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MODERN PROBLEMS AND PROSPECTS FOR CRIMINAL LEGAL REGULATION OF LIABILITY FOR THE ILLEGAL TRANSFER OF NARCOTIC DRUGS OR PSYCHOTROPIC SUBSTANCES

Submission Date: May 10, 2024, Accepted Date: April 15, 2024,

Published Date: May 20, 2024

Crossref doi: <https://doi.org/10.37547/ijlc/Volume04Issue05-05>

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ABSTRACT

Among the effective means of combating crime, criminal law is the particular importance. One of the methods used to achieve its objectives is the application of criminal legal sanctions to persons who have committed socially dangerous acts. Strict observance of the rule of law and ensuring reliable protection of the legitimate rights and interests of the individual, society and the state are the key to directions of modern criminal policy. This requires a clear and justified application of legislation, including criminal law, which serves as the legal basis for the classification of crimes.

KEYWORDS

Legislation, including criminal law, Republic of Uzbekistan, criminal liability, illegal manufacture, acquisition.

INTRODUCTION

The legal assessment of a socially dangerous act includes a comparison of the signs characterizing the circumstances of the committed act with the signs of a specific crime provided for by the criminal law norm.

In the Republic of Uzbekistan, criminal liability for the illegal transfer of narcotic drugs or psychotropic substances is provided in Article 273 of the Criminal Code.

An analysis of criminal legislation and the practice of its application shows that in the legal assessment of the illegal transfer of these substances and means, there are certain problems associated with the legislative design of this article.

In particular, within the meaning of the disposition of part one of this article, criminal liability arises in cases of illegal manufacture, acquisition, storage, transportation or shipment for the purpose of transfer

or for the transfer of narcotic drugs, their analogues or psychotropic substances committed in small quantities. Article 56 of the Code of the Republic of Uzbekistan on Administrative Liability establishes administrative liability for the illegal manufacture, acquisition, storage, transportation or transfer of narcotic drugs, their analogues or psychotropic substances, committed in small quantities without the purpose of transfer.

An analysis of the above provisions of criminal and administrative legislation shows that the illegal manufacture, acquisition, storage, transportation or shipment for the purpose of transfer or transfer of narcotic drugs, their analogues or psychotropic substances committed in small quantities remains outside the scope of legal regulation. In other words, neither administrative nor criminal liability is provided for the commission of such acts.

In practice, the legal gap that has arisen is resolved on the basis of the provisions of the resolution of the plenum of the Supreme Court of the Republic of Uzbekistan “On judicial practice in criminal cases related to the illicit trafficking of narcotic drugs, their analogues and psychotropic substances” dated April 28, 2017 No. 12, according to paragraph 4 of which, “... it should be borne in mind that for the illegal manufacture, acquisition, storage, transportation or transfer of narcotic drugs, their analogues and psychotropic substances without the purpose of selling in small quantities, the perpetrators in all cases are subject to administrative liability (Article 56 of the Code of the Republic of Uzbekistan on Administrative Liability). If these actions were committed for the purpose of transfers, the act is subject to qualification under the first part of Article 273 of the Criminal Code” [1].

However, in our opinion, this qualification rule proposed by the highest judicial body of the country has no legal basis, since in this situation a conflict arises between the provisions of the Criminal Code and the decision of the plenum of the Supreme Court. Based on the third part of Article 18 of the Law of the Republic of Uzbekistan “On Regulatory Legal Acts” No.-682 dated April 20, 2021, “In case of discrepancies between regulatory legal acts, a regulatory legal act with higher legal force is applied” [2], those. the provisions of the Criminal Code are subject to application.

In connection with the above, in order to eliminate the existing legal gap and achieve a uniform interpretation of the norms of criminal law, we believe it is advisable to exclude from the disposition of the first part of Article 273 the indication of a small amount of narcotic drugs, their analogues or psychotropic substances.

The adoption of urgent measures requires the spread in recent years of contactless forms of transfer of narcotic drugs, psychotropic substances and their analogues. The widespread use of modern computer technologies and telecommunication systems in all spheres of life, the creation of global computer networks and the active use of cyberspace for the distribution of drugs pose significant threats. The use of the Internet and information and telecommunication technologies when committing these crimes allows criminals to reach an almost unlimited audience and ensures a high degree of efficiency and anonymity. The lack of identification, unified control, high latency and transnational nature of these crimes indicate a higher degree of public danger from the transfer of narcotic drugs, psychotropic substances and their analogues using the Internet and telecommunication technologies.

Taking into account the above, we believe it is advisable to supplement Article 273 of the Criminal

Code with a qualifying feature providing for increased liability for the illegal manufacture, acquisition, storage and other actions with narcotic drugs, their analogues or psychotropic substances for the purpose of transfer, committed using telecommunications networks, as well as the worldwide information network Internet.

Part five of the article in question provides liability for the illegal transfer of narcotic drugs or psychotropic substances. We agree that the transfer of narcotic drugs or psychotropic substances poses a significant social danger compared to other forms of transfer, and undoubtedly, this form of transfer should influence the severity of the punishment. However, its presence in the disposition of part five of Art. 273 of the Criminal Code gives rise to serious difficulties in law enforcement practice. For example, cases of other (except of sale) forms of illegal transfer of narcotic drugs or psychotropic substances (donation, transfer to pay off a debt, etc.) on a large scale. Here the question rightly arises: What should be guided by the legal assessment of such a situation – quantity or form of transfers? The current edition of the article indicates that such situations can only be qualified under the second part (not even the third!) of Art. 273 Criminal Code. In this regard, taking into account that transfer is one of the forms of transfers and the changes we propose will ensure a uniform interpretation and application of this norm and will contribute to achieving the principle of fairness of punishment, we believe it is advisable in part five of Article 273 of the Criminal Code to replace the words “Illegal sale” with the words “Illegal transfer.”

The current version of Article 273 of the Criminal Code includes two independent elements of crime: 1) illegal production, acquisition, storage, transportation or shipment for the purpose of transfer, as well as transfer of narcotic drugs, their analogues or

psychotropic substances; 2) organizing or maintaining dens for the consumption or distribution of these funds. Such an edition, in our opinion, violates the principles of legislative technology, since each article of a normative legal act must be characterized by internal unity, have a holistic character and express a complete meaning. Combining in one article norms that are not directly related to each other represents an artificial reduction in the number of norms of a normative act. The formation of a separate norm should be based on the interdependence and interconnection of its provisions, which is the main feature of its structural unity.

If two or more rules are interrelated, complement each other and can only answer a specific legal question together, then for ease of use they can be placed in one article. Combining several norms in one article is advisable provided that they are logically connected, define each other and follow from the general to the specific.

In this case, the wording of Article 273 of the Criminal Code combines norms that do not have the indicated signs of interconnectedness and interdependence. Illegal production, acquisition, storage, transportation or shipment for the purpose of transfer, as well as the transfer of narcotic drugs and the organization or maintenance of dens for the consumption or distribution of these drugs are various types of illegal activities that require independent legal regulation. The combination of these norms in one article violates the principles of legislative technology, since it does not ensure internal unity and integrity, which complicates the enforcement and perception of the norms. Elimination of this violation of legislative technology necessitates the establishment of responsibility for the organization or maintenance of dens for the consumption or distribution of narcotic

drugs, psychotropic substances or their analogues in a separate article of the Criminal Code.

We express our hope that the proposals and recommendations we have formulated to improve the legislation on liability for the illegal transfer of narcotic drugs and psychotropic substances will help to increase the efficiency of law enforcement practice and strengthen measures to combat crimes that constitute illicit trafficking in narcotic drugs or psychotropic substances.

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