

# Criminal Prosecution for Organizing or Maintaining Dens for the Consumption of Narcotic Drugs, Psychotropic Substances, Their Analogues and Providing Premises for The Same Purposes Under the Legislation of the Republic of Kazakhstan

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**Abstract:** The main aim of the study is to consider problematic issues related to the qualification of a criminal offense, provided for in Article 302 of the Criminal Code of the Republic of Kazakhstan "Organization or maintenance of dens for the consumption of narcotic drugs, psychotropic substances, their analogues and the provision of premises for the same purposes". This article describes the circumstances that make it difficult to prosecute persons who provide their homes or other premises for the consumption of narcotic drugs, psychotropic substances, their analogues, as well as the organizers of this type of illegal activity, creating conditions for anesthesia of the population. Through the study and analysis of statistical information, available approaches to this issue, as well as materials of judicial investigative practice in cases of this category, an attempt was made to consider the causes and conditions conducive to the commission of this offense, an author's vision of resolving the situation was proposed. The article presents the data of criminal statistics in Kazakhstan for 2015-2018, identifies the most typical conditions conducive to the creation and functioning of drug traffickers, makes reasonable proposals for amending Article 302 of the Criminal Code of the Republic of Kazakhstan, aimed at improving the current criminal law. The materials of the article can be of practical value for law enforcement officers fighting the specified type of crime.

**Keywords:** Narcotic drug, psychotropic substance, drug analogs, offense, illegal traffic.

## INTRODUCTION

In the 21st century, the narcotization of society has become a global threat to humanity, in connection with which most states create appropriate legal and organizational mechanisms to counter this process. The Republic of Kazakhstan has created a fairly extensive regulatory framework for combating narcotism, which is of great preventive importance for establishing effective international and domestic control over drug addiction and the drug business. However, the results of the fight against drug trafficking do not inspire enough optimism to further improve the drug situation in the country (Fetkulov & Seitkhozhin, 2018).

Unfortunately, Kazakhstan continues to maintain conditions conducive to an increase in the reproduction of illegal drug use, the scale of the drug trade is expanding, and the drug business has become transnational in nature. Insufficient coordination of actions of various departments designed to combat

drug addiction and drug trafficking (health authorities, social services, law enforcement agencies), each of which considers its activity a priority, does not contribute to reducing the number of drug addicts.

It's no secret that the rapid increase in the number of drug addicts in the last decade has occurred, among other things, and thanks to the ability of drug addicts to find a safe and secure place where they can take a dose of the drug, relax, sell or buy a portion of psychoactive drugs, train newcomer to all the intricacies of using narcotic potions and draw him into this disastrous occupation (Kuznetsov, 2012).

As you know, one of the dangerous forms of drug addiction is drug addiction. They allow drug addicts to hide their addiction to drugs from others and provide for the joint use, manufacture or sale of drugs. It is in dens that the process of familiarizing oneself with drugs, the inducement and subsequent involvement of new consumers in drug addiction, most often creates a favorable ground for the preparation and commission of other, more dangerous crimes. Often in such rooms, there is targeted training in drug preparation technology.

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In addition, drug traffickers carry a pronounced social danger. If one addict consuming narcotic drugs draws up to ten people into his orbit, then it is possible to assume with a certain degree of probability how many people are involved in such consumption through drug barriers, for which this activity is the main goal of their creation and is permanent, often is the main source of income for the organizer and (or) the owner of drug addiction and is characterized as fishing (Pavlenko, 2015).

On the pages of the journal "Narkokontrol" has already repeatedly from the criminal law, criminological and forensic positions discussed issues related to the organization and maintenance of dens for the consumption of narcotic drugs or psychotropic substances. In particular, articles devoted to them by N. Zhuravleva (2010), Homutov V.V. (2005), Shekk E.A. (2013), Yakovlev A. (2007) and several other authors. In the Republic of Kazakhstan, A.U. Umetov (2009).

### Purpose of the Study

The aim of the study is to identify the causes and functioning conditions of drug traffickers and to determine the inefficiency of the national criminal law in suppressing the activities of persons contributing to the spread of narcotic drugs, psychotropic substances, their analogues.

### MATERIALS AND METHODS

The main method of researching the identified problem is the study and analysis of statistical information, judicial investigative practice in this category of cases for the period 2015-2018 in the Republic of Kazakhstan. As well as a critical analysis of the current criminal law and existing approaches to this issue.

The organization or maintenance of dens for the consumption of narcotic drugs, psychotropic

substances, their analogues and the provision of premises for the same purposes is provided for in Article 302 of the Criminal Code of the Republic of Kazakhstan (hereinafter the Criminal Code of the Republic of Kazakhstan) dated July 3, 2014.

Despite all the efforts of the state and law enforcement agencies, the number of criminal acts related to drug trafficking is changing every year. In the study, the authors of this article presented an analysis of the statistical data of the Committee of Legal Statistics and special records of the General Prosecutor's Office of the Republic of Kazakhstan (Committee of legal statistics and special records of the General Prosecutor's Office of the Republic of Kazakhstan), which are set out in the following Table 1.

From the above table for the above period, there is a decrease in the number of criminal offenses committed in general. A similar trend is associated with a decrease in criminal offenses provided for by Chapter 11 of the Criminal Code of the Republic of Kazakhstan - offenses against public health and morality. However, the number of recorded crimes under Article 302 of the Criminal Code of the Republic of Kazakhstan from 2015 to 2017 is proportionally increasing. A slight decrease is observed only in 2018. However, the reduction does not occur because this type of criminal offense has been eradicated, but because the crime we are analyzing is characterized by a significant degree of latency. Firstly, this is due to the active work of the organizers of drug traffickers to hide the traces of crime; secondly, the reluctance of citizens to apply to law enforcement agencies against the perpetrators. This attitude of the population is due to the disbelief of citizens in the elimination of drug trafficking by law enforcement agencies, the possibility of bringing the organizers and participants of drug trafficking to criminal responsibility, as well as the fear of possible reprisal by the organizers and visitors of the drug trafficking. At the same time, it is quite obvious that this crime is committed quite often and has a fairly common

**Table 1: Information on Criminal Offenses in the Republic of Kazakhstan for 2015-2018**

Years	2015	2016	2017	2018
Total criminal offenses	386718	361689	316418	292286
Criminal offenses under Chapter 11 of the Criminal Code of the Republic of Kazakhstan	10239	9359	9090	8146
Article 302 of the Criminal Code of the Republic of Kazakhstan "Organization or maintenance of dens for drug use and provision of premises for the same purposes"	33	41	74	55

character, since a significant part of the drugs that enter into illicit trafficking are regularly consumed in dens.

*The public danger* of the crime lies in the fact that, as a form of distribution of narcotic drugs, psychotropic substances, their analogues (hereinafter referred to as drugs), this act involves a significant number of people in their consumption, especially young people, inciting them to use drugs.

According to individual criminologists, the public danger of drug traffickers, in addition to the fact of the spread and consumption of drugs, lies in the fact that:

- new people are involved in drug addicts;
- repeatedly convicted persons continue to fix attitudes towards the conduct of an antisocial lifestyle;
- the risk of HIV infection, hepatitis due to the use of infected syringes and other tools for drug use is seriously increasing;
- there is a high likelihood of harm to life or health of people who are or living directly in or near the drug bar because of the inappropriate behavior of drug addicts (Rodionov, 2011).

Of course, any non-medical drug use negatively affects health. Meanwhile, we can agree with E.A. Shekk, arguing that the public danger of stash-keeping is not so much in the use of prohibited substances and substances by the organizer or keeper of the brothel, but in the organization of such use by others. Thus, the essence of this crime is the deliberate creation of conditions for anesthesia of the population (Shekk, 2014).

This crime cannot be underestimated, since it directly encroaches on people's health, creating conditions for causing harm to the health of a significant circle of people. Based on this premise, the object of the criminal offense under consideration is determined.

The Generic subject of a crime under Article 302 of the Criminal Code of the Republic of Kazakhstan in 2014 (Article 264 of the Criminal Code of the Republic of 1997), is the health of the population, by which we should understand the totality of social relations that ensure normal physical and mental health (Umetov, 2009).

The immediate object of stasis is social relations that impede the creation of conditions for the non-medical use of narcotic drugs or psychotropic substances by others (Kuznetsov, 2012). Separate authors highlight the additional object of this offense - public morality (Rodionov, 2011).

The content of the direct object of the crime, provided for by Article 302 of the Criminal Code of the Republic of Kazakhstan, is determined by the nature of the subject of this assault.

*The subject* of the crime is narcotic drugs, psychotropic substances, their analogues. We believe that this is the most important moment for distinguishing this act from other elements of a crime similar in other respects, in particular, from organizing or keeping dens for stupefying using drugs or other means provided for by Article 310 of the Criminal Code of the Republic of Kazakhstan.

In accordance with Clause 3, Article 1 of the Law of the Republic of Kazakhstan "On Narcotic Drugs, Psychotropic Substances, Precursors and Measures to Combat Their Illicit Trafficking and Abuse" of July 10, 1998, *narcotic drugs* are understood to be substances of synthetic or natural origin included in the List of Narcotic means, psychotropic substances and precursors subject to control in accordance with the legislation of the Republic of Kazakhstan, the Unified Convention on Narcotic Drugs of 1961 as amended by it in accordance with the protocol 1972 amending the Single Convention on Narcotic Drugs of 1961 (The Law of the Republic of Kazakhstan dated July 10, 1998 No. 279-I "On Narcotic Drugs, Psychotropic Substances, Their Analogs and Precursors and Measures to Combat Their Illicit Trafficking and Abuse").

*Psychotropic substances* - substances of synthetic or natural origin included in the List of narcotic drugs, psychotropic substances and precursors to be controlled in accordance with the legislation of the Republic of Kazakhstan, international treaties of the Republic of Kazakhstan, including the 1971 Convention on Psychotropic Substances.

*Under the analogues* of narcotic drugs and psychotropic substances should be understood substances of synthetic or natural origin, having a chemical structure and properties similar in structure and properties to substances included in tables I, II, III, causing a stimulating, depressive or hallucinogenic state, dangerous to public health when abused and not

approved as narcotic drugs or psychotropic substances by the Law and international UN conventions.

In accordance with the legislation of the Republic of Kazakhstan, criminal liability is established for the illicit trafficking of those narcotic drugs, psychotropic substances, their analogues, which are included in the "List of narcotic drugs, psychotropic substances, their analogues and precursors subject to control in the Republic of Kazakhstan", which entered into force on August 8, 2002 years (Appendix 1 to the Law of the Republic of Kazakhstan dated July 10, 1998, No. 279-1 "On Narcotic Drugs, Psychotropic Substances, Their Analogs and Precursors and Measures to Combat Their Illicit Trafficking and Abuse").

## RESULTS AND DISCUSSION

However, in our study, it is important to determine the concept of "drug trafficking", since it is often its ambiguous understanding that complicates the work of law enforcement agencies fighting the fight against narcotism.

It should be noted that an attempt to clarify this concept was made by the Supreme Court of the Republic in its regulatory decision. So according to clause 16: a residential (apartment, room, cottage) or non-residential premises (basement, attic, barn) adapted and provided for the consumption of narcotic drugs, psychotropic substances, and their analogues can be recognized as a brothel) (The normative resolution of the Supreme Court of the Republic of Kazakhstan "On the application of legislation in cases related to the illicit trafficking of narcotic drugs, psychotropic substances, their analogues and precursors" of May 14, 1998. Clause 16 as amended by regulatory decisions of the Supreme Court of the Republic of Kazakhstan dated April 21, 2011, No. 1; dated March 31, 2017 Number 3).

However, some authors expand the content of this concept. In particular, S.A. Roganov and D.A. Kolmykov (20014), believe that a brothel can include:

- 1) premises: private houses, apartments, rooms, dormitories, summer residences, hotels, attics, cellars, sheds, warehouses, office premises (for example, utility or guard rooms);
- 2) isolated areas (for example, huts, dugouts in forests) (Roganov & Kolmykov, 2014).

Other authors identify "marginal" and highly organized drug defenses. "Marginal" drug traffickers

are places where drug use occurs by people with low incomes and self-awareness, without appropriate accommodation, conspiracy, etc. Highly organized dens, places in which conditions are created for drug use, with a high degree of conspiracy, the distribution of roles, a clear mercenary focus, etc. Such hangouts, as a rule, are organized in nightclubs, places of youth leisure or in specially equipped places for this. Such dens are few in number, bringing together wealthy people who use heroin and other expensive drugs (Gusev, 2015).

Kuznetsov (2008), proposed identifying signs, the presence of which characterizes the hangout as a place adapted for the use of drugs, psychotropic substances or their analogues. He identified the following species:

- *physical* - this is residential or non-residential premises or a plot of land, a vehicle that allows you to secretly consume any drug or psychotropic substance in any way;
- *target* - its intended use for illegal (without medical indications) consumption of any drug, psychotropic substance at least three times during the year by two or more persons, of which at least one is not the owner of the premises or legally residing there;
- *legal* - the lack of permission of the relevant authorities for such use of the premises, the vehicle (Kuznetsov, 2008a).

Khachaturian D.A. suggests considering drug narcotics in the broad sense as any place where people gather for the purpose of consumption, storage, manufacture and marketing of narcotic drugs, psychotropic substances or their analogues. And also, in the narrow sense, any residential or non-residential premises, buildings or structures that are provided by one person more than twice during an indefinite time for the consumption of narcotic drugs, psychotropic substances or their analogues on a reimbursable or free basis to any contingent of persons in which it is also possible their storage, manufacture and marketing (Khachaturian, 2015).

Thus, we see various approaches to the definition of the term "drug trafficking", which boils down to the use of any premises for the consumption, storage, manufacture or sale of narcotic drugs, psychotropic substances and their analogues.

This approach is confirmed by the analysis of materials of investigative and judicial practice. In particular, the most "unusual" places recognized as specially adapted local areas in forests (huts, dugouts), abandoned construction sites, places for mass youth "parties", rock music concerts, apartments, garages, sheds, attics, cellars were recognized as drug traffickers etc. (Aleksandrov & Salnikov, 2000).

"Elite" clubs were even used as drug addicts. There are cases when the same premises were used for drug use and for prostitution (Ivanischev & Bakin, 2016).

It should be borne in mind that the problem of determining drug addiction is of a criminal law nature, but it is of crucial importance for the identification, investigation and prevention of crimes related to the organization and maintenance of drug addiction.

Among forensic scientists, disputes most often arise not only about what exactly is meant by drug trafficking, but also about exactly what actions and by whom should be performed in order for any space or room where such actions are performed to be considered as drug pitone.

Consideration of objective signs of the organization or content of drug traffickers reflects the specifics of the external manifestation of their commission and the degree of public danger of the identity of the offender, which creates the prerequisites for individualizing the appointment of the type and amount of criminal punishment for the guilty person.

Thus, the objective side of the analyzed crime is expressed in three independent alternative actions:

- 1) the organization of dens for the consumption of narcotic drugs, psychotropic substances, their analogues;
- 2) the content of such dens;
- 3) the provision of premises for the same purposes. The commission of at least one of these actions constitutes a complete crime.

In this regard, some authors note that the mere use of a person's property for the use by others of narcotic drugs, psychotropic substances or their analogues does not always form the organization or the content of the brothel. The basis for criminal prosecution takes place only if specific, targeted actions are taken to adapt the premises to a hangout (for example,

remodeling a room, installing a ventilation system, equipment for the manufacture of narcotic drugs, etc.) (Volkolupova & Sentsov, 2015:37-46).

Meanwhile, in practical activity, quite controversial situations arose, therefore, with a view to the uniform application of the law; the Supreme Court of the Republic of Kazakhstan gave its clarification on this issue in its regulatory decision.

So, according to paragraph 16, the *organization of a brothel* should be understood as the actions aimed at its creation (search, hiring, adaptation of a room and its equipment, etc.), and if there is a room, the involvement of people who want to use it for the consumption of narcotic drugs, psychotropic substances, their analogues, etc.

The content of the brothel is understood as the completion of a system of actions aimed at ensuring its functioning (its material support, protection, repair, customer service, obtaining means and substances, their analogues for consumption, etc.).

If the organization and maintenance of the brothel are associated with the illicit trafficking of narcotic drugs or psychotropic substances, their analogues, or with a tendency to consume them, these actions should be qualified in the aggregate of the relevant part of Article 302 of the Criminal Code and other articles of the Criminal Code of the Republic of Kazakhstan providing for liability for their commission (paragraph 16 of the Supreme Court Regulation of the Republic of Kazakhstan dated 05/14/1998) (The normative resolution of the Supreme Court of the Republic of Kazakhstan "On the application of legislation in cases related to the illicit trafficking of narcotic drugs, psychotropic substances, their analogues and precursors" of May 14, 1998. Clause 16 as amended by regulatory decisions of the Supreme Court of the Republic of Kazakhstan dated April 21, 2011, No. 1; dated March 31, 2017 Number 3).

It should be noted that these explanations are formulated on the basis of the analysis by the Supreme Court of the materials of judicial investigative practice and the study of the proposals of the scientific community based on the pages of the legal press (Volkolupova & Sentsov, 2015:37-46; Kuznetsov, 2008b; Rolik, 2014).

It should be noted that the stash is a "refuge" for drug addicts, and not just an apartment where they accidentally met. So, according to V.N. Kurchenko, if a

person purchases an apartment for the use of narcotic drugs or psychotropic substances and is not going to use it for living, then we are talking about organizing and maintaining a brothel in his own apartment. If the person provides the premises for drug use, in which he lives, without taking any additional measures for conversion, etc., then we can talk about keeping the brothel in his own apartment (Kurchenko, 2003).

Based on the analysis of the given points of view of legal scholars, it should be concluded that the organization of a brothel for drug use should be understood as the active activity of one or more persons aimed at creating a brothel and its functioning.

The content of the brothel should be understood as the activity to ensure its functioning in accordance with the purpose for which it was created. As a rule, the content of a brothel is a logical consequence of its organization.

Meanwhile, an ambiguous approach has developed the concept of providing premises for a brothel.

The term "provision" in Russian means, firstly, "to make available, use", and secondly, "to give the right, the opportunity to do something" (Ozhegov, 1973). In this regard, it should be noted that it is almost impossible to maintain a stash without providing a room. Thus, the content is always in the provision of premises. However, the provision of premises does not always indicate the content of the brothel in the criminal law aspect. So, for example, if the organizer or the owner of a brothel supplies its visitors with narcotic drugs or psychotropic substances, his actions are subject to qualification in the aggregate of crimes provided for in Article 302 and Article 297 of the Criminal Code of the Republic of Kazakhstan, that is, not only for providing premises, but also for selling drugs.

Since the concept of a brothel is inextricably linked with the systematic nature of certain actions (which creates confidence among "clients" that they will always find shelter for their antisocial activities), according to most criminologists, the consumption of psychoactive substances should take place at least 3 times during the year (Rezonov, 2006; Bubon, 1999).

Thus, we can conclude that the provision of premises means the occasional commission of any actions aimed at creating conditions and opportunities for the use of narcotic drugs, psychotropic substances, their analogues.

We believe that for the qualification of the crime in question, the composition of the participants in drug abuse procedures in the brothel is important. In this regard, I would like to voice the position of V.I. Kuznetsov, who believes that at least one of the participants should be a person who is not the owner of the apartment, premises, vehicle, i.e. to be a person, in fact, an outsider, invited. A hangout can be recognized as such only with a certain composition of visitors: two or more people (including at least one outsider who does not legally reside in the apartment) (Kuznetsov, 2008b).

The position of V.I. Kuznetsov, that in cases where the brothel owner hires a maid or a cleaner to eliminate traces of orgies, and she knows the essence of what is happening, her actions must be qualified as physical aiding, but not as co-execution, according to Part 1 of Article 232 of the Criminal Code of the Russian Federation (corresponding to part 1 of article 302 of the Criminal Code of the Republic of Kazakhstan) and part 5 of article 33 of the Criminal Code (Part 5 of Article 28 of the Criminal Code of the Republic of Kazakhstan) (Kuznetsov, 2012).

The moment of the end of the analyzed crime depends on the form of its commission. An analysis of the content of Article 302 of the Criminal Code of the Republic of Kazakhstan allows us to conclude that the composition of the organization or maintenance of dens for the consumption of narcotic drugs, psychotropic substances, their analogues and the provision of premises for the same purposes is formal, i.e. to recognize this crime completed, it is sufficient to perform one of the three actions described in the disposition of this article.

Forensic practice follows the path that the crime is considered completed at the time of the organization of the brothel, i.e. criminal liability arises for the process of organizing the brothel, regardless of whether it began to function. Meanwhile, it should be noted that proving the circumstances indicating that the perpetrator has taken actions to organize the brothel, in practical activities causes significant difficulties.

Meanwhile, one should agree with S.A. Roganov, who claims that within the meaning of the law the contents of the brothel will be a complete crime only if the premises were actually used by the same person several times or by different people for the consumption of narcotic drugs, psychotropic substances or their analogues (Roganov, 2017).

This seems to us quite reasonable, therefore, we join this point of view and believe that the crime in question should be considered completed as from the moment of organization, if this fact is established by the evidence gathered in the case. Also, the crime in question should be considered completed from the moment the premises for the use of narcotic drugs, psychotropic substances, their analogues and the establishment of actions aimed not at keeping the brothel are provided.

The subject of a crime is a natural sane person who has reached the age of 16 by the time the crime was committed. At this age, a person is fully aware of the nature of the act, the social danger of his illegal actions and is able to manage his behavior.

It should be borne in mind that the legislator takes into account not only the age characteristics of minors, but also proceeds from an analysis of criminal offenses committed by adolescents, takes into account the public danger of criminal offenses, their prevalence in the youth environment. It should be borne in mind that drug abuse interferes with the normal formation of the physical and moral health of minors (Khanov, Erohin, Intykbaev, Fetkulov, Zhuzbaev & Tabaldieva, 2015).

Another sign characterizing the subject of the crime is sanity. In order to free a person from criminal liability due to his insanity, it is necessary to establish legal (psychological) and medical (biological) criteria. A person who committed a socially dangerous act in a state of drug intoxication or withdrawal (drug starvation), in any case, is recognized completely guilty and prosecuted under Article 302 of the Criminal Code of the Republic of Kazakhstan. It is partially impossible to recognize a drug addict guilty of this crime.

Persons held criminally liable for organizing or maintaining drug traffickers or providing premises for drug use should be subject to a thorough medical examination for mental disorders or mental retardation. Along with measures of a criminal legal nature, under appropriate legal conditions, compulsory medical measures should be applied to them.

The criminological characterization of the identity of the prisons is beyond the scope of this article; it is described in detail in a number of scientific papers (Rolik, Romanova & Fedorov, 2009; Borchashvili, 2015).

On the subjective side, the crime in question is committed only with direct intent - the perpetrator

realizes that he is organizing or maintaining a drug counter or providing premises for the consumption of narcotic drugs, psychotropic substances, their analogues and wishes to perform these actions. In the crime in question, the intellectual moment of intent is fully realized by the perpetrator of the public danger of actions to provide premises for drug use. The intellectual moment is not detected on its own, but as a result of a criminal offense, activity or behavior of the perpetrator. The intellectual moment is closely interconnected with the strong-willed, which is expressed in the performance of actions to organize or maintain a brothel for drug use. The qualification of stall-bearing does not establish the desire for any consequences. The will of the perpetrator is manifested in the commission (preparation) of actions prohibited by law, the social danger of which the perpetrator is aware to some extent (Suslikov, 2008).

Therefore, for the presence of a crime under Article 302 of the Criminal Code of the Republic of Kazakhstan, direct intent is sufficient, firstly, the perpetrator's awareness of the danger of their actions and, secondly, the desire to provide premises, organize or maintain a stash for drug use.

The determination to carry out the actions indicated in the disposition of Part 1 of Article 302 of the Criminal Code of the Republic of Kazakhstan is due to the goal of creating conditions for drug use. The person must be aware that the premises provided will be used specifically for the purpose of drug use, manufacture or marketing, i.e. in the functioning of drug addiction. Identification and study of the motive and purpose of organizing or maintaining drug trafficking or providing premises for drug use provide an idea of the identity of the offender, his features, the motivation of his activities, allow more targeted individual preventive and educational work with people prone to commit them.

To complete the study of the issue, it is necessary to consider the aggravating signs of organizing or maintaining dens for the consumption of narcotic drugs, psychotropic substances, their analogues and the provision of premises for the same purposes. Qualifying signs of *corpus delicti* are an important means of differentiating responsibility and individualizing the sentence imposed in criminal law. They are defined as the essential circumstances characteristic of a part of crimes of the corresponding type specified in the law, reflecting the typical degree of social danger of the deed significantly changed in comparison with the main *corpus delicti*, the identity of

the perpetrator, affecting the legislative assessment (qualification) of the deed and the measure of responsibility (Kostareva, 1993).

This kind of differentiation ensures the accuracy of qualification of the act and the punishability of the guilty person, which means the ultimate individualization of criminal punishment and the degree of its social danger. Qualifying circumstances criminal law refers to the signs of a more dangerous criminal act.

The offense under Article 302 of the Criminal Code of the Republic of Kazakhstan, the legislator specified three aggravating signs: a person using his official position (clause 1 part 2), repeatedly (clause 2 part 2), a criminal group (clause 3 part 2), which we will consider individually.

It should be noted that earlier in the Criminal Code of the Kazakh SSR of 1959, article 215-1 (maintenance of dens and pandering), qualifying attributes were not provided at all.

According to paragraph 1, part 2 of article 302 of the Criminal Code of the Republic of Kazakhstan should qualify the actions of the officers who committed the crime using his official position, working in state or other organizations. The presence of this aggravating symptom is explained by the fact that a certain part of people, using their official position, has great opportunities for organizing or maintaining a brothel for drug use.

The organization or maintenance of drug trafficking, as well as the provision of premises for drug use, committed by an official, is a qualifying symptom of this crime and additional qualifications under Article 361 of the Criminal Code of the Republic of Kazakhstan "Abuse of official authority" is not required.

This attribute provides liability for the organization or maintenance of drug trafficking, as well as the provision of premises for drug use by a special entity - a person who abuses the powers granted to him by the service in state bodies or other bodies, institutions, enterprises or organizations, regardless of any form of ownership.

Of course, the use of official position testifies to the increased nature and degree of social danger of this act and the person who committed it.

The concept of "official position" is absent in the norms of criminal law, but in the theory of criminal law, this definition is considered by individual scientists. For

example, from the point of view of T.D. Ustinova, by official position, should be understood the totality of those professional duties and rights that allow them to carry out their activities and limit one group of employees from another, defining only her inherent place in the general system of employees (Ustinova, 1997). It is assumed that these persons are aware that they are using their official position to commit precisely this criminal act and wish that this would happen.

These include employees of institutions, enterprises, organizations, researchers and law enforcement officials, medical personnel and other persons holding a position in the public administration system. The same category of subjects of crime can be attributed to officials, the concept of which is given in paragraph 26 of article 3 of the Criminal Code of the Republic of Kazakhstan.

Having authority, individual officials use the opportunities offered to them by the service to commit a crime, one way or another connected with narcotic drugs or psychotropic substances or their analogues. Justifiably Professor A.N. Agybaev points out that the recognition of certain categories of persons as a special subject is due to the fact that, due to their position, they can commit such criminal acts that other people cannot commit (Agybaev, 1997).

In paragraph 2 of part 2 of article 302 of the Criminal Code of the Republic of Kazakhstan, the sign "repeatedly" is provided. Repeatability is classified as aggravating due to the fact that a crime committed by the same person two or more times indicates an increased degree of public danger to the identity of the guilty person, indicates that he has established antisocial attitudes, which should entail more stringent criminal liability under the law.

By the frequency of criminal offenses is understood the commission of two or more acts provided for by the same article or part of the article of the Special Part of the Criminal Code (part 1 of article 12 of the Criminal Code).

A criminal offense is not recognized as committed repeatedly if a person has been convicted of or has been released from criminal liability on the grounds established by law (part 2 of article 12 of the Criminal Code) for a previously committed criminal offense.

The regulatory decision of the Supreme Court of the Republic of Kazakhstan dated December 25, 2006 "On qualification of frequency and totality of crimes" gives a



practically similar definition of the term “frequency”. Instead of the word “crimes” in the Criminal Code of the Republic of Kazakhstan dated July 3, 2014, “criminal offenses” are indicated (On qualification of the frequency and totality of crimes: Normative resolution of the Supreme Court of the Republic of Kazakhstan dated December 25, 2006).

The simplest type of repetition is when a person organizes or maintains a drug counter or provides premises for drug use several times at different times. In those cases when drug barter is organized or maintained or premises are provided for the above purposes only once, then there is not a repeated but a single ongoing crime that does not contain the qualifying attribute “repeatedly”.

According to Part 3 of Article 12 of the Criminal Code of the Republic of Kazakhstan, a continuing criminal offense is not recognized as repeated, that is, a criminal offense consisting of a number of identical unlawful acts that are covered by a single intent and purpose and form a whole criminal offense.

The repeatability provided for in clause 2 of part 2 of article 302 of the Criminal Code of the Republic of Kazakhstan will take place when the following actions are performed:

- 1) a person organizes or maintains a drug trafficker, but before a conviction is passed, it turns out that this person was previously guilty of providing another room for drug use;
- 2) a person organizes or maintains a drug stall, or provides premises for drug use two or more times before his conviction;
- 3) a person organizes or contains several drug addicts.

The essence of the ongoing crime is that the person organizes / maintains a drug trap, but also provides a room for drug use and does not achieve his goal immediately, not by one action, but during the phased implementation of identical actions covered by general intent.

If the same person commits another crime during the period of the ongoing crime, the signs of which are not covered by the disposition of Article 302 of the Criminal Code of the Republic of Kazakhstan, for example, during the organization or maintenance of drug trafficking, as well as the provision of premises for

drug use, the guilty person organizes or maintains a brothel for engaging in prostitution, as well as pandering, his actions are qualified on the basis of crimes under Article 302 and 309 of the Criminal Code of the Republic of Kazakhstan.

If there were two episodes of organizing or maintaining drug trafficking, as well as providing premises for drug use, and one of them constituted a completed crime, and the second an attempted assassination, then the act should also be qualified as an act committed repeatedly under paragraph 2 of clause 2 article 302 of the Criminal Code of the Republic of Kazakhstan, in the absence of signs of a single continuing crime.

When qualifying the actions of perpetrators on the basis of organizing or maintaining a brothel for drug use, as well as providing premises for the same purposes, committed by a "criminal group", Part 3 of Article 31 of the Criminal Code of the Republic of Kazakhstan.

In addition to the quantitative change in crimes committed by organized groups and criminal communities, there are qualitative changes in the corresponding criminal behavior, expressed in the emergence of new areas of organized crime, which, in particular, is the “criminal group”.

Prior to the entry into force of the Criminal Code of the Republic of Kazakhstan dated July 3, 2014, the concept of a “criminal group” was absent. This provision is a novelty, and therefore it was considered in one of the previously published works by the authors (Khanov, Bakishev, Fetkulo & Nurpeisova, 2017).

Meanwhile, in the legal literature regarding the definition of "criminal group" there are different points of view. Without dwelling on their analysis in detail.

Of particular note is the contribution made by B.M. Nurgaliev, who devoted his research to organized criminal activity in Kazakhstan in his dissertation for the degree of Doctor of Law (Nurgaliev, 1998).

Since in practice there are serious problems with the qualification of signs of an organized criminal group, the Supreme Court of the Republic of Kazakhstan clarified in its regulatory decision “On some issues of application by the courts of legislation on liability for banditry and other crimes committed in complicity”. So, in paragraph 11 it is indicated: the stability of an organized criminal group and a gang can

be indicated, in particular, by such signs as the stability of its composition, the close relationship between its members, the coordination of their actions, the constancy of forms and methods of criminal activity, the duration of its existence.

Along with this, it should be noted that according to Part 4 of Article 31 of the Criminal Code of the Republic of Kazakhstan, the person who created the "criminal group" or directed it is subject to criminal liability for the organization of the criminal group and its management in cases provided for in the relevant articles of the Special Part of the Criminal Code of the Republic of Kazakhstan, as well as for all crimes committed by the criminal group, if covered by its intent. Other members of the "criminal group" are criminally liable for participating in it in cases provided for by the relevant articles of the Special Part of the Criminal Code of the Republic of Kazakhstan, as well as for crimes in the preparation or commission of which they participated. If the commission of the act is recognized as a "criminal group", the actions of all accomplices, regardless of their role in the deed, are subject to qualification as co-execution, without reference to Article 28 of the Criminal Code.

It is also necessary to remember that any organized criminal group, and even more so in the field of narcotism, acts to obtain material benefits and affects social processes. As noted earlier, narcotism today is not only a breeding ground, but also such a part of it as the drug business, in many respects significantly initiates qualitatively negative changes in the sphere of public relations (Fetkulov, Karzhasova, Nurpeisova, Kopbulov, Baikenzhina & Khanov, 2019).

In the case of a "criminal group", a crime under paragraph 3 of Part 2 of Article 302 of the Criminal Code of the Republic of Kazakhstan, it is required to take into account the increased social danger and establish the compliance of this group with its general characteristics.

According to individual scholars, a person's membership in an organized criminal group should be established from the moment when the person participated in the development of a plan for committing a crime or was aware of it and actively contributed to its implementation by its actions (Naumov, 2004).

In accordance with the provisions of h. 5 Article 29 of the Criminal Code, the liability of persons who are not a special entity can only occur when they perform the functions of an organizer, instigator or accomplice.

This means that as performers (co-executors), common entities in compositions with a special entity cannot be considered. It is generally accepted that all members of the "criminal group", regardless of the functions they perform, are considered as co-executors.

In the theory of criminal law of the Republic of Kazakhstan and judicial practice, the "criminal group" is always considered as a more dangerous criminal association than the "group of persons by prior conspiracy." Therefore, the court, when imposing punishment for organizing or maintaining a brothel for drug use, as well as providing premises for the same purposes as a "criminal group", must take into account the degree of public danger of such a group and each of its members, in particular.

It is also necessary to take into account that, as a rule, members of criminal groups put pressure on potential victims and involve them in drug addiction. This conclusion is confirmed by other researchers. In particular, a group of Russian scientists came to the conclusion that most illegal drug users began to use these drugs under the influence of other people. In particular, their survey showed that 62.3% started using drugs as a result of offers from other people, 23.2% - due to regular visits to nightclubs, which does not exclude the impact on them of people who were in these clubs and the atmosphere institutions (Evlanova, 2013).

The questionnaire conducted during this study identified the reasons for the inefficiency of law enforcement agencies in preventing and detecting offenses related to the organization or maintenance of dens for the consumption of narcotic drugs, psychotropic substances, their analogues, as well as the identification of persons providing premises for the same purposes.

So, respondents name the following reasons:

- insufficient level of interagency coordination of the anti-drug activities of state bodies of 28.7%;
- weak interaction with public institutions and non-governmental organizations - 18.2%;
- poor preventive work of district inspectors - 38.4%;
- corruption of the law enforcement system - 46.6%;

- imperfection of the current legislation - 23.6%;
- confidence of organizers and landlords of brothel in their impunity - 44.3%
- lack of a monitoring system for the spread of drug addiction - 3.9%
- lack of consistency in the activities of operational services to identify organizers and holders of brothels - 13.7%;
- limited opportunities for law enforcement agencies and the non-governmental sector to suppress the activities of drug traffickers - 7.2%.

It should be noted that the majority of respondents indicated two or more reasons that, in their opinion, affect the identification and suppression of this type of offense. The most alarming result, we see that a significant number of people surveyed indicated corruption (46.6%), the confidence of the organizers and owners of the brothel impunity (44.3%) and the poor preventive work of the district inspectors (38.4%). A significant percentage (23.6%) agreed that the reason is the imperfection of the current legislation, which confirms the need for further research and development of proposals for amendments and additions to the Criminal Code of the Republic of Kazakhstan and other legislative acts.

Our analysis of the current legislation and the study of materials of judicial investigative practice in cases of this category showed the imperfection of the name and disposition of Part 1 of Article 302 of the Criminal Code of the Republic of Kazakhstan.

We consider it appropriate to amend the current version of Article 302 of the Criminal Code of the Republic of Kazakhstan and the title of the criminal law under consideration shall be stated as: "Organization or maintenance of a brothel for the consumption of narcotic drugs, psychotropic substances, their analogues or provision of premises for the same purposes", which will correspond to the version of part 1 of article 302 of the Criminal Code of the Republic of Kazakhstan.

The need for such a change is due to the fact that the law uses the term "dens" in the plural, i.e. according to the current version of the analyzed norm, in order to bring a person to justice, it is necessary to establish signs of an offense related to the organization or maintenance of two or more dens for drug use.

The presence of such a discrepancy was also indicated by Russian scientists, in particular, V.I. Kuznetsov and S.A. Roganov, directly point out that "... some lawyers in the cassation appeals asked the court to retrain the actions of their clients from the completed crime to the attempt, since for the presence of a complete corpus delicti the law requires not only to create a hangout in the apartment, but also to open its branch in the basement of the house" (Kuznetsov, 2008b; Roganov, 2017).

Also proposed in the title of Article 302 of the Criminal Code of the Republic of Kazakhstan, replace the union "and" with the union "either". Since the aforementioned norm is amended, the union "and" means a combination of two concepts, such as: "organizing or maintaining dens for the consumption of narcotic drugs, psychotropic substances, their analogues" and "providing premises for the same purposes", and the union "either" implies that responsibility will come both for "organizing a drug counter" or "maintaining a drug counter", and for "providing premises for drug use", that is, for three different forms of content (signs of the objective side) of the analyzed reprimands. Otherwise, the lack of evidence, one of the signs of the objective side, can lead to the exclusion of the responsibility of the perpetrator, due to the lack of all elements of the crime.

Based on the foregoing, it is proposed to state the disposition of Part 1 of Article 302 of the Criminal Code of the Republic of Kazakhstan in the following edition:

"1. Organizing or maintaining a brothel for the consumption of narcotic drugs, psychotropic substances, their analogues or providing premises for the same purposes - shall be punished ..."

## CONCLUSION

Based on the study of the indicated problem, it is necessary to summarize the above and outline ways to further resolve it by means of a comprehensive fight against the creation of drug barriers and the identification of persons providing premises for drug use in them. In this regard, in our opinion, appropriate legal measures should be worked out.

Firstly, the implementation of comprehensive measures to identify and expose the organizers and active participants in drug groups, the people financing this criminal activity, and their corrupt ties in

government and law enforcement agencies remain the priority areas in the fight against drug crime for law enforcement agencies.

Secondly, the identification of hidden problems and threats to public health is designed to provide the conditions for the formation of a complex of measures to counteract negative phenomena. In such a situation, the struggle with the organization or maintenance of dens for the consumption of narcotic drugs, psychotropic substances, their analogues and the provision of premises for the same purposes is of paramount importance for the protection of public health.

Thirdly, it is necessary to prepare legislative and legal conditions to guarantee the implementation of anti-drug propaganda and the organization of active educational work on drug prevention for various target groups of the population of the Republic of Kazakhstan, especially the younger generation.

Fourth, ensuring the administrative and legal regulation of the activities of legal entities and individuals whose actions can create conditions conducive to the spread of non-medical drug use, especially in risk groups

Fifth, the organization of comprehensive state support for the activities of non-governmental organizations involved in all types of drug prevention and their coverage in the media.

Sixth, it is advisable to study and put into practice the most effective forms and methods of preventive work, the results of scientific research in the field of preventing the drug business and suppressing the facts of the provision of illegal services.

Seventhly, the criminal procedure mechanism should be clarified and strengthened, which helps to ensure the completeness and comprehensiveness of the study of circumstances in the investigation of criminal cases of crimes in the organization or the maintenance of dens for the consumption of narcotic drugs, psychotropic substances, their analogues and the provision of premises for the same purposes.

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Received on 06-11-2020

Accepted on 12-12-2020

Published on 29-12-2020

DOI: <https://doi.org/10.6000/1929-4409.2020.09.289>© 2020 Umerzhanovich *et al.*; Licensee Lifescience Global.

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