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## **SOME ISSUES RELATED TO THE SUBJECT OF THE ILLEGAL INTRODUCTION OF STRONGLY AFFECTING OR TOXIC SUBSTANCES**

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### **ABSTRACT**

The article examines the theoretical views related to the subject of the crime of illegal introduction of powerful or toxic substances into circulation and the problems arising in the practice of applying the law related to it. As a result of the research, the author gives opinions on who can be the subject of this crime, the problems in the qualification of such crimes committed as part of a group, and some proposals aimed at improving the norms related to this crime are put forward to the legislative documents.

### **KEYWORDS**

Subject of the composition of the crime, general subject, special subject, individual, legal entity, sanity, strongly influencing and toxic substances, public health, criminal liability.

### **INTRODUCTION**

Today, the increased use of strong-acting substances for non-destructive purposes and the increased incidence of damage to human life and health as a result of illegal turnover of toxic substances pose a serious threat to the health and public safety of the population. Analysis of information on the illegal circulation of powerful influencing substances published on the official pages of law enforcement agencies on social networks in one way or another, we can see how much in the territory of Uzbekistan there is an increasing need for such substances that cause

narcological diseases. Already, these substances would not have been smuggled into the country's territory unless there were high cases of use of powerful substances by the population, such as drugs or in their place.

In this process, it is important to improve criminal legal mechanisms in the fight against their illegal turnover. Today, the Criminal Code of the Republic of Uzbekistan establishes a number of liability measures for illegal actions related to these articles. One of these is the

unlawful use of strong-acting or toxic substances prescribed in Article 2511 of the Criminal Code [1].

In this case, some issues related to the subject of the content of this crime are considered. One of the elements of the composition of the crime is the subject of the crime. In the theory of criminal law, a lot of research has been carried out on the subject of crime, many aspects of this institution are covered in detail from the theoretical side [9, 14, 15, 16, 27]. At the same time, it is necessary to conduct a deeper study on certain aspects of the subject of the crime, especially in crimes related to the illegal treatment of strongly affecting and toxic substances.

### **ANALYSIS OF THE BASIC LITERATURE**

The norms of the Criminal Code do not use the concept of “subject of crime”, instead we can see such concepts as “person who committed socially dangerous acts” in Article 2, “person convicted of committing a crime” in

Article 4, “person who committed a crime” in Article 5, “person who committed a criminal act” in Article 13, “person to be held accountable” in Chapter IV.

Article 17 of the Criminal Code stipulates that sane individuals who have reached the age specified in this Code before committing a crime shall be held liable. In this article we can see the signs of a common criminal entity. Such indicators include the fact that the perpetrator is a natural person, he has reached a certain age and is of sound mind. The absence of any of these signs indicates that the subject of the crime, in turn, does not have the structure of the crime.

The first characteristic of the subject of a common crime is that the perpetrator must be a natural person.

According to the Criminal Code, a legal entity cannot be a subject of a crime.

Article 11 and 12 of the Criminal Code define which categories of individuals can appear as subjects of crime. In particular, in accordance with Article 11 of the Code, a person who commits a crime on the territory of Uzbekistan (citizens of the Republic of Uzbekistan, stateless persons permanently residing in Uzbekistan, foreign citizens, as well as stateless persons permanently residing in the territory of Uzbekistan) shall be held liable under this Code. According to Article 12 of the Code, citizens of the Republic of Uzbekistan, as well as stateless persons permanently residing in Uzbekistan, shall be prosecuted under this Code if they have not been punished for a crime committed in the territory of another state by the judgment of the court of that state, foreign citizens, stateless persons residing permanently in the territory of Uzbekistan. It is established that persons are held accountable for crimes committed outside the territory of Uzbekistan under this Code only in cases provided for in international treaties or agreements.

In the legal literature, there are various discussions on the inclusion of legal entities in the subject of the crime.

In particular, scientists who oppose the establishment of criminal liability of legal entities, believing that this issue is against the principle of guilt of criminal law, argue that legal entities do not have the property of feeling and thinking, as well as the inability to educate them in the spirit of compliance with legislation, cannot make the team responsible as a subject [20, 21].

A proposal is put forward by another group of scientists [22, 23, 24], including researchers [8, 10] who have carried out research on the treatment of strong

influencers and toxic substances in illegal possession, to apply criminal-legal measures of influence on legal entities. In our opinion, it is appropriate to consider the issue of applying criminal-legal measures against legal entities without recognizing them as the subjects of crime, in the era of increasing illegal trafficking of powerful and toxic substances.

Despite the fact that Article 48 of the Civil Code establishes the liability of a legal entity [2], the law “On licensing, permitting and notification procedures” defines [4] the termination and cancellation of a legal entity’s license, these mechanisms do not allow to reduce crimes associated with the illegal introduction of strongly influencing and toxic substances.

In particular, in accordance with Article 33 of the Law “On licensing, permitting and notification procedures”, the licensee regularly (two or more times during a year) or once grossly violates the requirements and conditions of the license, if these violations shall be canceled if it has caused damage to the lives and health of citizens, the rights and legal interests of individuals and legal entities, damage to public safety, and damage to the environment. Sale of unregistered, low-quality, counterfeit drugs according to Annex 29 (Licensing of retail sale of drugs and medical supplies) of the Uniform regulation on licensing of certain types of activities through the special electronic system, approved by Cabinet of Ministers Resolution No. 80 of February 21, 2022 does not fall under the category of terms and conditions which is considered a gross violation [6].

It turns out that the conduct of pharmaceutical activities in order to revoke the license of a person with a license granting the right, it is required by him to enter into illegal circulation of drugs containing powerful substances two or more times a year. No

effective mechanisms have been created in the legislation by a licensed person to revoke his license in the event that a drug containing a strong substance is once illegally treated. Already, it is somewhat difficult to prove that as a result of this violation, the consequences mentioned in Article 33 of the Law

“On licensing, permitting and notification procedures” have occurred.

Let’s imagine that a person's life and health were damaged as a result of the non-medical use of substances that have a strong impact on their health. In this case, a natural question arises as to whether the harm to the life and health of a person was caused by the drugs sold in a pharmacy or by the regular consumption of these drugs. Otherwise, it has become unclear what harm can be caused to the rights and legal interests of individuals and legal entities, as well as to public safety as a result of the sale of powerful substances in the pharmacy.

At the same time, we must note that neither the law “On licensing, permitting and notification procedures” nor other legislative acts establish restrictions on the revocation of this license to the person whose license gives the right to carry out pharmaceutical activities, including the one who established another business entity. This will allow the pharmacy, whose license has been revoked for illegal realism of strong-acting substances, to re-obtain the license for Retail re-drug realization activities again, and this situation, in turn, will not work in combating violations in the field.

The analysis of the court judgments studied by us showed that in many cases cases of transfer of these drugs are committed by their leaders, workers and informal workers in pharmacies that do not have the authority to sell drugs containing powerful substances.

According to the judgments issued on cases related to the illegal handling of powerful or toxic substances posted on the “Public.sud.uz” website, in 2022 alone, 63 pharmacy managers, official and informal workers sold drugs containing powerful substances [28].

It can be seen that in the practice of law enforcement there are cases of illegal circulation of these substances by legal entities, and the mechanisms available in the civil legislation to eliminate them are insufficient.

Based on this, it would be appropriate to include amendments to the Criminal Code regarding the possibility of applying criminal-legal measures, which include fines, deprivation of certain rights, and liquidation of legal entities.

The next sign of a general criminal subject is that he has reached a certain age. If a person has not reached the age specified in the criminal law at the time of committing a crime, it is not possible to talk about his criminal responsibility. When determining the age of a criminal subject, the legislator takes into account, first of all, the ability of a person to be fully responsible for his actions in terms of mental and physical development, and to be able to fully control his actions (inactions).

In Article 17 of the Criminal Code, the age at which a person can be held criminally liable is divided into 3 categories, namely:

- sixteen years (general age of criminal responsibility);
- fourteen years old;
- reserved for eighteen years.

The criminal liability of persons who commit the crime of illegal introduction of powerful or poisonous

substances into circulation occurs when they reach the age of sixteen before committing the crime.

If a person under the age of sixteen commits another type of crime with the use of strong or poisonous substances (for example, murder by poisoning, incapacitation of the victim with the help of strong substances), he will be charged with illegal possession of strong or poisonous substances. shall not be liable for the act related to the introduction into circulation, but shall be held liable only for the other type of crime committed.

Part 2 of Article 2511 of the Criminal Code establishes more severe liability measures for the illegal introduction of powerful or poisonous substances into circulation by a group of persons in advance.

In the legal literature, there are various discussions about the qualification of the crime with this sign when only one of them has reached the age of the subject of the crime in the case of a crime committed by a group of persons. Discussions in this regard can be divided into two groups.

Scholars belonging to the first group claim that there is no participation in the crime in the recorded cases. For example, in her dissertation on the composition of a crime similar to illegal trafficking in powerful substances (illegal trafficking in narcotic drugs, their analogues, and psychotropic substances), B.A.Umarova argued that if only two people participated in the crime as perpetrators, and one of them was under the age of criminal responsibility for that crime, or he opined that the crime should not be considered committed by a group of persons if he was insane [11]. S.S.Niyozova also expressed a similar opinion and considers the participation of two or more persons who have reached the age of criminal



responsibility to commit a deliberate crime together as participation [17].

Scientists belonging to the second group consider the commission of a crime by a group of persons, at least one of whom has reached the age of the crime subject, as participation in the crime [18, 25, 26]. For example, A.V.Naumov explains the need to assess this situation as a crime committed by a group of persons, because crimes committed by minors have a high social risk, and such crimes are evaluated by the victims as a crime committed by a group [18].

The analysis of the criminal legislation showed that there is no clear answer to this question.

For example, in paragraph 12 of the decision of the Plenum of the Supreme Court of October 29, 2010 “On judicial practice in cases of defamation and unnatural satisfaction of sexual needs” No. 13, even in cases where one of the participants in the crime is not the subject of the crime according to the law (Articles 17 and 18 of the Criminal Code articles) it is established that the actions of the second participant should be qualified as a crime committed within the group. The existence of this rule seems to be taken into account by the opinion of the second group of scientists in the assessment of participation in crime in our country. However, if we take into account that this decision of the Plenum provides an explanation for exactly one category of crimes and that the rule on the impossibility of applying the law by analogy is not directly defined in the criminal legislation, we cannot find a clear answer to this issue in the decisions of the Plenum.

According to Article 27 of the Criminal Code, participation of two or more persons in the commission of an intentional crime is considered

participation. It is not clearly defined whether all persons referred to in this provision have the characteristics of a criminal subject or not. In our opinion, this gap is the reason why law enforcers and scientists do not develop a uniform practice in the qualification of cases where one of the participants in the crime is not the subject of the crime.

Article 17 of the Criminal Code stipulates that individuals who have reached a certain age before committing a crime and who are of sound mind are held accountable, while the second part of Article 16 states that the commission of an act with all the signs of a crime is the basis for prosecution.

Based on this, in our opinion, in cases where one of the participants in the crime is not the subject of the crime, the actions of the second participant should not be qualified as a crime committed within the group. After all, committing a crime within a group implies that every person participating in it has an intention to commit a crime. Persons under the age of responsibility do not fully understand the illegality and social danger of the committed act, in this case it is inappropriate to talk about their intention to commit a crime.

According to the above, we believe that it is appropriate to state Article 27 of the Criminal Code in the following version:

### **Article 27. The concept of participation in crime**

“Participation” is considered to be the deliberate participation of two or more persons who should be held responsible in the commission of an intentional crime.

The next characteristic of a common criminal is his sanity. In accordance with Article 18 of the Criminal

Code, a person who has realized the socially dangerous nature of his actions (inaction) and was able to control them at the time of committing a crime is a sane person. A person who was mentally deranged at the time of committing a socially dangerous act, i.e. a person who could not understand the significance of his actions (inaction) or was unable to control them due to his mental state being chronically or temporarily disturbed, or his mental state was impaired in some other way, shall not be held liable. In the case of mental deficiency, the court may order coercive medical measures against a person who has committed a socially dangerous act.

The insanity formula has legal and medical criteria. The legal criterion of mental retardation is formulated in the law as the inability to feel the danger of one's actions (inaction) to society and the evidential description or to control them. Both criteria must be present at the same time for a person to be considered mentally retarded. The legal criterion characterizes two signs: intellectual (inability to feel the description of one's actions) and volitional (inability to control one's actions). The medical criterion of sanity reflects the state of mind of a healthy person from a mental and medical point of view [19].

Many scientific studies have been conducted in the legal literature on whether individuals are sane or not, those who consume strong-acting substances [10, 12, 13]. In particular, in these researches, it was thought that there are disturbances in the ability to control one's will in persons who regularly consume strong substances and narcotic drugs. In our opinion, these views are more related to the crime of illegal possession of powerful or poisonous substances (Article 251 of the Criminal Code) and do not apply to the crime of illegal introduction of powerful or poisonous substances into circulation, provided for in

Article 2511 of the Criminal Code. Indeed, liability for the crime defined in Article 2511 of the Criminal Code arises only when there is an intent to commit.

Some of the crimes related to the illegal handling of powerful and toxic substances can be committed by a special entity, that is, by individuals with special characteristics.

For example, the act of violating the order of retail sale of prescription drugs containing strong active substances in part 5 of Article 1863 of the Criminal Code, which is similar to the crime provided for in Article 2511 of the Criminal Code, is committed by a special entity.

In accordance with Article 16 of the Law "On medicines and pharmaceutical activities", pharmaceutical activity is carried out on the basis of a license issued in the prescribed manner [3]. In the explanatory part of the list of strong-acting substances, approved by the Cabinet of Ministers' decision No. 818 of September 27, 2019, the retail realization (sale) of strong-acting substances named zaleplon, pregabalin, tropicamide and cyclopentolate is licensed only for the activities of storage and sale of narcotic drugs, psychotropic substances it is determined to be implemented through pharmacies and social pharmacies [5].

Accordingly, in paragraph 18 of the decision of the Plenum of the Supreme Court of November 27, 2021 "On judicial practice in criminal cases related to the illegal introduction of powerful or toxic substances into circulation", paragraph 18 Violation of the order of retail sale is defined as a cause of responsibility by Article 1651, Part 3 of the Code of Administrative Responsibility, if such actions are committed after the application of administrative sanctions or in large quantities, the actions of the culprit are qualified by

Article 1863, Part 5 of the Criminal Code. In paragraph 19 of the decision, it is noted that the sale of drugs containing powerful substances in pharmacies that do not have a permit (license) for this should be evaluated as illegal transfer of powerful substances and should be qualified by the relevant part of Article 2511 of the Criminal Code.

At the same time, the analysis of the practice of law enforcement shows that difficulties and errors occur in the evaluation of a person as a general or special subject in judicial investigation bodies.

In particular, there were cases where almost the same actions were qualified by the investigative authorities under Article 1863, Part 5 and Article 2511 of the Criminal Code. In particular, according to the judgment of the Ohangaron city court on criminal cases dated June 3, 2022, citizen “U” was found guilty of committing the crime provided for in part 5 of Article 1863 of the Criminal Code. According to the verdict, on February 16, 2022, citizen “U” was caught while transferring 108 units of the drug “Zardex” containing the substance “pregabalin” to citizen “M” for a total of 240,000 soums during a quick operation based on the application of citizen “M”. Although the initial investigative body accused the actions of citizen “U” under part 3 of Article 2511 of the Criminal Code, the court, based on paragraph 18 of the Plenum decision, reclassified “U”’s actions under part 5 of Article 1863 of the Criminal Code. But if we look at the information given in the court verdict, citizen “U” did not work in a pharmacy authorized to sell strong substances at the time of committing the crime [28].

In our opinion, the lack of a clear explanation regarding the fact that citizens who do not work in pharmacies are not considered subjects of the crime provided for in part 5 of Article 1863 of the Criminal Code in the

provisions specified in paragraphs 18 and 19 of the above Plenum decision is the reason for the lack of formation of the practice of applying a single right.

## **CONCLUSION**

Based on the above, it is proposed to combine paragraphs 18 and 19 of the Plenum decision into one paragraph and to state it in the following version:

“18. Violation of the order of retail sale of drugs containing strong active substances by prescription is a cause of responsibility under part 3 of Article 1651 of the Code of Administrative Responsibility of the Republic of Uzbekistan. If such actions were committed after the application of administrative sanctions or in large quantities, the actions of the perpetrator are qualified by part 5 of Article 1863 of the Criminal Code.

It should be explained to the courts that the crime (criminal offense) specified in these articles is committed by a special entity, that is, a person operating in pharmacies who have the authority to sell prescription drugs containing powerful substances at retail”.

The analysis of the subject of the illegal introduction of powerful or toxic substances into circulation made it possible to conclude the following:

- the subject of the crime specified in parts 1-3 of Article 2511 of the Criminal Code is a general subject;
- the responsibility for illegal distribution of powerful or poisonous substances by colluding with a group of persons in advance occurs when at least two sane individuals over the age of sixteen act as part of the group;



- the measures of influence established by the current legislation do not allow to fight effectively against cases of sales of drugs containing strong active substances in pharmacies. Accordingly, it is appropriate to introduce the institution of criminal-legal impact measures against legal entities into the criminal legislation.

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