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Illegal manufacturing, processing, acquisition, storage, transportation, or dispatch of potent or toxic substances with the intent of distribution and some issues related to the objective elements of this crime

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Abstract: The article examines theoretical views and practical issues related to the objective aspects of the crime involving illegal manufacturing, processing, acquisition, storage, transportation, or dispatch of potent or toxic substances for illegal distribution purposes, as well as their illegal distribution. The author presents insights on the elements of the objective side of this crime, discusses the problems encountered in the legal qualification of such crimes, and proposes certain amendments aimed at improving the legislation concerning this criminal offense.

Keywords: Objective elements of crime, potent and toxic substances, public health, criminal liability, time of crime completion.

Introduction: In accordance with Article 13 of the Constitution of the Republic of Uzbekistan, democracy in Uzbekistan is based on universally recognized principles, which regard human beings, their life, freedom, honor, dignity, and other inviolable rights as the highest values. Democratic rights and freedoms are protected by the Constitution and laws.

Nowadays, there are emerging threats to human life and health, as well as public safety, among which the illegal circulation of potent and toxic substances is one of the most dangerous. The illegal handling of these

substances is considered highly socially dangerous, as their misuse by the population for narcotic purposes inevitably leads to criminogenic situations and adversely affects public safety.

Discussion and analysis of main results

Criminal legislation contains several provisions aimed at combating the illegal circulation of these substances. Among these provisions, paragraphs 3-5 of Article 251¹ of the Criminal Code (hereinafter CC) establish criminal liability for the illegal manufacturing, processing, acquisition, storage, transportation, or dispatch of potent or toxic substances intended for illegal distribution, as well as their illegal distribution.

M. Usmonaliev classifies crimes based on their structure into three categories: simple, complex, and alternative crimes. Simple composition crimes do not include complicating or aggravating elements and have a single object, single action, and single socially dangerous consequence. Complex crimes involve several objects or multiple actions. Alternative composition crimes, although a type of complex crime, specify several actions in the disposition, and committing any one of these actions alone can result in criminal liability.

The crimes described in the analyzed article fall under the category of alternative composition crimes. Specifically, paragraphs 3-5 of Article 251¹ of the Criminal Code describe several alternative actions constituting the objective side of the crime:

1. Illegal manufacturing, processing, acquisition, storage, transportation, or dispatch of potent or toxic substances intended for illegal distribution;
2. Illegal distribution of these substances;
3. Preparation, acquisition, storage, transportation, dispatch, or distribution of equipment intended for manufacturing or processing these substances.

Clarifications regarding actions involving potent and toxic substances in paragraphs 3-5 of Article 251¹ CC are provided in Resolution No. 33 of the Plenum of the Supreme Court dated November 27, 2021, titled "On judicial practice regarding crimes related to illegal circulation of potent or toxic substances".

In particular, paragraph 8 of the Plenum Resolution stipulates that criminal liability for actions involving potent and toxic substances arises only when the individual has intent for future illegal distribution. Paragraph 3 of the Resolution defines illegal manufacturing of potent or toxic substances as intentional actions aimed at illegally obtaining these substances from chemical sources, plants, or animals.

Currently, the legislation sets several requirements

regarding the manufacturing of these substances. Specifically, Articles 15 and 16 of the Law "On medicines and pharmaceutical activity" define manufacturing and preparing medicines as a pharmaceutical activity that requires licensing. According to paragraph 35 of the annex to the Law "On licensing, permissions, and notification procedures", manufacturing toxic substances is a licensed activity. Violating these established requirements constitutes grounds for criminal liability.

In analyzing the legal aspects of manufacturing actions, attention should be given to the possibility of producing potent or toxic substances, as provided separately from manufacturing in the legislation mentioned above.

M.Kh. Rustambayev defines the manufacturing of potent or toxic substances as the process of combining natural raw materials or ordinary non-toxic substances into various forms and types, creating (producing) these substances in necessary quantities. According to this scholar, creation and production are encompassed within the concept of manufacturing.

However, I.V. Lezenkova distinguishes between manufacturing and production, arguing that production involves batch manufacturing using specialized chemical and other equipment. She proposes that production should be specifically included as a separate crime in criminal legislation for illegal circulation of these substances. Supporting this viewpoint, it should be noted that certain articles of the CC (e.g., Articles 186³ and 250¹) already separately define responsibility for both manufacturing and production. Given that legislation explicitly differentiates production and manufacturing, criminal law should similarly establish separate liability for each.

Responsibility for manufacturing potent and toxic substances arises when specifically listed prohibited substances are produced. Creating new substances with potent or toxic characteristics not included in the prohibited list does not constitute illegal manufacturing.

According to V.V. Kukharuk, the crime of manufacturing these substances is completed at the initiation of actions aimed at obtaining finished products for use. However, other scholars argue that the crime is considered completed only when finished substances ready for use have been obtained. Preparation and attempted commission of crimes presume the absence of the criminally intended outcome. The wording of Article 251¹ of the CC explicitly refers to finished substances. Therefore, it is appropriate to consider the illegal manufacturing of potent or toxic substances as a completed crime only upon obtaining finished substances, and any earlier stages should be regarded as incomplete crimes.

Paragraph 4 of the Plenum Resolution defines the illegal processing of potent or toxic substances as refining (purifying) solid or liquid mixtures containing one or more potent or toxic substances from additional substances, or increasing the proportion of potent or toxic substances in such mixtures, as well as enhancing their effect on the human body by mixing with other pharmacologically active substances. From this definition, it is clear that the primary goal of processing substances is to enhance their effects when consumed.

According to M.G. Yermakov, purification of substances from additional mixtures and adjusting them to the required concentration during the manufacturing process is covered within the concept of manufacturing itself, hence not necessitating separate qualification as processing. This crime is considered complete once the substance acquires potent or toxic properties. However, it should be noted that the crime is not solely completed at this point since the act of processing also includes enhancing the effects of already prepared substances, and thus, the completion of the crime is linked to achieving this intended objective.

E.G. Shmelyova argues that dissolving potent or toxic substances in water without additional processes like evaporation, purification, or sublimation—which do not alter the chemical structure should not be classified as manufacturing or processing.

The provided definition of processing includes increasing the proportion of potent or toxic substances in a mixture. In our opinion, this action involves exclusively adding potent or toxic substances to a mixture already containing them. Merely combining substances of the same category (e.g., pouring the mixture of “tropicamide” eye drops into a single container) for future distribution, without the intention of increasing the concentration or enhancing the effect on the body, should not qualify as processing.

Illegal acquisition of potent or toxic substances refers to obtaining them by any means, including purchase, gift, as payment for services or debt, exchange with other goods or items, or appropriation of lost items.

National legislation imposes several requirements regarding the acquisition of such substances. For instance, Presidential Decree No. PD-4438 of September 6, 2019, “On strengthening measures to prevent the illegal circulation of medicines”, specifies that retail sale of medicines containing potent substances listed as controlled drugs is allowed only in social pharmacies and those licensed to store and sell narcotic drugs and psychotropic substances. Additionally, prescriptions for such drugs must be

retained in the pharmacy for one year. Therefore, such medications can only be acquired at specific pharmacies on the basis of a prescription.

According to V.V. Kukharuk, the act of acquiring potent or toxic substances is considered complete when the substances come into the possession of the offender, i.e., when the offender gains the ability to use or control them.

The temporary safekeeping of potent or toxic substances should not be considered illegal acquisition.

According to paragraph 6 of the Plenum Resolution, illegal storage of potent or toxic substances refers to intentional acts of unlawful possession by a person (e.g., storing them on one’s person, in a building, in a hidden location, or elsewhere). The duration for which the substances are unlawfully stored is not of legal significance.

Illegal storage of potent or toxic substances is considered complete from the moment actions aimed at storing such substances begin. Determining the starting point of these actions requires an assessment of how and under what conditions the substances came into the offender's possession. In particular, if a person acquired the substances through theft or robbery, the storage begins from the moment they had the opportunity to use or manage them at their discretion.

According to V.V. Kukharuk, all alternative actions related to the illegal circulation of potent or toxic substances involve active behavior by the offender. However, some of these actions, such as unlawful storage, can be committed through inaction. In our view, only storage, among the actions listed in paragraph 3 of Article 251¹ of the Criminal Code, can be carried out through both action and inaction, whereas all other actions require active conduct.

According to paragraph 7 of the Plenum Resolution, illegal transportation of potent or toxic substances refers to the act of moving them from one location to another, including within a single populated area, using any means of transport or any object used as a transport medium. This also includes transportation by an authorized representative of a legal entity licensed for such activity, provided the legal requirements have been violated.

Transportation of potent or toxic substances is considered complete from the moment the vehicle used for transportation begins to move. In our opinion, the definition of transportation provided in the Plenum Resolution should be reviewed for greater clarity.

Moreover, the definition specifies that transportation includes moving potent or toxic substances using any type of transport or any object employed as a

transportation means. This implies that during transportation, the substances may be carried on the offender's person (e.g., in a pocket or bag). This raises challenges in distinguishing between acts of transportation and storage.

M.G. Ermakov, in discussing the difference between transportation and storage, emphasizes the need to consider the offender's intent. According to him, the illegal transportation of substances occurs in at least three scenarios: (1) the substances are moved with the intent to distribute; (2) the quantity of transported substances is large; (3) the main purpose of the trip and the use of transport is to carry the substances.

Indeed, transportation involves the purpose of moving the substances from one place to another for distribution, while storage involves concealing them from others, often with the intent to distribute later. If a person is traveling with potent or toxic substances in a vehicle or by other means without the intent to distribute them during that trip, the act should not be considered transportation.

It should be noted that we disagree with M.G. Ermakov's claim that the composition of the transportation offense is valid only when large quantities are involved. A person may transport even small quantities of potent or toxic substances with the intent to distribute, which still constitutes a separately punishable offense.

Illegal dispatch of potent or toxic substances refers to deliberate actions aimed at transferring such substances using postal services, air transport, or other transportation means in violation of established legal procedures, including sending them as mail parcels, packages, or luggage, and doing so through another person without the direct involvement of the sender. From this definition, it becomes clear that the essential feature of dispatch is the indirect nature of the sender's involvement.

Uzbek legislation provides specific rules concerning the dispatch of potent or toxic substances. For instance, Article 15 of the Law "On postal services" states that postal operators and providers have the right to retain postal and courier shipments that contain prohibited enclosures. According to the Rules on the Provision of Postal Services (registered under No. 2219, dated April 18, 2011), subparagraph "b" of paragraph 1 of the List of Prohibited and Restricted Items and Substances prohibits the dispatch of potent and toxic substances in both domestic and international postal or courier shipments.

Furthermore, Annex 1 to the Regulation on Conducting security inspections in civil aviation of the Republic of Uzbekistan, approved by Resolution No. 183 of the

Cabinet of Ministers dated June 2, 2016, prohibits the carriage of potent and toxic substances aboard aircraft.

Therefore, dispatching potent or toxic substances in violation of these rules for the purpose of distribution gives rise to criminal liability.

According to I.V. Lazenkova, criminal liability for dispatching potent or toxic substances arises from the moment a parcel (e.g., an envelope or package) is sent, regardless of whether the recipient actually receives it. In this context, sending a parcel should be understood as handing it over to the postal operator or provider, since all further actions occur without the sender's involvement.

The subjective side is important in distinguishing dispatch from transportation. If a person transports potent or toxic substances belonging to someone else and is aware of the nature of the items, both the owner and the transporter may be deemed to have jointly committed the act of transporting the substances for the purpose of distribution. However, if the transporter is unaware of the restricted nature of the substances, they bear no criminal liability, while the sender's actions may still qualify as dispatch.

According to paragraph 9 of the Plenum Resolution, the illegal transfer (distribution) of potent or toxic substances includes their delivery to another person by any means, either for compensation or free of charge (e.g., sale, gift, exchange, in lieu of debt, or as a loan). This transfer can occur directly or by other methods (e.g., informing the recipient about the storage location or leaving the substances at an agreed-upon place).

There are differing views on when the act of transfer constitutes a completed crime. For example, M.Kh. Rustambayev believes that the crime is completed at the moment the substance is handed over to at least one person. In contrast, E.G. Shmelyova argues that the crime is complete only when the recipient has both received the substances and acquired the ability to use them excluding cases involving controlled purchase operations.

We do not agree with E.G. Shmelyova's interpretation regarding the moment of completion. The objective of transfer is to pass the substances to another person, and the purpose, ability, or intent of the recipient to use the substances is irrelevant. Therefore, transfer should be considered complete once the substances have been handed over.

Another important issue concerns when the act is considered complete if the transfer occurs by informing the recipient about the storage location or placing the substances at an agreed spot. Nowadays, many cases involve the transfer of potent substances through such

methods. E.G. Shmelyova maintains that the act is completed as soon as these actions are taken. Paragraph 9 of the Plenum Resolution similarly recognizes that transfer can be carried out by leaving substances at a designated location or disclosing their whereabouts.

However, we believe that these interpretations do not align with Article 26 of the Criminal Code. Transfer implies actual delivery to another person. When someone informs the recipient about the storage location or places the substances at a predetermined site, they do not fully transfer possession. Imagine a scenario in which a person agrees to transfer potent substances, leaves them at an agreed location, but then retrieves them before the recipient can collect them. In our view, such a person should be considered to have attempted the transfer but voluntarily withdrawn from committing the crime.

According to Article 26 of the Criminal Code, if a person voluntarily abandons the act before completing the crime and prevents the occurrence of criminal consequences, this constitutes voluntary renunciation and exempts them from criminal liability.

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Moreover, the definition of transfer does not clarify whether giving substances temporarily to another person is included or if it only refers to full transfer of ownership. According to M.Kh. Rustambayev, transfer implies that the substances become the possession of another person. Therefore, temporary possession granted with the intent to maintain control may instead fall under the crime of illegal storage if the aim is future transfer.

M.G. Ermakov considers injection of potent or toxic substances into another person as an act of transfer, unless the injected person is the owner of the substance. However, when such substances are used as instruments in crimes against life, health, property, or other types of offenses, they are not additionally qualified as illegal transfer of potent substances.

These views are partially reflected in the resolutions of the Supreme Court Plenum. For instance, paragraph 7 of Resolution No. 6 of April 30, 1999, "On judicial practice in cases involving theft, robbery, and armed assault of others' property", states that if a firearm requiring a permit, or another object that could be used as a weapon (such as explosives or toxic substances), is used during a robbery, the act should be qualified as a combination of relevant crimes.

Indeed, a person may inject potent or toxic substances into another individual with malicious intent as a means of committing other crimes. Such cases should be assessed as acts of illegal transfer of substances. Since this rule was introduced within a resolution concerning specific types of offenses, legal practitioners may not always classify every instance of injection as illegal transfer. Considering that similar rules are included in the Plenum resolution concerning crimes involving narcotic drugs, analogues, and psychotropic substances, it would be advisable to reflect these parallels in the Supreme Court Plenum's Resolution No. 33 of November 27, 2021, "On judicial practice regarding crimes related to illegal circulation of potent or toxic substances".

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CONCLUSION

The study of the objective elements of crimes related to the illegal circulation of potent or toxic substances allows for the following conclusions:

- The illegal handling of potent or toxic substances constitutes an alternative (composite) offense, in which several preparatory acts are treated as completed crimes due to the high degree of social danger posed by the dissemination of such substances;
- The definitions of actions constituting this offense contain ambiguities that hinder the development of uniform legal practice. Therefore, it is necessary to clarify these definitions and expand the scope of actions listed in part 3 of Article 251¹ of the Criminal Code to explicitly include the act of production.

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