.

The international legal framework is strengthened by the Single Convention on Narcotic Drugs, Convention on Psychotropic Substances and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted within the framework of the United Nations.

These international instruments oblige participating states to introduce effective criminal penalties for the illicit trafficking of narcotic drugs and psychotropic substances, to criminalize crimes and to prevent them.

In the Republic of Uzbekistan, criminal liability issues in this area are established by the norms of the Criminal Code of the Republic of Uzbekistan, as well as by the Law of the Republic of Uzbekistan "On Narcotic Drugs and Psychotropic Substances". In particular, the illegal manufacture, purchase, possession, storage, transportation and distribution of narcotic drugs, their analogues or psychotropic substances for the purpose of distribution are envisaged as a separate criminal offense.

If we dwell on the socio-legal nature and criminological characteristics of the crime, drug crimes are characterized by a high level of latency, elements of organization, and are committed on the basis of economic interest. Criminological studies show that illegal trafficking has a network structure, covering the stages of production - transportation - storage - wholesale distribution - retail sale.

The social danger of this crime is manifested in the following:

- causing widespread harm to the health of the population;
- leading to the spread of drug addiction among young people;
- leading to an increase in the level of recidivism of crime;
- leading to an increase in the costs of social rehabilitation, etc.

If we analyze the object, objective side, subject and subjective sides of this crime, the object of this crime is the established procedure for dealing with narcotic drugs, their analogues or psychotropic substances and precursors, as well as the health of the population [1]. Public safety and public order appear as additional objects.

Article 3 of the Law of the Republic of Uzbekistan "On Narcotic Drugs and Psychotropic Substances" provides the main definitions [2], according to which:

- narcotic drugs are substances of synthetic or natural origin, preparations and plants containing narcotic substances, included in the list of narcotic drugs and controlled in the Republic of Uzbekistan;
- psychotropic substances - substances of synthetic or natural origin included in the list of psychotropic substances and controlled in the Republic of Uzbekistan;
- precursors - substances included in the list of precursors and controlled in the Republic of Uzbekistan, used for the manufacture of narcotic drugs, their analogues and psychotropic substances;

- analogues of narcotic drugs and psychotropic substances - substances of synthetic or natural origin similar to narcotic drugs and psychotropic substances in terms of their chemical structure and properties, and having an active effect on the psyche in the same way as them;

- drug - a mixture of substances in any physical state, containing one or more narcotic drugs or psychotropic substances;

- circulation of narcotic drugs, psychotropic substances and precursors - narcotic drugs, - import (export), transit, storage, supply, sale, distribution, receipt, transportation, shipment, development, production, preparation, use and disposal of psychotropic substances and precursors, as well as cultivation of plants containing narcotic drugs;

- drug addiction - a disease associated with psycho-physical dependence on narcotic drugs;

- Toxicomania is a disease associated with mental and physical dependence on psychotropic substances, as well as substances that do not have medicinal properties, of synthetic or natural origin, and that actively affect the psyche, similar to narcotic drugs.

The subject of this crime is narcotic drugs, their analogues or psychotropic substances and precursors.

The subject of this crime is determined on the basis of lists approved by legal regulations. The concept of analogue is particularly important, as it includes substances that have a modified chemical composition, but are similar in pharmacological effect to prohibited substances.

This crime is objectively expressed in the actions of illegally preparing, acquiring, storing, transporting or sending, transferring narcotic drugs, their analogues or psychotropic substances.

This crime is a crime of formal composition. That is, the possession of a substance for the purpose of distribution can be considered a completed crime in itself.

Turning to the concept of transfer, transfer is understood as the transfer of narcotic drugs to another person by any method (sale, free gift, exchange, brokerage). In judicial practice, even a trial or "gift" is considered distribution.

From the subjective side, the crime is committed only with direct intent. That is, the offender realizes that he is preparing, purchasing, storing, transporting or sending narcotic drugs, their analogues or psychotropic substances and intends to commit it.

The purpose of the crime is a necessary sign of the crime, and if it is not proven, the act should be qualified under Article 276 of the Criminal Code.

If we focus on the subject of this crime, the subject of the crime is a natural person who has reached the specified age and is of sound mind at the time of the crime.

If we also focus on the issues of qualification and punishment of this crime, there is also a quantitative criterion in the criminal law.

According to the relevant part of Article 273 of the Criminal Code, a person is liable for the illegal transfer of narcotic drugs, their analogues, and psychotropic substances in connection with their quantity [3].

The Criminal Code provides for the concepts of a small quantity, a small quantity, and a large quantity. These quantities are the main criterion for determining the gravity of the crime. From a scientific point of view, the criterion of quantity expresses not only an objective sign, but also the level of social danger.

Since the sale of narcotic drugs, their analogues, and psychotropic substances in large quantities is considered the most socially dangerous form of their sale, this act should be qualified by Part 5

of Article 273 of the Criminal Code. The sale of these drugs or substances in large quantities by any other method entails liability under the other relevant part of Article 273 of the Criminal Code. If the accused transported only a part of the narcotic drugs, their analogues, and psychotropic substances, and the rest is later discovered during the inquiry or preliminary investigation, liability arises separately for illegal transportation and illegal possession (if intent to transport these drugs and substances is not established), depending on their quantity.

The illegal transfer of narcotic drugs, their analogues, and psychotropic substances, as provided for in Part 1 of Article 273 of the Criminal Code, should be understood as their transfer to another person in various ways for a fee or free of charge (sale, gift, exchange, in exchange for a loan or as a loan, etc.). In this case, the transfer of drugs, substances, and plants can be carried out by the person directly or in another way (for example, by reporting the place where they are stored, leaving them in a designated place). The injection of narcotic drugs, their analogues, or psychotropic substances by one person to another cannot be considered an unlawful transfer if the drug or substance belongs to the user and the injection was made at his request [4].

The following are considered aggravating circumstances for this crime:

- if it is committed in more than a small amount,
- by a person who has previously committed a crime involving illegal trafficking in narcotic drugs or psychotropic substances,
- by a group of persons in advance,
- in places of imprisonment,
- in educational institutions or other places used by pupils and students for educational, sports and public events,
- using telecommunications networks, as well as the Internet,
- illegal manufacture or processing of narcotic drugs, their analogues or psychotropic substances in laboratories or using means and equipment considered the property of another person or precursors, as well as the organization or storage of drug dens for the consumption or distribution of such drugs, as well as the acts provided for in the second or third part of this article,
- committed by a particularly dangerous recidivist,
- by an organized group or in its interests,
- illegal sale of narcotic drugs, their analogues or psychotropic substances in large quantities.

The aggravating circumstances listed above significantly increase the social danger of the crime.

If we compare them with international standards, the recommendations of the United Nations Office on Drugs and Crime suggest strengthening preventive and rehabilitation measures in the fight against drug addiction, along with criminal punishment.

In international practice, the following are used:

- diversion programs for users;
- referral to rehabilitation centers;
- community service;
- probation mechanisms.

In some countries, the principle of differentiation between distributors and consumers is more pronounced.

If we dwell on the problems in the practice of applying the law on this crime, they are associated with the complexity of proving the purpose of distribution and the assessment of evidence in cases of provocation.

Based on the above, the following proposals and conclusions can be made on the issues of criminal liability for the illegal preparation, purchase, possession and other actions for the purpose of distribution of narcotic drugs, their analogues or psychotropic substances, as well as their illegal distribution:

First, to define the concept of "Distribution purpose" in legislation.

It is proposed to additionally include the criteria for determining the purpose of distribution in the Criminal Code (quantity, method of packaging, correspondence by means of communication, electronic payment traces, etc.). This provides a uniform approach in judicial practice.

Secondly, it is necessary to strengthen the legal certainty regarding analogous articles.

It is necessary to define the concept of analogue in a broad but clear formulation and strengthen the criteria of expertise at the level of law. In particular, it is recommended to set the criteria of chemical composition and pharmacological effect normatively.

Thirdly, a decision should be adopted that summarizes judicial practice.

It is advisable for the Supreme Court to adopt a plenum decision on determining the purpose of distribution, assessing intermediary actions, and applying quantitative criteria in drug crimes.

Fourthly, reviewing quantitative criteria on a scientific and criminological basis

It is proposed to reassess the quantitative criteria of "small", "large" and "very large" based on medical and criminological research, and introduce a mechanism for their periodic revision.

Fifth, it is necessary to strengthen the differentiation between the distributor and the consumer.

In criminal policy, a clear distinction should be made between professional distributors and private consumers. In accordance with international practice, in particular, the recommendations of the United Nations Office on Drugs and Crime, rehabilitation programs for consumers should be expanded.

Sixth, it is necessary to clearly regulate cases of provocation.

It is necessary to clearly regulate the procedure for the practice of "controlled purchase" within the framework of rapid search measures, and to establish criteria for the admissibility of evidence.

Seventh, it is necessary to strengthen the legal status of electronic evidence.

Taking into account the cases of distribution via the Internet, it is necessary to determine the procedure for evaluating cryptocurrency payments, instant messenger correspondence, and digital traces as evidence.

Eighth, it is necessary to expand the mechanisms for individualizing punishment.

It is advisable to give courts the authority to take into account the degree of social danger of a person, the significance of his role, the state of recidivism, and the possibilities of rehabilitation when imposing punishment.

Ninth, it is necessary to introduce a criminological monitoring system.

It is necessary to form a single electronic analysis platform for drug crimes, plan preventive measures on the basis of statistical and analytical data at the territorial level.

Tenth, it is necessary to institutionally strengthen preventive and rehabilitation measures.

Along with the penal policy, it is proposed to strengthen the activities of social rehabilitation centers, expand preventive legal propaganda programs among young people, and systematically implement measures to promote a healthy lifestyle.

In conclusion, it can be said that the crimes of illegal manufacture, purchase, possession and distribution of narcotic drugs, their analogues or psychotropic substances for the purpose of distribution are acts that pose a serious threat to the health and safety of society.

Correctly identifying all elements of the crime, especially proving the purpose of distribution, is crucial in ensuring fair liability. National legislation should be improved in line with international standards, and penalties should be combined with prevention and rehabilitation mechanisms.

This approach serves to increase the effectiveness of the fight against crime and to protect public health.

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