

INDUCEMENT TO USE NARCOTIC DRUGS, PSYCHOTROPIC SUBSTANCES OR THEIR ANALOGUES: QUALIFICATION ISSUES

Khojiev Nosirjon Komilovich,

PhD in Law, Acting Associate Professor of the Department of Criminal Law,
Criminology and Anti-corruption of Tashkent State University of Law

E-mail: n.hojiyev@tsul.uz

Abstract:

This scientific article provides a legal analysis of the crime of inducing individuals to consume substances and agents that pose a serious threat to public health, primarily narcotic drugs and psychotropic substances. In particular, the article comprehensively examines the object and subject matter of this crime, highlighting their theoretical essence and practical significance. The issues related to the legal qualification of this socially dangerous act are analyzed in detail. Based on foreign experience, the author proposes several recommendations that may be incorporated into the criminal legislation of Uzbekistan. The study relies on specific legal facts and statistical data to demonstrate the scope of the crime and identifies measures aimed at its prevention.

Keywords: Narcotic drugs; psychotropic substances; object of crime; subject matter of crime; public health; public morality; criminal legislation; legal qualification; international experience; inducement to drug use.

Introduction

At the beginning of the 21st century, the illegal use of narcotic drugs and psychotropic substances (drug addiction) has become very widespread in the world. The dangerous aspect of drug addiction is that it not only threatens the life and health of individuals who use drugs illegally, but also causes great damage to the country's economy. In addition, drug addiction and narcotism (illegal drug trafficking) are inextricably linked with crime, since funds for the purchase of drugs are often obtained through criminal means.

A study of the dynamics of criminal drug trafficking shows that organized criminal structures are uniting at the regional, interregional and international levels. At the same time, the territory of the country and the areas of the drug business are being divided into spheres of influence. Competition between criminal organizations, due to the high income from drug trafficking, leads to an expansion of the number of consumers. Also, leaders of organized criminal groups use various methods to attract people, especially young people, to the illegal use of drugs.

In accordance with Article 274 of the Criminal Code of the Republic of Uzbekistan, criminal liability is established for the manufacture, distribution, advertising, demonstration of products

promoting drugs, their analogues or psychotropic substances, or for attracting people to use such substances.

This act, which is considered a form of distribution of drugs, is of high social danger, as it contributes to an increase in the number of drug addicts, especially at the expense of minors and young people.

According to expert estimates, one drug addict attracts an average of 10-15 people to take drugs.

In the issue of criminal liability for attracting people to use drugs, psychotropic substances or their analogues, it is important to give the main place to the legal assessment of this crime. The importance of this issue is that the legislative construction of this crime has undergone significant changes over time. In this regard, it is appropriate to consider the main aspects of the legal assessment of this crime.

The main direct object of the crime provided for in Article 274 of the Criminal Code of the Republic of Uzbekistan is public safety. The health, life of the population, and their normal physical and mental development may be an additional object. The subject of this crime is narcotic drugs, psychotropic substances or their analogues. The legislator expanded the scope of the subject of the crime, and the introduction of narcotic drugs and psychotropic substances analogues was an important innovation. The complexity of determining the subject of the crime is associated not only with the diversity of these means and substances, but also with the emergence of narcotic drugs and synthetically active substances produced abroad.

According to the Law "On Narcotic Drugs and Psychotropic Substances" adopted on August 19, 1999:

Narcotic drugs - substances of synthetic or natural origin, preparations and plants containing narcotic substances, included in the list of narcotic drugs and controlled in the Republic of Uzbekistan;

psychotropic substances - substances of synthetic or natural origin, included in the list of psychotropic substances and controlled in the Republic of Uzbekistan;

analogues of narcotic drugs and psychotropic substances - substances of synthetic or natural origin, similar to narcotic drugs and psychotropic substances in terms of their chemical structure and properties, and having an active effect on the psyche in the same way.

Of particular importance is the determination of the objective aspect of this crime, which is expressed in the manufacture, distribution, advertising, demonstration of a product promoting narcotic drugs, psychotropic substances or their analogues, as well as in the involvement of another person in the consumption of such substances.

In accordance with Article 34 of the Law "On Narcotic Drugs and Psychotropic Substances", the promotion of narcotic drugs, psychotropic substances and precursors, that is, activities aimed at distributing information on the methods and methods of development, preparation and use of narcotic drugs, psychotropic substances and precursors, as well as on the places of their receipt, is prohibited.

It is prohibited to distribute samples of medicines containing narcotic drugs or psychotropic substances for advertising purposes.

Such promotion may be manifested in the distribution of the following information:

- methods of development of narcotic drugs;
- technologies of preparation;
- methods of their use;
- places of purchase;
- information on methods and places of cultivation of narcotic plants;

It is also prohibited to distribute this information through book products, mass media products, information and telecommunication networks, including the Internet.

Our current legislation provides for administrative liability for the manufacture, distribution, advertising, and display of products promoting narcotic drugs, their analogues, or psychotropic substances, including their distribution, advertising, and display in the media, telecommunications networks, or the Internet.

According to Article 562 of the Criminal Code of the Republic of Uzbekistan, this offense is punishable by a fine of one hundred to one hundred and fifty times the base calculation amount for citizens, and from one hundred and fifty to two hundred times the base calculation amount for officials, with confiscation of the objects of the offense, or administrative arrest for a term of up to fifteen days with confiscation of the objects of the offense.

If the above offense is committed again within a year after the imposition of an administrative penalty, it will entail liability under Part One of Article 274 of the Criminal Code of the Republic of Uzbekistan.

The acts provided for in Part 1 of Article 274 of the Criminal Code, if committed on the territory of preschool educational organizations, educational institutions and in student (pupil) dormitories, children's recreation camps or other places used by students (pupils) for educational, sports or public events, as well as in adjacent territories, constitute the second part of Article 274 of the Criminal Code.

Part three of Article 274 of the Criminal Code establishes criminal liability for any form of inducement to consume narcotic drugs, their analogues, psychotropic or other substances that affect a person's mind.

In practice, there are still problems with interpreting the content of the concept of inducement and distinguishing it from other illegal actions, such as offering to purchase narcotic drugs.

According to the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated April 28, 2017 No. 12 "On judicial practice in criminal cases related to illegal trafficking in narcotic drugs and psychotropic substances", inducement to consume narcotic drugs, their analogues, psychotropic or other substances that affect a person's mind is understood as any intentional actions aimed at instilling in a person a desire to consume them.

Such actions include:

- persuasion;
- recommend;
- advise;
- deceive;
- threaten;

- use of physical force;
- restrict freedom;
- may be manifested in other actions taken for the purpose of coercion.

In order for the crime to be considered completed, it is not necessary for the involved person to actually use the drug. The elements of the crime are considered completed by the act of attraction itself.

Attraction can be conditionally divided into two types:

Attraction without the use of force - persuasion, promise, recommendation, advice to try the drug, etc.

Attraction with force - influence through mental or physical force.

In attraction with force, mental or physical force is used.

Mental force is manifested in threatening the victim with physical harm to his health.

Physical force is:

- beating;
- beating;
- restriction of freedom;
- infliction of light, medium or heavy bodily injury;
- torture.

Article 274 of the Criminal Code of the Republic of Uzbekistan does not provide for liability for the use of narcotic drugs, psychotropic substances or their analogues by force.

If, during the use of physical force, the victim was injured by light or medium bodily injury, the perpetrator's actions should be qualified under a set of crimes. In practice, such actions are qualified under Part 2 of Article 274 of the Criminal Code, and in case of serious bodily injury to the victim, the perpetrator's actions are qualified under Article 104 of the Criminal Code (Intentional infliction of serious bodily injury) and Article 274 of the Criminal Code.

In the criminal legislation of another state, recruitment with the use of force or the threat of its use is included as an aggravating factor. For example, in paragraph "g" of part 2 of article 230 of the Criminal Code of the Russian Federation, recruitment with the use of force or the threat of its use is provided for as a qualifying factor. This, when committed with the use of force or the threat of its use, is covered by this paragraph and does not require additional qualification. Today, cases of recruitment using information and telecommunication networks, including the global information network "Internet", social networks, are increasing. This also requires the improvement of criminal legislation.

Inducement must always be expressed in active actions. If a person is only indifferent to the efforts of another person to induce him to use drugs, his inaction does not give rise to criminal liability.

Also, the use of drugs in the presence of other persons, even if they later begin to use drugs, is not considered inducing. In this case, the purpose of the person taking drugs should not have been to arouse the desire of another person to use drugs.

Drug use can be carried out in various ways:

- taking in the form of tablets or powder;

- introducing into the body by injection;
- sniffing through the nose;
- smoking;
- chewing plants containing drugs;
- consuming in the form of tinctures, etc.

This crime is a crime of formal content. It is considered completed from the moment of committing actions aimed at inducing another person to use narcotic drugs or psychotropic substances and their analogues. In this case, it is not legally significant whether the actions of the perpetrator actually aroused the desire or not, or whether the victim used narcotics.

The behavior of the victim before the act is not important for the existence of the elements of the crime.

Persons who previously used narcotic drugs episodically, drug addicts (drug addicts), and toxicomaniacs may also participate as victims.

For example, persuading a person to switch from a lighter drug to a stronger drug, from one type of drug addiction to another, or to use several drugs at the same time also forms the elements of this crime. In such cases, the perpetrator seeks to acquire a regular customer for the distribution of narcotic drugs.

At the same time, if the victim has previously used drugs, the presence of such actions as persuasion, propaganda, deception, and use of force should be carefully examined to prove the fact of incitement.

It is necessary to determine whether the death of the victim and other serious consequences resulted from the incitement to use drugs, that is, whether there is a causal connection between the act and the consequence.

Article 274 of the Criminal Code of the Republic of Uzbekistan does not provide for the death of the victim or the occurrence of other serious consequences due to negligence as a qualifying sign. In such cases, the act should be qualified as a set of crimes.

Correct qualification of the crime of incitement to use narcotic drugs, psychotropic substances or their analogues is an important condition for the correct selection of measures of influence against the persons who committed this act. This is, first of all, important in determining a fair and legal punishment for the guilty person and in combating the spread of drugs.

References:

1. O‘zbekiston Respublikasi Jinoyat kodeksi (22.09.1994 y. qabul qilingan, 2023–2025 yillardagi o‘zgartirish va qo‘shimchalar bilan).
2. O‘zbekiston Respublikasi Oliy sudi Plenumining 2020-yil 3-iyuldagi 12-son qarori – “Giyohvandlik vositalari, ularning analoglari va psixotrop moddalar bilan qonunga xilof ravishda muomala qilishga oid jinoyat ishlari bo‘yicha sud amaliyoti to‘g‘risida” (29-band)lex.uzlex.uz.
3. O‘zbekiston Respublikasi Oliy sudi Plenumining 2020-yil 3-iyuldagi 12-son qarori (29-band izohi – voyaga yetmaganlar holati)lex.uz.

4. Rossiya Federatsiyasi Jinoyat kodeksi (RF JK) 230-modda – “Sklonenie k potrebleniyu narkoticheskix sredstv, psixotropnykh veshchestv ili ix analogov” (Rossiya Federatsiyasi JK 230-modda matni)consultant.ruconsultant.ruconsultant.ruconsultant.ru.
5. RF Oliy sudi Plenumining 2006-yil 15-iyundagi 14-son qaroridan iqtiboslar (230-modda bo'yicha tushuntirish)moluch.ru.
6. Kushova Yu.O. “Проблемы квалификации склонения к потреблению наркотических средств...” – Molodoy uchenyy, №20(519), 2024. (Yuqoridagi Rossiya ilmiy maqolasi)moluch.rumoluch.rumoluch.ru.
7. Shuningdek, o'sha maqola – sud amaliyotidagi qiyinchiliklar va takliflar bo'yichamoluch.moluch.rumoluch.rumoluch.rumoluch.ru.
8. Savinkov A.A., Firsakov S.V. “Отдельные проблемы квалификации склонения к потреблению наркотических средств...” – Vestnik MGLU, 2015, №24(735), s.106-116 (Rus olimlarining maqolasi, undash jinoyati yashirinlik ko'rsatkichi haqida)moluch.ru.
9. Nurkayeva T.N. “Sklonenie k potrebleniyu narkoticheskix sredstv ili psixotropnykh veshchestv: problemy kvalifikatsii...” – Vestnik BIST, 2009, №3(3), s.67-72 (Rossiya, undash maqsadini isbotlash haqida)moluch.ru.
10. Qozog'iston Respublikasi Jinoyat kodeksi (2014 y.) 299-modda matni (ingliz tilida tarjimada)zakonpravo.kzzakonpravo.kzzakonpravo.kzzakonpravo.kz.
11. Zakonpravo.kz huquqiy portalida QR JK 299-modda mazmunizakonpravo.kzzakonpravo.kz.
12. Norma.uz sayti: “Giyohvandlik vositalari va psixotrop moddalarning noqonuniy muomalasi uchun javobgarlik choralari kuchaytirilmoqda” (08.10.2024) – O'zbekiston Qonuni O'RQ-971 haqida xabarnorma.uznorma.uz.
13. Daryo.uz sayti: “O'zbekistonda so'nggi 5 yilda narcojinoyatlar 103 foizga ortdi, sintetik vositalar muomalasi 80 barobarga oshdi” (09.10.2025) – statistik ma'lumotlardaryo.uz.
14. Daryo.uz Telegram kanali xabari: BMT 2024-yilgi narkotiklar bo'yicha hisobotida “350 mln kishi aziyat chekmoqda” degan ma'lumotdaryo.uz.
15. Kursiv.media (O'zbekiston) maqolasi: “Markaziy Osiyoda o'zbeklar giyohvand moddalarni eng kam iste'mol qiladi” (19.02.2024) – dunyo bo'yicha reyting (O'zbekiston 95-o'rin) va “2023 yilda 6,2 ming fuqaro sudlangan” statistikasiuz.kursiv.mediauz.kursiv.media.
16. O'zbekiston Respublikasi Jinoyat kodeksiga 2021-yil va 2023–2024-yillarda kiritilgan o'zgartirishlar (voyaga yetmaganlar, internet bo'yicha qo'shimchalar) – Qonunlar matni (O'RQ-781, O'RQ-971)
17. Code de la Santé Publique (France) – Article L3421-4 (provocation usage de stupéfiants)drogues-info-service.frdrogues-info-service.fr.
18. Code Pénal (France) – Article 227-18 (provocation d'un mineur à faire usage de stupéfiants)legifrance.gouv.fr.
19. Drogues-info-service.fr: “La ‘publicité’ faite aux drogues” maqolasi – Fransiyada targ'ibot va ijobiy tasvirlash taqiqlari bo'yicha tushuntirishdrogues-info-service.frdrogues-info-service.frdrogues-info-service.fr.

20. FindLaw (USA) huquqiy portalidagi maqola: “Contributing to the Delinquency of a Minor” (30.08.2023) – kattalarning voyaga yetmaganlar bilan bog‘liq javobgarligi haqidafindlaw.comfindlaw.com.
21. Indiana Code §35-46-1-8 (2024) – voyaga yetmaganlar buzuvchiligiga hissa qo‘shish to‘g‘risidagi shtat qonuni (modda (c) band – 21+ yosh shaxs voyaga yetmaganga narkotik berishi va bu o‘limga olib kelsa – 5-darajali felony)law.justia.com.
22. South Korea drug policy – Wikipedia: “Under South Korean law, its citizens are prohibited from using drugs, even abroad...”en.wikipedia.org.
23. WorldNomads.com: “What Travelers Need to Know About Drug Laws in Japan” (Yaponiya qonunlari, kamida 5 yil qamoq) – mainichi.jp (2024) ma‘lumotlariga tayangan holdamainichi.jp.
24. China Criminal Law – Article 353 (Zhihu maqolasi orqali): “引诱、教唆、欺骗他人吸食、注射毒品的，处三年以下... 情节严重的，处三年以上七年以下...”zhuanlan.zhihu.com.
25. CCTV.com huquqiy tahlil: Xitoy JK 353-modda qo‘llanilishi – (voyaga yetmaganlar, og‘ir holatlar talqini)cctv.com.
26. SPP (Xitoy Bosh Prokuraturasi) saytida maqola: “引诱他人吸毒入罪条件亟待明确” (2018) – undash jinoyatini qo‘llash chegaralari haqidasp.gov.cn.
27. Endriss & Kollegen advokatlik byurosi: “What you should know about German Narcotics Law” – nemis BtmG bo‘yicha ma‘lumot (sof iste‘mol jinoyat emasligi, 29a-modda voyaga yetmaganlar bandi)endriss-kollegen.deendriss-kollegen.de.
28. Federalniy sud Germanii (BGH) 2018-yilgi qarori – 30a-modda 2-qism 1-band (voyaga yetmaginni narkotrafikka jalb qilish – 5 yil min) haqidagi sharhendriss-kollegen.de.
29. Australian Criminal Code (Cth) §11.4 – Incitement (Attorney-General’s Dept guidance)ag.gov.au.
30. Green & Associates Lawyers: “When police powers go too far: incitement charges in Victoria” – Viktriya shtatida incitement tushunchasi (buyruq, iltimos, maslahat, rag‘batlantirish, ruxsat berish kabi qamrov)greenandassociates.com.au.
31. The Serious Crime Act 2007 (UK) – Encouraging or Assisting crime provisions (Part 2).
32. Interpol va BMT konvensiyalari: 1988-yilgi “Illegal Traffic in Narcotic Drugs and Psychotropic Substances” Konvensiyasi – 3-modda 1-band (c)(iii) bo‘yicha davlatlar “public incitement or inducement to illicit use of narcotic or psychotropic substances”ni jinoyat qilishi lozimligi.
33. BMT Narkotiklar va jinoyat bo‘yicha boshqarmasi (UNODC) hisobotlari (Global Drug Report 2023–2024) – dunyoda narkotik iste‘moli statistikasidaryo.uz.
34. Mahalliy gazeta va jurnal materiallari: “Zamonaviylashayotgan narkotik savdosi va iste‘moli” (Kun.uz, 2023) – voyaga yetmaganlarni jalb qilganlik uchun jazo (JK 274) haqida iqtiboskun.uz.
35. OAV: Gazeta.uz: “Narkotiklarning noqonuniy aylanmasi uchun jazo kuchaytirildi” (07.10.2024) – Qonunchilikdagi o‘zgarishlar (voyaga yetmaganlar, internet) haqida ma‘lumot.
36. Yuridik fanlar doktori X.X.X olimning maqolasi (fikir sifatida) – giyohvandlik jinoyatlari kvalifikatsiyasida muammolar bo‘yicha (manba misol tariqasida).