



**THE OBJECTIVE SIDE OF MANUFACTURING, DISTRIBUTING, ADVERTISING, DEMONSTRATING PRODUCTS PROMOTING POTENT SUBSTANCES OR THE ILLEGAL CIRCULATION OF SUCH SUBSTANCES OR TOXIC SUBSTANCES**

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**Abstract**

This article provides a legal and theoretical analysis of the objective side of crimes related to the manufacture, distribution, advertising, and demonstration of products that promote potent substances not classified as narcotics, their analogues, or psychotropic substances, as well as the illegal circulation of such substances or toxic substances. According to the theory of criminal law, one of the essential elements of a crime is its objective side. The article analyzes the actions covered by Article 2511 of the Criminal Code, such as the production, distribution, advertisement, and demonstration of products promoting potent substances, or the illegal handling of such substances and toxic materials. The article details specific actions that constitute the objective side of the crime: preparation of products, distribution, advertisement, demonstration, and the manufacturing, storage, transportation, delivery, or transfer of such substances. Particular attention is paid to how these actions are carried out through mass media, social networks, and the Internet for propaganda and promotional purposes. The article also explains how such promotional products affect public consciousness, and discusses the social danger and legal consequences of these crimes. Identifying the objective side of the crime allows for accurate legal qualification, prevention of such acts, and the application of effective legal measures.

**Keywords:** Objective side of the crime, potent substances, toxic substances, illegal handling, manufacturing, distribution, advertising, demonstration, transfer, processing, acquisition, storage, transportation, delivery, mass media, telecommunications networks, global information network Internet.



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## **Introduction**

According to the theory of criminal law, along with the object of the crime, the objective features of the crime also include its objective side. Below, we will dwell separately on each component of the crime analyzed in this study. Article 2511 of the Criminal Code establishes liability for the manufacture, distribution, advertising, demonstration of products promoting narcotic drugs, their analogues or strong-acting substances that are not psychotropic substances, or the illegal introduction of such substances or toxic substances into circulation, which is committed objectively through the following actions:

- 1) manufacture (1), distribution (2), advertising (3), demonstration (4) of products promoting narcotic drugs, their analogues or strong-acting substances that are not psychotropic substances, including distribution, advertising, demonstration in the media, telecommunications networks or the Internet;
- 2) illegal manufacture (1), processing (2), acquisition (3), storage (4), transportation (5), shipment (6) or transfer (7) of potent or toxic substances that are not considered narcotic drugs, their analogues or psychotropic substances;
- 3) preparation of equipment for the manufacture or processing of potent or toxic substances that are not considered narcotic drugs, their analogues or psychotropic substances for the purpose of illegal transfer (1), acquisition (2), storage (3), transportation (3), shipment (4) or transfer (5).

The production of a product promoting potent substances is understood as the creation of a certain product (for example, images, symbols, words, videos, clothing, graphics, etc.) specifically for the purpose of promoting narcotic drugs, their analogues or potent substances that are not considered psychotropic substances. For example, designing a T-shirt depicting the process of consuming such a substance, creating a song, clip, comic or meme praising a certain substance, designing a video or banner for the Internet, in which the use of such substances is presented as “fashionable”, etc. Distributing a product promoting such a substance means delivering a product with promotional content to others in any form, including selling, giving as a gift, sharing on social networks, and distributing it on various platforms and channels. For example, distributing promotional videos on YouTube that claim to “give you a strong thrill”, sharing such products (T-shirts, posters, GIFs, etc.) in Telegram groups, distributing special “sticker” sets in messengers, which contain drug ideas.



Advertising of products promoting highly active substances that are not considered narcotic drugs, their analogues or psychotropic substances means the dissemination of specific information about products promoting such highly active substances, using advertising media, in order to attract the attention of consumers (advertiser users) located in the territory of the Republic of Uzbekistan, arouse their interest in this product and support the promoted idea or image, thereby directly or indirectly obtaining profit.

In this case, the characteristics of advertising can be summarized as follows: 1) the information is targeted and directed; 2) it is distributed through advertising media (for example, banners, videos, posts, TV or radio advertisements, etc.); 3) it serves to arouse interest in the product or idea; 4) it aims to obtain income or influence by promoting it in the market; 5) it aims to influence consumer behavior.

The display of such products, which is a visual display of the product in a manner aimed at the public, even if its content is not overtly promotional, can form a positive attitude towards drugs.

It should be noted that all of these actions, even if they do not directly distribute narcotic drugs, their analogues or potent substances that are not psychotropic substances, may have the purpose of positively portraying them, encouraging their consumption, or normalizing them. Therefore, such products and activities related to them are prohibited by law.

The illegal production of potent or toxic substances that are not narcotic drugs, their analogues or psychotropic substances is understood as the production of one or more potent or toxic substances that are ready for use and consumption on the basis of medicinal, chemical and other substances in violation of the law. In this regard, the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan states that it is understood as deliberate attempts to obtain chemical substances, plant or animal substances, once or in large quantities, in violation of the legislation[1].

Like any other controlled substances and preparations, potent and toxic substances can be obtained not only from similar components, but also from various natural or synthetic raw materials. They can also be prepared “by combining ordinary, non-harmful substances in the necessary proportions.”

Thus, preparation is understood as the process of obtaining potent or toxic substances by any method and in any form (for example, in the form of powder, solution,



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granules). This can also be in the form of processing of chemical substances or processing of potent and non-toxic ready-made drugs.

Also, this action is considered to be illegal preparation even if it is carried out by individuals or employees of enterprises, institutions, organizations who do not have the appropriate permit.

The crime is considered completed from the moment the substances intended for ready consumption or use are obtained. At the same time, it should be noted that the person's activities must be aimed only at obtaining potent or toxic substances included in the relevant lists. Therefore, the process of obtaining substances that, due to their concentration, quantity and properties, may pose a threat to human life or health, but are not recognized as potent due to the lack of a legal designation, is not considered to be the illegal production of such substances.

According to the opinion formed in the field of jurisprudence, the illegal purchase of components for the purpose of manufacturing potent or toxic substances is considered preparation for a crime. Direct actions aimed at obtaining these substances (the production process) are considered to be attempted. Also, if a person tried to manufacture substances, but due to reasons beyond his control (for example, the unsuitability of the components), such actions are considered to be attempted.

Supporting this point of view, we emphasize that the person's intention plays an important role in qualifying such actions. The intention must be aimed at the production of substances included in the relevant lists.

The next action to be analyzed is the processing of these substances. According to the decision of the Plenum of the Supreme Court, the unlawful processing of these substances should be understood as the purification (refining) of 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 a mixture, as well as enhancing their effect on the human body by mixing them with other pharmacologically active substances.

It should be emphasized that the concept of processing is interpreted as obtaining another substance from one substance, which essentially means the production of these substances. It is impossible to agree with the opinion of some authors that processing is understood as the transformation of raw materials and semi-finished products into finished potent or toxic substances, since as a result of such actions a new substance is obtained, which is a manufacturing process. In this regard, we agree



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with the opinion of scientists: the guilty person, by his actions, seeks to increase the effectiveness of this substance, that is, processes it by changing its chemical or physical structure (for example, increasing its concentration, purifying it from impurities, etc.).

As it turned out during the study, this crime is very rarely detected by law enforcement agencies. In our opinion, this is due, first of all, to the fact that most of the potent and toxic substances in circulation are already in a sufficiently “pure” form and are ready for consumption or use. Therefore, their processing is usually not required or additional purification of such substances in manual conditions is very difficult. Purification from impurities and bringing to the required concentration is part of the illegal production and does not have to be qualified as a separate illegal processing. This crime is considered to be completed from the moment the substance acquires a strong effect or toxic properties.

Illegal acquisition of these substances means their acquisition by any means. This includes purchase, receipt as a gift, receipt in exchange for labor or services, payment of debt or exchange for other goods and items, mastering of found substances, collection of wild plants or their parts, collection of residues left in the fields. Also, taking into account the nature of the origin of poisonous substances, their collection from bees and snakes is also included in the list of methods of illegal acquisition.

Thus, illegal acquisition means the acquisition of a substance with or without payment, as a result of which this substance passes into the possession of a person. However, in the case of illegal acquisition, a person is not considered the owner of this substance, since he can possess the substance only in some exceptional cases. Therefore, in order to qualify a person’s actions as illegal acquisition, it is first of all necessary to determine whether this substance was acquired legally or illegally. This is primarily due to the circulation of such substances, which also has a legal form of circulation.

According to the decision of the Plenum of the Supreme Court, the illegal storage of potent or toxic substances should be understood as intentional actions of a person related to the illegal possession of such substances (storing them near, in a building, in a secret place, and in other places). In this case, it does not matter how long the person illegally stored potent or toxic substances. In the scientific and legal literature, storage is characterized by the concept of “a continuing crime, regardless of its duration, subject to liability”, where “the period or place of storage does not affect the qualification of this crime.” The crime is considered completed from the moment



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of storage, since at that time the elements of the crime already exist. At the same time, as a continuing crime, it ceases when the person is arrested, confesses his guilt and turns to law enforcement agencies, dies, or other circumstances occur that lead to the cessation of the commission of the crime (for example, the loss of the object that served as the basis for the illegal circulation of this article).

Possession of potent or toxic substances may be legal or illegal. Possession of these substances by a person who has legally purchased them does not constitute a crime, but may become illegal over time. For example, the head of the organization A. previously had a license to conduct pharmaceutical activities and purchased and stored potent drugs on this basis. However, after the expiration of the license, A. sold these substances, as a result of which he was found guilty of the crime of illegal possession with the aim of illegal sale and sale.

The results of the analyzed criminal cases show that cases of illegal possession are often associated with illegal purchase or sale. If the substances illegally belong to other persons, such actions are qualified as complicity in illegal possession, and also, depending on the circumstances, as complicity in committing other crimes within the group.

The subsequent act is the crime of illegal transportation of these substances. As is known, transportation is understood as the movement of an object from one place to another. These actions are carried out using any means of transport or other objects intended for transportation, as well as in violation of the procedure for transporting these substances.

According to the decision of the Plenum of the Supreme Court, the illegal transportation of highly toxic or poisonous substances is understood as their movement from one place to another, including within one settlement, using any type of transport or any object used as a means of transportation, as well as the transportation of the specified means and substances by a responsible person of a legal entity licensed to engage in such activities in violation of the procedure established by law[2]. In this case, illegal transportation is considered to be completed at the time of the start of the transportation of these substances.

Transportation can be carried out using special hiding places. Examples of this are placement in special hiding places in vehicles, luggage, clothing, as well as cavities in the body of a person or animal.



At the same time, there are disputes in practice and legal literature about the differences between illegal storage and illegal transportation. In our opinion, the presence of the elements of the crime of illegal transportation in the actions of a person and the distinction of these actions from illegal storage should be assessed by the court in each case separately. In this process, the intention of the person, the amount of substances, their location and other factors should be taken into account.

However, this formulation does not clearly explain the problem, since it is natural that any criminal case is assessed by the court based on the circumstances. At the same time, there are no clear criteria for the differences between illegal storage and transportation. This issue has been addressed in more depth in the legal literature. For example, K.M. Osmonaliev identified the following main criteria in determining the elements of the crime of illegal transportation: use of a vehicle; usually, the amount of substance exceeding the one-time consumption amount; if the subject of the crime is narcotic plants, their sufficiently large volume; placing substances in a hidden place (under the car seat, in the trunk, etc.)[3]. A.G. Nenaydenko emphasizes the importance of the following criteria in determining the differences between illegal transportation and storage: the purpose of using the vehicle; volume of substances and other additional factors[4].

In our opinion, despite the existence of objective signs of substance transportation, the distinction between these concepts should be made, first of all, based on the intention of the person to carry out the unlawful transportation or storage. The purpose of unlawful transportation is, first of all, the transfer of the substance, including through the use of a means of transport, that is, not “transporting the substance itself”. In other words, if the purpose is to deliver and sell the substance, to take it to another, safer place or to transfer it to another person, then the element of illegal transportation can be considered present; if the transportation of the substance is not the main purpose, but rather one of the methods of storing it, then this is considered storage. In the case of highly potent and toxic substances, the absence of a purpose for their transfer means that neither the transportation nor the possession of the substance is considered to be an element of the crime provided for in Article 251<sup>1</sup> of the Criminal Code, in which case any other circumstances (quantity, means of transport, etc.) are irrelevant.



In this regard, if a person carries a small amount of a substance intended for personal consumption with him during a trip, this is not considered to be illegal transportation as provided for in Article 251<sup>1</sup> of the Criminal Code.

A generalization of judicial practice shows that courts determine the composition of the illegal transportation of highly potent and toxic substances in the actions of convicted persons (in order to distinguish them from possession) based on the following criteria: forced use of a means of transport, concealment of the substance (under the seat of a car, in luggage, in specially equipped hiding places, etc.).

Thus, the crime of illegal transportation exists in at least three cases: 1) when substances are transported for the purpose of trafficking; 2) when the substances being transported are in large quantities (usually in bulk); 3) when the transportation of substances is the main purpose of the trip and the use of the vehicle.

In order to qualify illegal transportation as a crime, not only the presence of these substances, but also the intention of the person is important. If the person's goal is to sell the substance, deliver it to another person, or take it to a safer place, this is considered illegal transportation. However, if the person acted with the intention of keeping the substance in his possession, this situation is assessed as illegal storage.

Judicial practice shows that courts use the following criteria when distinguishing between illegal transportation and storage: 1) forced use of a vehicle; 2) concealment of the substance (under the seat of a car, in luggage, in specially designated secret places).

Illegal transportation can be carried out by a person himself or through other persons - for example, "couriers". If the courier knew the essence of his task, in this case the crime is assessed as a group commission, and the person who sent the carrier should be held liable as an organizer. If the carrier did not know that the substance was illegal, he can only be guilty of illegal shipment.

The next act, which expresses the objective aspect of this crime, is the illegal shipment of potent or toxic substances. The illegal shipment of these substances should be understood as the deliberate actions of a person to transport them using postal, air or other means of transport as postal items, parcels or cargo (luggage), as well as through another person without his direct participation, in violation of the procedure established by law[5]. In this case, criminal liability for these acts arises only if the person has the intention to illegally transport these substances in the future.



The next act, which expresses the objective aspect, is the illegal transfer of substances. According to the decision of the Plenum of the Supreme Court, the illegal transfer of these substances should be understood as their transfer to another person in any way for a fee or free of charge (sale, gift, exchange, transfer in exchange for debt or as a loan, etc.). In this case, the substances can be transferred by the person directly or by other means (for example, by informing about their storage location, leaving them in a designated place). [6] According to legal literature, transfer is a form of distribution, in which the transfer of potent or toxic substances into the practical possession of other persons is understood. One of the main features of transfer is that in this case the substance passes into the full control of another person, and this person participates as a buyer or consumer. If the substance is transferred to another person for temporary use, in this case both persons are assessed as persons who have jointly committed the crime of illegal possession.

In addition, if a person does not consume these substances, but produces, processes, stores or sends them for the purpose of transfer, factors such as the quantity of these substances, the form of convenient packaging for them or agreements concluded with consumers may indicate that this person intends to transfer.

The crime of transfer is considered completed from the moment of transfer of these substances to other persons and their acceptance by them. It doesn't matter how much of these substances were sold.

In cases where the perpetrator illegally transported only a part of the potent or toxic substances, and the remaining part is subsequently discovered during the inquiry or preliminary investigation, the actions of the perpetrator should be qualified as illegal transportation, based on the total amount of potent or toxic substances. [7]

Also, if a person transported some other substances under the guise of potent or toxic substances, his act should be qualified as fraud. In this case, the actions of the recipient, if there are grounds provided for by law, are qualified as attempted illegal transportation of potent or toxic substances.

The subsequent action, which expresses the objective aspect of the crime, is the preparation, acquisition, storage, transportation, shipment or transfer of equipment for the preparation or processing of potent or toxic substances for the purpose of transportation. In this case, the above descriptions apply to such actions as preparation, acquisition, storage, transportation, shipment or transfer.



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Also, equipment intended for these purposes means devices, apparatus, instruments, facilities, technological complexes and other technologies capable of producing or processing highly toxic or hazardous substances. When resolving issues related to such equipment, it is necessary to adhere to the reasoned conclusion of the relevant state body. The actions of an intermediary in the illegal transfer or receipt of such equipment must be qualified as participation in the illegal transfer of these substances or equipment.

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