

Distinguishing Between the Concepts Of "Planting" And "Cultivation" In the Investigation of Crimes Related to Cultivating Prohibited Crops

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Abstract: This article analyzes aspects that inquiry officers and investigators should pay attention to when investigating the crime of cultivating prohibited plants under Article 270 of the Criminal Code of the Republic of Uzbekistan, namely the differences between the concepts of "sowing" and "cultivation." The author addresses collisions between sectoral legislation, the resolution of the Plenum of the Supreme Court, and the text of the criminal law, and presents the results of a survey of 200 inquiry officers, investigators, and lawyers. Based on a comparative study of the experience of foreign countries (Germany, Russia, Kazakhstan, Belarus), proposals and recommendations for improving national legislation have been developed.

Keywords: Prohibited crops, sowing, cultivation, plant care, narcotic substances, corpus delicti, qualification.

Introduction: In the initial stage of any scientific research, it is of great methodological importance to define the concept and essence of the problem under study. This principle is one of the fundamental requirements of scientific methodology, as a precise definition of the content of terms and concepts plays a decisive role not only for theoretical research but also for practical law enforcement activities. The thorough substantiation of a concept in legislation and theory is a necessary condition for the correct qualification of crimes, the precise determination of circumstances to be proven in investigative practice, and the assurance of the principle of justice in sentencing. From this perspective, when researching the specifics of investigating the crime of cultivating prohibited crops, as stipulated in Article 270 of the Criminal Code, it is particularly important to first clarify the legal content of the concepts related to this field and the distinctions between them.

Indeed, the quality of the development of investigative methodology—including the correct identification of initial investigative situations, effective tactics for investigative actions, and the well-founded assignment of expert examinations—directly depends on how

thoroughly the theoretical aspects of the corpus delicti have been elucidated. If discrepancies or gaps exist at the conceptual level, this will inevitably have a negative impact on practical investigative activities. For instance, differing approaches may arise in defining the boundary between the acts of "sowing" and "cultivating," in determining the point at which the crime is completed, or in assessing the legal significance of the cultivated area.

Based on the aforementioned methodological considerations, it is first necessary to analyze the legal content of the three most fundamental terms in Article 270 of the Criminal Code—"crop," "sowing," and "cultivation"—as well as the inconsistencies among them. It is precisely the ambiguities in these initial concepts that form the root cause of all subsequent practical and investigative problems.

A comparison of current legislative acts reveals that these concepts are reflected with inconsistent meanings in sectoral norms and the text of the criminal law. Specifically, the primary source regulating relations in this area, Article 3 of the Law of the Republic of Uzbekistan "On Narcotic Drugs and Psychotropic Substances" dated August 19, 1999,

provides a legal definition for the concept of "trafficking in narcotic drugs, psychotropic substances, and precursors." Although it establishes "the cultivation of plants containing narcotic substances" as a distinct type of activity, the terms "crop" and "sowing" are not used at all[1].

Also, in accordance with Resolution of the President of the Republic of Uzbekistan dated April 28, 2017, No. 12 "On judicial practice in criminal cases involving the illegal trafficking of narcotic drugs, their analogues, and psychotropic substances."

Paragraph 3 also lists acts of illegal trafficking, but in the same context as the text of the law, only the phrase "cultivation of plants containing narcotic substances" is mentioned[2].

A logical and comparative analysis of these legal sources shows that neither in the sectoral Law nor in the section of the Resolution of the Plenum of the Supreme Court providing general definitions, the term "sowing" as an independent action is mentioned at all. However, this concept is not included in

It appears as an independent criminal act in the disposition of Article 270 of the Criminal Code[3].

From this, it can be concluded that the legislator committed a terminological inconsistency by introducing the term "sowing" into the Criminal Code, which does not exist in the basic legislation defining the basis of this field. However, if we take into account that in linguistics and agricultural sciences, "crop" means a cultivated plant that is intentionally planted in the ground and cared for by humans, it becomes clear that the category of "plant cultivation" in the sectoral law has a much broader and more general meaning than the actions of "planting" and "cultivating" in the Criminal Code.

Secondly, this inconsistency in the regulatory documents creates a controversial situation in the interpretation of the sentences "sowing or cultivation" in the disposition of Article 270 of the Criminal Code. In the text of the law, the dividing conjunction "or" is placed between these two actions, which means that according to the theory of criminal law, each of them must constitute an independent crime.

However, Clause 16 of this Resolution No. 12 of the Plenum of the Supreme Court provides an interpretation of the concept of illegal cultivation of prohibited plants, which is evaluated as "the creation of special conditions for their planting and cultivation, as well as the improvement of planting and cultivation technology, the creation of new varieties, and the enhancement of productivity and resistance to existing climatic conditions."

It is evident that the Plenum, through its commentary on this clause, logically incorporates the act of "sowing" into the concept of "cultivation."

As a result, a contradiction arises that repeats itself from a purely legal and technical point of view. If in the sectoral Law and paragraph 16 of the Plenum Resolution, "growing" is considered a holistic activity that includes the process of "sowing," then why is the act of "sowing" identified as a separate, alternative act in the text of Article 270 of the Criminal Code? This circumstance indicates that in the text of criminal legislation, a specific term is interpreted in a narrow sense, while in the interpretation of the Supreme Court, it is interpreted in an excessively broad sense, leading to a violation of a unified approach in law enforcement practice.

This legal and technical contradiction, in turn, creates a serious theoretical collision in the correct definition of the concept of the time of completion of this criminal act. According to the doctrine of criminal law, the crime of planting prohibited crops is considered a formal (formal) offense and represents the concept of the completion of the crime from the moment the seed or seedling is planted in the ground, and it is not necessary to obtain a harvest or sprout the plant for this.

However, if, as explained by the Plenum of the Supreme Court, "growing" also includes the process of "sowing," if the person did not care for the seeds after planting them in the ground at all, and the seeds rotted under the soil due to natural factors (for example, unfavorable weather or drought), there are different approaches among lawyers on the issue of whether this act should be classified as a completed crime or as an attempted crime (Article 25 of the Criminal Code).

On the other hand, this terminological confusion leads to the demarcation, that is, the disappearance of the border, on the issue of whether the act should be classified as the concept of the crime of illegal "growing" (Article 270 of the Criminal Code) or illegal "storage" of narcotic drugs (Articles 273 or 276 of the Criminal Code depending on the purpose of the act) when a person only cares for (irrigates, weeds) forbidden plants that grew on their own in household plots as a result of natural factors. After all, the legal nature of the act of caring only for a ready-grown plant without planting and its place in the construction of the crime are strictly distinguished in the text of the law, which is of great methodological importance not only for theoretical consistency, but also for determining the true significance of the social danger of this crime.

In order to find out what problems such confusion and inconsistencies in legislation lead to in practice, a survey was conducted among inquisitors, investigators,

lawyers, a total of 200 participants.

When respondents were asked the question "If a citizen did not plant a wild cannabis plant that grew on its own plot, but did not pull it out, but watered it, how would you evaluate this situation?" 54% of the participants (108 people) said that they consider this action to be the cultivation of prohibited crops (Article 270 of the Criminal Code), and 36% (72 people) said that the act should be assessed as illegal possession of narcotic substances (Article 273 or 276 of the Criminal Code). The remaining 10% (20 people) expressed the opinion that there is no crime at all here, but simply that there should be an administrative offense (Article 106 of the Code of Administrative Responsibility) for the non-destruction of wild cannabis[5].

The results of the survey also show that due to the ambiguity of the law, the same act is assessed differently in different places. Such disputes and contradictions in practice have led to the emergence of different opinions among legal scholars.

In particular, according to M. Kh. Rustambaev, the cultivation of prohibited crops should be understood as actions aimed at their care, irrigation, and weeding, regardless of whether the seeds are planted or the plant has sprouted, and the cultivation of a wild plant should also be qualified under this article[6].

E.A. Inoyatov states that the cultivation process can exist even without planting activity and pose a real threat to public health[7].

According to A.V. Zvonova, the concept of cultivating prohibited plants encompasses all biological and agrotechnical stages from their planting to harvesting, and the presence of a planting action in this process is not considered a mandatory sign[8].

A.A. Mayorov and V.B. Malinin argue that, regardless of who planted the plant's seeds, its agrotechnical processing by humans fully forms the objective side of the crime[9]. T. M. Klimenko characterizes direct cultivation as an active human action (irrigation) aimed at the domestication of a wild crop and the preservation of its narcotic properties[10].

However, such an excessively broad interpretation of the concept of "cultivation" turns the "sowing" feature, which is independently established in the disposition of the criminal law, into a purely conventional element. However, in legislative technique, every alternative action must have its own legal content and boundaries. Blind adherence to this approach leads to an artificial expansion of criminal liability in law enforcement practice and the complete disappearance of the logical boundary between the crimes of illegal "storage" and "production." As a result, there is a risk that a citizen

who watered a wild plant that grew on their plot due to natural factors, without simply destroying it, will be considered to have created a new drug plantation. We believe that this does not correspond to the degree of public danger of the act and the principle of legality, which is the foundation of the Criminal Code.

At the same time, B.M. Mustafayev, recognizing planting and cultivation as independent actions, approves that the cultivation of a wild plant falls within the scope of the concept of criminal cultivation, even if the original purpose of the individual is to obtain a drug harvest without planting[11].

A.I. Rarog emphasizes that "sowing" is a one-time action that ends with the placement of seeds or seedlings in the soil, while "cultivation" is a long-term process; however, in matters of liability, the subject's goal should play a leading role[12]. K.A. Sultanov concluded that it is an administrative offense if a person did not simply destroy wild cannabis, but irrigated it for the purpose of obtaining narcotics, which constitutes criminal cultivation[13].

L.N. Anisimov indicates that when evaluating cultivation without sowing, the content of the act is determined depending on the extent to which the individual applied agrotechnical methods and the purpose expected from them[16].

V.A. Vladimirov calls planting and cultivation alternative actions, but states that their social danger is condensed into the desire to create narcotic raw materials, which is the subject's ultimate goal[17].

In these scientific views, the elements of the objective side of the crime (sowing and cultivation) are theoretically separated from each other. However, linking the legal qualification of a criminal act solely to the internal "goal" of the subject leads to an insufficient legal assessment of the absence of the act of planting a material sign that must be objectively observed. Therefore, recognizing this approach, we consider it necessary to strengthen its objective criteria.

In contrast, A.N. Triniani argued that every alternative action specified in the disposition of the criminal law must have its own objective boundary, and that the artificial insertion of one term into another violates the theory of the composition of a crime[18].

V.S. Komissarov emphasizes that if a person did not plant the plant themselves and the plant grew naturally, then any subsequent cultivation by them would not be the creation of a new plantation, but rather the possession of a ready-made source of narcotics under their control, i.e., the concept of a "holding" crime in the purest sense[19].

B.D. Speransky states that the concept of "cultivation"

should be a logical continuation of pre-organized "planting" actions carried out by man alone, otherwise it would be a legal contradiction to accuse man of cultivating a new crop for irrigating a wild plant created by nature itself[20].

A.A. Muzika argues that evaluating cultivation without sowing under the relevant article of the Criminal Code is a broad interpretation of the law (analogue) and that these actions must be formalized with "preservation" articles only depending on whether they have a purpose or not [21].

M.A. Lyubavina points out that it is theoretically incorrect to accuse a citizen who irrigated the hemp he grew in his backyard of cultivating it, as the structural feature of the crime is inextricably linked to the planting process[22].

The outlined theoretical views and practical doubts indicate that the concept of "maturation" in the text of the current norm, due to its extremely broad and abstract content, cannot provide purely legal clarity in the application of law. It is this ambiguity that created the basis for the inclusion of the act of "sowing" in this word in the decision of the Plenum of the Supreme Court.

In our opinion, the most correct way to eliminate such ambiguity in the criminal law is to completely exclude the term "education" from this article based on national legislative techniques and the rules of our native language. Instead, it is advisable to introduce the word "parishlash," which expresses a purely objective action—that is, the processing of a finished plant—and is very understandable in the vernacular. This change serves to distinguish between the actions of "planting" and "cultivation" and to correctly qualify the act in investigative practice.

Ways to eliminate such confusion in our national legislation can be seen in the example of advanced experience of foreign countries. In the criminal legislation of many foreign countries, clear legal solutions have been developed in advance so that the actions of "planting" and "nurturing" do not cause any doubts in investigative and judicial practice.

For example, in the Criminal Code of the Federal Republic of Germany, the cultivation of prohibited plants is expressed not by a general phrase with a purely biological content, but by specific actions such as "planting" (Anbau) and "cultivation/treatment" (Pflege). According to this experiment, simply tending to a plant created by nature itself is not considered criminal planting, and they are strictly separated from each other, unless a premeditated planting process was previously carried out by humans[23].

The official explanation of the Plenum of the Supreme Court of the Russian Federation regarding this category of crimes stands out as a correct legal solution to our existing problem. In Russian practice, it is strictly established that the cultivation of prohibited plants refers specifically to their planting, cultivation, and targeted treatment (care). Most importantly, simply cultivating (irrigating or weeding) hemp or poppy that has grown naturally (wildly) is not considered a separate crop planting crime, but is considered a purely "holding" crime according to the purpose of the act.[24].

In Article 300 of the Criminal Code of the Republic of Kazakhstan, the legal text of the cultivation of prohibited plants is expressed by the actions of agrotechnical treatment, that is, pure care, in which this action is also interpreted independently of the planting process. Kazakhstani legislation has abandoned the word "crop" in its narrow sense, which is specific only to agriculture, and introduced the category of "prohibited plants" that more broadly represents the subject of this norm, which plays an important role in the proper identification of the subject of the crime in investigative practice[25].

The structure of Article 329 of the Criminal Code of the Republic of Belarus serves as an example of eliminating the largest gap in our national legislation. In particular, this article directly establishes liability not only for the illegal planting and cultivation of prohibited plants but also for the illegal cultivation and cultivation of "fungi (fungi) containing narcotic drugs or psychotropic substances," which poses a new threat in investigative practice[26].

The synthesis of such positive and proven aspects of international experience serves as the basis for developing specific proposals for improving national legislation.

Summarizing the theoretical analyses conducted, the results of a survey conducted among 200 employees of judicial and investigative bodies, and the experience of advanced foreign countries, in order to improve national legislation and unify law enforcement practice, we propose the following proposals:

first, based on the requirements of sectoral legislation and the development of modern criminology, the following amendments shall be introduced to the Criminal Code of the Republic of Uzbekistan:

The title of Article 270 shall be stated in the following wording:

Article 270. Sowing or cultivation of prohibited plants or fungi";

The disposition of part one of Article 270 shall be set

forth in the following wording:

"Illegal planting or cultivation of prohibited plants, namely poppy or oil poppy, cannabis, or other plants and fungi (mushrooms) containing narcotic drugs or psychotropic substances";

Secondly, in order to correctly define the boundary between "planting" and "cultivation" actions at the preliminary investigation stage and to ensure a unified approach in law enforcement practice, paragraph 16 of the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan No. 12 dated April 28, 2017, "On judicial practice in criminal cases involving the illegal trafficking of narcotic drugs, their analogues, and psychotropic substances," shall be supplemented with a new paragraph with the following content:

to supplement with paragraph 161:

161. Courts and investigative bodies should bear in mind that the crime of "cultivating" prohibited plants occurs only when intentional active actions (irrigation, weeding, plowing, fertilization, and other actions) are committed against plants that grew spontaneously (wildly) as a result of natural factors or were planted by other persons. Failure (inaction) by a person to take measures to destroy wild plants that are simply present on household plots or land plots without the purposeful performance of maintenance actions does not give rise to the content of Article 270 of the Criminal Code. Such cases entail administrative liability under Article 106 of the Code of Administrative Responsibility.

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