



 Research Article

QUALIFICATION OF ILLEGAL SALE AND OTHER ACTIONS WITH NARCOTIC DRUGS OR PSYCHOTROPIC SUBSTANCES FOR THE PURPOSE OF SALE IN CASE OF MULTIPLE CRIMES

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ABSTRACT

Based on the analysis of the current criminal legislation, the judicial practice of the Republic of Uzbekistan, the study of foreign experience, the article discusses some aspects of the qualification of illegal sale and other actions with narcotic drugs or psychotropic substances for the purpose of sale, committed by persons who have previously committed such crimes, and also formulates proposals for improving legislation.

KEYWORDS

Qualification, multiplicity of crimes, illicit trafficking in narcotic drugs and psychotropic substances, repetition, relapse, qualifying sign, conviction, legislative technique.

INTRODUCTION

In the current criminal legislation of the Republic of Uzbekistan, crimes constituting illicit trafficking in narcotic drugs or psychotropic substances are placed in a separate chapter of the Special Part of the Criminal Code, which emphasizes the special attention of the legislator to the protection of public relations that ensure public safety related to public health from encroachments constituting illicit trafficking in narcotic drugs or psychotropic substances.

One of the most dangerous crimes in this area is illegal acts for the purpose of selling or selling narcotic drugs or psychotropic substances and their analogues, liability for which is provided for in article 273 of the Criminal Code of the Republic of Uzbekistan.

The criminal law, being one of the most effective means of combating crime, requires the achievement of a unified interpretation of its provisions, which determines the correct classification of crimes, which

acts as a guarantor of compliance with the principles of criminal law and ensuring the rights and interests of citizens.

A unified interpretation of the law can be achieved if there are at least two factors. First, the text of the law should be presented in a concise, concise and accessible form. Secondly, the law enforcer must perceive the provisions of the law in a similar way to the meaning that the legislator lays down when constructing this norm.

Judicial practice shows that, in general, the article in question is applied correctly, however, some of its provisions require theoretical understanding and the development of a unified law enforcement practice.

In particular, paragraph "a" of the second part of Article 273 of the Criminal Code of the Republic of Uzbekistan provides for liability for illegal manufacture, acquisition, storage, transportation or shipment for the purpose of sale, as well as the sale of narcotic drugs, their analogues or psychotropic substances in small quantities or in amounts exceeding a small, committed by a person who has previously committed a crime constituting illegal circulation of narcotic drugs or psychotropic substances. According to the law, this qualifying feature is applied in case of committing several crimes constituting the illegal circulation of narcotic drugs or psychotropic substances. Namely, in the presence of such forms of multiplicity of crimes as repetition and relapse.

According to the decision of the Supreme Court of the Republic of Uzbekistan "On the issues of qualification of acts in case of multiple crimes" No. 13 dated May 5, 2008, "according to the law, the repetition of crimes is understood as the simultaneous commission by a person of two or more intentional crimes, provided for:

the same article of the Special Part of the Criminal Code, if it provides for liability for the same elements of crimes;

the same part of the article of the Special Part of the Criminal Code, if this article provides for liability for different elements of crimes (for example, articles 228, 248, 273 of the Criminal Code).

In certain cases specially specified in the criminal law, the commission by a person of two or more intentional crimes is provided for by different articles of the Special Part of the Criminal Code (for example, parts two of articles 118, 119, 189, 211, 212, part three of article 213, part two Article 276 of the Criminal Code)" [1].

Thus, one of the main signs of repetition is the commission of crimes intentionally. Article 34 of the Criminal Code of the Republic of Uzbekistan shows that the recurrence of crimes also forms only intentional socially dangerous acts.

The current version of the considered qualifying feature assumes its application in cases of a crime committed by a person who has previously committed any of the crimes making up the illegal circulation of narcotic drugs or psychotropic substances, which are combined by Chapter XIX of the Special Part and provided for in Articles 270, 271, 273-276 of the Criminal Code of the Republic of Uzbekistan. We should note that we commit intentionally not these crimes. For example, a crime under Article 275 of the Criminal Code (Violation of the rules for the production or handling of narcotic drugs, their analogs, or psychotropic substances) can also be committed through negligence, in the presence of which, the use of this qualifying feature is not allowed. However, the present edition of the considered qualifying feature does not contain this exception, which gives rise to an erroneous interpretation of the legal norm.

In addition, the question arises of the application of this qualifying feature in the commission of a crime by a person who has previously committed other crimes not included in Chapter XIX, related to illicit trafficking in narcotic drugs or psychotropic substances. For example, should the considered qualifying sign be applied in the event of the commission of a crime under Article 273 of the Criminal Code by a person who has previously committed crimes under the second or third part of Article 127 of the Criminal Code, providing for liability for involving a minor in the use of narcotic drugs, their analogs or psychotropic substances, or a crime, provided for by Article 246 of the Criminal Code, which provides for liability for smuggling of narcotic drugs, psychotropic substances?

It should be noted that paragraph “a” of the third part of Article 127 of the Criminal Code also contains a qualifying feature providing for increased responsibility for involving a minor in the use of narcotic drugs, their analogs or psychotropic substances, committed by a person who has previously committed any crime related to drug trafficking drugs or psychotropic substances. However, such a wording of the qualifying feature does not cause different interpretations when applied to persons who have previously committed crimes constituting illicit trafficking in narcotic drugs or psychotropic substances or smuggling, since the legislator uses the expression “by a person who has previously committed any crime related to illicit trafficking in narcotic drugs or psychotropic substances.

In this aspect, Professor M.Kh. Rustambaev notes that the considered qualifying sign should be applied in cases where a person has previously committed any of the crimes under Art. 270-276 of the Criminal Code, provided that the statute of limitations for bringing to justice has not expired or the conviction for a

previously committed crime has not been canceled or removed in the manner prescribed by law [2].

Certain questions are raised by the provisions of the plenum of the Supreme Court of the Republic of Uzbekistan dated April 28, 2017 “On judicial practice in criminal cases related to illicit trafficking in narcotic drugs, their analogs and psychotropic substances”, in which the highest judicial body gives clarifications on the application of the considered qualifying feature, indicating that “... the criminal liability of a person under paragraph “a” of part two of Article 270, paragraph “a” of part two of Article 271, paragraph “a” of part three of Article 273, paragraph “a” of part two of Article 274, paragraph “b” part two of Article 276 of the Criminal Code occurs in the event of his conviction earlier for any committed crime, provided for in Chapter XIX of the Criminal Code. Qualification of an act on the basis of the indicated sign is unacceptable if a person has been exempted from criminal liability for a previously committed crime or the conviction for him has been canceled or removed in the manner prescribed by law” [3].

We cannot agree with this clarification of the Supreme Court, since, with such an interpretation, the qualifying feature under consideration can only be applied in case of recidivism of crimes, and cases of a repeated commission of these acts will remain outside the legal response. In addition, they see a certain inconsistency from the above position of the plenum. Namely, the court, explaining that liability arises in the event of a conviction of a person for a previously committed crime, provided for in Chapter XIX of the Criminal Code, immediately shows that qualification is unacceptable if a person has been released from criminal liability for a previously committed crime. How can a person released from criminal liability for a previously

committed crime under Chapter XIX of the Criminal Code be convicted?

An analysis of the current criminal legislation of the Republic of Uzbekistan shows that such legislative definitions are used in eighteen articles of the Criminal Code. In eleven of them, the legislator equates the social danger of general or special repetition[1] and dangerous recidivism[2], combining these forms of plurality in one qualifying feature (for example, paragraph “b” of part 3 of article 104, paragraph “b” part 2 of article 118 of the Criminal Code, etc.) or formulating qualifying signs of repeated commission or commission of a crime by a dangerous recidivist and a qualifying sign providing for the commission of a crime by a person who has previously committed a crime, provided for by another article of the Special Part of the Criminal Code in different paragraphs, but within one part of the article (for example, paragraph “b” of part 3 of article 128 of the Criminal Code), also emphasizing the equal social danger of these circumstances.

The study of foreign criminal legislation on this issue shows that in the Criminal Code of Ukraine [4], Estonia [5], Belarus [6], similar qualifying signs contain indications of the number of specific articles of the Criminal Code that provide for liability for crimes constituting illicit trafficking in narcotic drugs or psychotropic substances. In the Criminal Code of Georgia [7], a similar sign is similar to the Criminal Code of the Republic of Uzbekistan, however, it is more specific and formulated as follows: “a person who has previously committed any of the crimes provided for by this chapter of the Code.”

Based on the foregoing, it should be concluded that the legislator, when formulating the qualifying feature under consideration, meant criminal liability for the illegal manufacture, acquisition, storage and other

actions with narcotic drugs, their analogs or psychotropic substances for the purpose of sale, as well as their sale, committed by a person who has previously committed any intentional crime under Chapter XIX of the Special Part of the Criminal Code, regardless of the fact of conviction, provided that the person for the previously committed crime was not released from criminal liability or the conviction for him was not canceled or removed in accordance with the law okay.

In the legal literature, this qualifying feature is considered in a similar sense [8].

Based on the foregoing, we consider it appropriate to state paragraph “a” of part 3 of article 273, as well as the corresponding paragraphs of articles 270, 271, 274 and 276 of the Criminal Code of the Republic of Uzbekistan in the following wording:

“repeatedly, a dangerous recidivist or a person who has previously committed any intentional crime related to the illegal circulation of narcotic drugs, psychotropic substances or their analogs.”

These proposals will serve to achieve a unified interpretation of the considered criminal law norms, as well as the observance of a uniform legislative technique for formulating such qualifying features, which will ensure their unmistakable application.

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