

## CRIMINAL LIABILITY FOR ILLEGAL HANDLING OF NARCOTIC DRUGS UNDER THE NEW CRIMINAL CODE OF THE RE- PUBLIC OF KAZAKHSTAN

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*This scientific article displays up-to-date data on criminal liability for illicit trafficking in narcotic and psychotropic substances under the new criminal legislation of the Republic of Kazakhstan. This article also provides statistical data and a comparative analysis of data on drug-related crimes.*

**Key words:** criminal liability, illegal, narcotic, drugs, criminal code, illegal handling.

Until the end of the 1980s, the Soviet Union was considered a fairly prosperous country in terms of the distribution and consumption of narcotic drugs and psychotropic substances. But ten years have not passed since the CIS countries were overwhelmed by the problem of drug addiction, and its scale and pace are already calling into question the social stability of the country and the future of young people in particular. Judging by the pace at which drug addiction is spreading throughout our country, we do not yet have serious immunity against a terrible threat, which, along with another, no less terrible – AIDS – is capable of destroying not only the CIS, but all of humanity. But drug addiction is more socially dangerous, because an AIDS patient does not live long, but is conscious, and a drug addict is a zombie who does not understand anything, but is capable of any crimes for the sake of a dose. Therefore, drug addiction is an extremely complex and socially dangerous phenomenon in the modern world. The damage it causes is enormous and almost incalculable. This is the degradation of the personality of drug addicts, and the impulse to commit various crimes, and the decrease in the material, technical and intellectual potential of society, the deterioration of its gene pool, and much more. So, already in 2015, more than 79 thousand drug-related crimes were committed in our country, which is 2.5 times more than in 2011, and in 2020 more than 143 thousand of

similar crimes were committed, which 2.1 times more than in 2011, and this is taking into account the rather high latency of these crimes. This confirms that drug-related crime is on the rise almost everywhere [1].

Moreover, the trend of spreading drug addiction among young people is of particular concern. All researchers of domestic drug addiction problems record the fact that children and youth prevail among drug users (76%). From 15 to 30% of adolescents have tried drugs and other psychoactive substances by the age of 16. More than 14,000 minors are registered as drug users and about 7,000 as users of strong and other intoxicating substances.

The scientific novelty of the work lies in the fact that the author made an attempt to compare and distinguish between the composition of illegal manufacture, acquisition, storage, transportation, shipment or sale of narcotic drugs or psychotropic substances with related offenses; formulate proposals for further improvement of the disposition of Art. 296 of the Criminal Code of the Republic of Kazakhstan in order to increase the fight against this crime; proposed a new name for Art. 296 of the Criminal Code of the Republic of Kazakhstan with the introduction of the term «illicit trafficking»; formulated a new composition providing for criminal liability for negligent violation of special rules for the legal circulation of narcotic drugs or psychotropic substances.

The Criminal Code, which came into force in 2015, establishes criminal liability for drug trafficking in two articles – 296 and 297. The difference lies in the qualification of the actions of the perpetrators depending on the presence or absence of the purpose of selling drugs. In addition, offenses in the field of drug trafficking are divided into criminal offenses – these are parts 1, 2, 3 of article 296 of the Criminal Code and crimes – this is part 4 of article 296 of the Criminal Code and the entire article 297 of the Criminal Code [2].

Until January 1 of this year, liability for the use of drugs without the purpose of sale entailed administrative liability. The transfer of administrative offenses in the field of illicit drug trafficking from the Code of Administrative Offenses to the category of criminal offenses has led to an increase in the number of cases considered in this category.

For 6 months of 2015, the courts of the republic considered 2561 criminal cases on drug offenses against 2650 persons against 887 cases against 1008 persons for 6 months of 2014. The number of cases dealt with has tripled. This growth was due to criminal offenses. Criminal misdemeanors account for 75.5% of the total drug offense cases (1935/1958) [1].

At the same time, due to the significant difference between criminal and administrative legislation, difficulties arose in collecting evidence at the pre-trial stage of the investigation of criminal offenses. The simplification of the criminal process in the investigation of misdemeanors did not happen, it is much more complicated in comparison with administrative proceedings and takes considerable time.

In particular, for this reason, the number of detected offenses under Part 1 of Article 296 of the Criminal Code, non-medical consumption of narcotic drugs, psychotropic substances, their analogues, precursors in public places, has decreased.

The stumbling block was the proof of the obligatory sign «commission of a criminal offense in public places».

It is also impossible to bring such a person to administrative responsibility, since the Code of Administrative Offenses provides for liability for appearing in a public place only while

intoxicated (Article 440 of the Code of Administrative Offenses).

For the prevention of offenses related to drug trafficking, it is necessary to consider the issue of introducing liability for appearing in a public place in a state of drug intoxication.

For example, in the administrative code of the Russian Federation there is an independent norm providing for responsibility for appearing in public places in a state of intoxication. At the same time, it does not matter as a result of the use of which psychoactive substances such intoxication occurred. The qualification of alcohol or drug intoxication is determined taking into account the results of a medical examination.

In the Republic of Belarus, since 2015, administrative liability has been introduced for appearing in a public place in a state of drug intoxication.

In our opinion, it is also necessary to introduce administrative liability in the domestic legislation for appearing in a public place not only in a state of narcotic, but also substance abuse (relevant amendments are being developed).

Guilty verdicts were handed down in 2378 cases against 2465 persons (817 cases against 898 persons).

The practice of imposing criminal penalties indicates that the imposition of fines and community service prevails. So, for the 1st half of 2015, fines were imposed on 770 persons, public works – 654 persons, in 2014 this penalty was not applied.

The appointment of imprisonment decreased by 21.5% from 650 in 2014 to 510 convicts in the current year. The assignment of suspended sentences also decreased from 106 to 69 or 34.9%.

A novelty of the Criminal Code is also the introduction of criminal liability for illicit trafficking in analogues of narcotic drugs and psychotropic substances. The concept of «analogues» is simultaneously included in the Law «On Narcotic Drugs, Psychotropic Substances, Their Analogues and Precursors and Measures to Counteract Their Illicit Trafficking and Abuse».

These include substances of synthetic or natural origin, having a chemical structure and properties similar in structure and properties to the substances included in the Summary Table, causing a

stimulating, depressive or hallucinogenic state, dangerous to public health if they are abused.

The Summary Table included a provision that the size of analogues (including criminally punishable) corresponds to the size of the drug, of which it is an analogue [3].

The study made it possible to identify a number of positive and negative aspects of the fight against illicit trafficking in narcotic drugs, psychotropic substances and their analogues, draw conclusions, develop recommendations aimed at improving the effectiveness of the application of the criminal law norms considered in the work. With this in mind, the main conclusions and proposals for the study can be summarized as follows [4].

1. The holding of numerous commissions, conferences and the documents, agreements, conventions and protocols adopted by them aimed at countering the spread of drug addiction on an international scale, as well as the creation of special international bodies and organizations designed to implement the decisions contained in these documents, leave no doubt about the seriousness intentions and actions of the world

community to combat illicit trafficking in narcotic drugs and psychotropic substances. However, in fact, the problem of combating drug addiction remains very relevant today, and all the attempts made by the world community to limit the illegal circulation of narcotic drugs, psychotropic substances, their analogues and precursors have not led to a final victory over this threat to all mankind. Meanwhile, the dynamics of crimes in the field of illicit trafficking in narcotic drugs, psychotropic substances and their analogues continues to maintain negative trends.

2. Crimes related to illicit trafficking in narcotic drugs and psychotropic substances can be defined as socially dangerous, guilty acts that infringe on the health of the population and public morality and cause them significant harm.

3. The object of encroachments aimed at causing harm to the health of the population is precisely the health of many people in the sense of a certain physical state of the body, which ensures the physical and social usefulness of a person, provides the opportunity to fully participate in the social ties of society, enjoy the benefits of life.

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## УГОЛОВНАЯ ОТВЕТСТВЕННОСТЬ ЗА НЕЗАКОННЫЙ ОБОРОТ НАРКОТИЧЕСКИХ СРЕДСТВ ПО НОВОМУ УГОЛОВНОМУ КОДЕКСУ РЕСПУБЛИКИ КАЗАХСТАН

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*В данной научной статье отображены современные данные об уголовной ответственности за незаконный оборот наркотических средств и психотропных веществ по новому уголовному законодательству Республики Казахстан. В статье также приведены статистические данные и сравнительный анализ данных о преступлениях, связанных с наркотиками.*

**Ключевые слова:** уголовная ответственность, незаконный оборот, наркотики, уголовный кодекс, незаконное обращение.

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