

УГОЛОВНОЕ ПРАВО, УГОЛОВНО-ИСПОЛНИТЕЛЬНОЕ ПРАВО

UDC 343.575:347.157]:343.222.4

SPECIAL FEATURES OF CRIMINAL LIABILITY FOR JUVENILE COERCION TO USE OF STUPEFYING MEANS

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SUMMARY

The article deals with the peculiarities of the criminal characteristics of the crime stipulated by Article 315 of the Criminal Code of Ukraine, and the concept of coercion to use of narcotic means. The concept of "toxicomania" is defined, the difference between drug addiction and toxicomania is substantiated, and forms of toxicomania are presented. The historical analysis of counteraction to juvenile coercion to use of stupefying means is carried out; the stages of the emergence and development of responsibility for the crime under consideration are distinguished. The establishment of criminal liability for juvenile coercion to use of stupefying means is conditioned by the social and legal nature of normative human activity and the natural process of formation of a legal norm. The study of the current state of the problem, the history of liability, reasons and principles of criminalization of juvenile coercion to use of stupefying means convince that criminal liability for legal regulation of this phenomenon needs further improvement.

Key words: toxicomania, crime, historical development of criminal liability, criminal liability for juvenile coercion to use of stupefying means.

ОСОБЛИВОСТІ КРИМІНАЛЬНОЇ ВІДПОВІДАЛЬНОСТІ ЗА СХИЛЕННЯ НЕПОВНОЛІТНІХ ДО ВЖИВАННЯ ОДУРМАНЮЮЧИХ ЗАСОБІВ

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АНОТАЦІЯ

Стаття присвячена розкриттю особливостей кримінально-правової характеристики злочину, передбаченого ст. 315 КК України, та поняття схилення до вживання наркотичних засобів. Визначено поняття «токсикоманія», обґрунтовано різницю між наркоманією та токсикоманією, наведено форми токсикоманії. Проведено історичний аналіз протидії схиленню неповнолітніх до вживання одурманюючих засобів та виокремлено етапи виникнення та розвитку відповідальності за розглядуваний злочин. Встановлення кримінальної відповідальності за схилення неповнолітніх до вживання одурманюючих засобів зумовлене соціально-правовою природою нормативності людської діяльності й закономірним процесом формування юридичної норми. Дослідження сучасного стану проблеми, історії відповідальності, підстав та принципів криміналізації схилення неповнолітніх до вживання одурманюючих засобів переконують у тому, що кримінально-правова регламентація відповідальності за це явище потребує подальшого вдосконалення.

Ключові слова: токсикоманія, злочин, історичний розвиток кримінальної відповідальності, кримінальна відповідальність за схилення неповнолітніх до вживання одурманюючих засобів.

Formulation of the problem. The problem of drug addiction excites worrying around the world. This antisocial phenomenon creates a real threat to the rule of law and the security of states, as well as to the health of individuals and entire nations. First of all, public danger, which consists in non-medical use of narcotic drugs and psychotropic substances or their analogues (hereinafter – drugs and psychotropic drugs), is activated by the continuous involvement of new people in such actions. It stimulates steady demand for these substances. In addition, such a massive negative impact on the health of the population is often accompanied by dangerous consequences (perpetration of serious crimes or suicide, HIV infection, development of mental illness, etc.). Scientists emphasize that the involvement of persons as consumers in illicit drug trafficking provides a criminal world with a steady demand

for prohibited means, that is, guarantees the market for their sale [1, p. 141]. One way of attracting new people (mostly young people) to drug trafficking is their coercion to use of drugs or psychotropic drugs. Such illegal activity causes the rapid spread of drug abuse among teenagers and young people. Thus, the unlawful act of coercion to use of drugs or psychotropic drugs, the responsibility for which is defined in Article 315 of the Criminal Code of Ukraine, occupies a special place among crimes in the field of illicit drug trafficking and requires great attention of practitioners of law-enforcement bodies and scientists.

Relevance of the research topic. In order to implement the provisions of the UN Convention on the Rights of the Child, ratified by the Verkhovna Rada of Ukraine, a number of organizational and legal measures were taken in the state, the main of

which was the adoption of the Law of Ukraine “On the Protection of Childhood” of April 26, 2001. The Law determines the national priority – to ensure the implementation of the rights of the child to life, health care, education, social protection and comprehensive development. At the same time, the state must ensure not only the guarantee of the right to birth, but also maximally protect life during this period, since children are the most vulnerable category of citizens in the social and legal sense.

The complex of measures that solve this important task includes the establishment of criminal liability for juvenile coercion to use of stupefying means (Article 324 of the Criminal Code of Ukraine). The main task of this article is to counteract the development of such a socially dangerous phenomenon as toxicomania.

The object of the research is social relations in the field of criminal law protection of comprehensive physical and moral development of minors.

The subject of the investigation is criminal liability for juvenile coercion to use of stupefying means.

The state of the study. The problem of illicit trafficking in narcotic drugs, psychotropic substances, their analogues and precursors was elaborated by many Ukrainian scientists such as H. Kurilov, A. Muzyka, D. Nykyforchuk, Yu. Ponomarenko, V. Pshenychnyi, L. Raietska, E. Rasiuk, A. Savchenko, S. Safronov, O. Sachko, O. Striltsiv, Ya. Stupnyk, M. Khruppa. However, the attention of researchers left the question of the peculiarities of the criminal characteristics of coercion to use of narcotic means.

The purpose of the article is to study the peculiarities of the criminal characteristics of the crime stipulated by Article 315 of the Criminal Code of Ukraine, and the concept of coercion to use of narcotic means.

Presentation of the main material. Intensification of involving teenagers and young people in the sphere of the use of psychoactive substances is a reality of the present day of Ukraine. Ukrainian society has been struggling against this unprecedented problem since the mid of 1980s.

The term “toxicomania” has appeared in the scientific literature recently. Previously, the generalized notion of “drug addiction”, that is, the habit and unhealthy dependence on narcotic substances, was used. They include some substances of plant origin and medicines, which are included in the special list of narcotic substances, issued by the Ministry of Health of Ukraine. At the same time, other drugs, if they are used not for medical purposes, but without doctor’s orders in poisonous doses, as well as many toxic substances of household chemistry, also possess the stupefying effect that can cause a habit and a painful dependence. The use of toxic substances for intoxication is called toxicomania. From the medical point of view, there is no fundamental difference between drug addiction and toxicomania: health effects are extremely dangerous in both cases. The only difference is that narcotic substances are prohibited by law and strictly controlled, and toxic ones are available to everyone.

What is the use of drugs (sleeping and soothing pills) for the purpose of getting intoxication? If in the therapeutic dose they cause calming, relaxation, sleep, then in the large (toxic) dose (3–5 pills or more) they cause retardation, stun, that is, toxic intoxication. A larger dose – 6–7 pills or more – leads to serious poisoning, when breach of cardiac activity is possible, breathing stops, and even with fatal consequences. Unfortunately, our first-aid kits often resemble the store of medicines, often with toxic effects. Medicines for emergency wait for years, with overdue deadlines, but their toxicity does not weaken, it may increase.

No less dangerous form of toxicomania is the inhalation of vapors of volatile organic substances that are used in everyday life and technology (gasoline, acetone, varnishes, paints, glue, etc.). If toxic substances are used by adults and older teens, then “sniffing” is available to younger teens and even children, pupils of junior forms.

Vapors of petrol after 2–3 inhales cause intoxication – dizziness, nausea, a feeling of “no weight”, a feeling that the head

changes shape and size, and there are moving visual hallucinations. Headache and breakdown occur after 15–20-minute intoxication. A similar state takes place in case of inhaling acetone vapor and other substances.

Toxicological intoxication with substances of household chemistry is no less harmful to health than the use of large doses of medicines or drugs.

Even a single inhalation of vapors of toxic substances can cause damage to the liver, kidneys, especially the nervous system. The repeated inhalation causes the dependence on toxic substances quickly. There is the need to inhale them daily, even several times a day. How to fight against toxicomania?

First of all, at home, strict control over the use of potent substances is required. Keep them in places that are inaccessible to children and adolescents, and, of course, do not allow the accumulation of drugs in the first-aid kits.

It is also necessary to pay attention to the storage conditions of substances of household chemistry. Any suspicion that a teenager consumes toxic substances should not remain unconfirmed.

Quite often, minors did the first steps to the use of such substances not independently, but under the influence of acquaintances, friends and adults. The actions of adults were recognized the most dangerous in this case. Their actions were more dangerous when they were conscious. Our state recognized this fact.

Thus, with the entry into force of the Criminal Code of the RSFSR in 1960, the norms that stipulated responsibility for juvenile involvement in criminal activity were substantially expanded. For example, Article 210 provided for criminal liability “for the involvement of minors in criminal activity, drunkenness, prostitution, begging, gambling, or juvenile coercion to use of narcotic substances, the use of minors for the purpose of parasitic existence” [2, pp. 47–48].

Attention is drawn to the fact that only in 1987 the Criminal Code was supplemented by Article 210.2 of the Criminal Code of the RSFSR, which provided the criminal liability for the involvement of a minor in non-medical use of medicinal and other means, which cause intoxication. Apparently, this can be explained by the fact that in the 60’s and 80’s of the twentieth century the cases of use of narcotics and stupefying means by minors were not of a mass nature, which was caused by a number of objective reasons, namely: the lack of information on the peculiarities of the use of such means, the severe negative attitude towards their use in society, the high cost of such means, the wide promotion of a healthy way of life, etc.

The further development of criminal legislation in this direction has been implemented in the Criminal Code, adopted by the Verkhovna Rada of Ukraine on April 5, 2001. This event marked a new stage in the development of the investigating norm. Thus, Article 324 of the Criminal Code of Ukraine provided for a separate responsibility for juvenile coercion to use of stupefying means.

The main difference between the current Criminal Code and the previous one consists in the following that during the drafting of the law, not only the experience of previous rule-making was taken into account, but also the results of scientific researches, recommendations of scientists based on the synthesis of judicial and investigative practices. Therefore, Article 324 of the Criminal Code of Ukraine in 2001 contains a set of fundamentally new provisions, compared with Article 210.2 of the Criminal Code of the RSFSR in 1960, in part of criminal liability for juvenile coercion to use of stupefying means. Let’s note the main ones:

1. The subject of the crime stipulated by Article 210.2 of the RSFSR Criminal Code could be drugs and other means that were not narcotic and caused stupefying. It suggests that psychotropic substances or their analogues that caused stupefying could also be recognized as the subject of the crime.

In Article 324 of the Criminal Code of Ukraine, the subject of the crime has been corrected and clearly indicated – these are

stupefying substances that are not narcotic or psychotropic or their analogues.

2. The objective side of the crime, stipulated by Article 210.2 of the Criminal Code of the RSFSR, consisted of different ways of involving a minor in non-medical use of medicinal and other non-narcotic drugs. There was no judicial interpretation or clarification of how “juveniles were involved” in the non-medical use of stupefying means. If you adhere to paragraph 8 of the Resolution of the Plenum of the Supreme Court of the USSR of November 1, 1985 “On the practice of using legislation aimed at strengthening the fight against drunkenness by courts”, then in relation to Article 210 of the Criminal Code, “involvement” of minors in drunkenness are actions of an adult that consist in repeated joint use of alcoholic beverages with a juvenile, the purchase of alcoholic beverages for him, etc. It is also important that the non-medical use of these means took place, that is, without doctor's orders or with violation of a medical prescription (for example, in doses that are significantly higher, those prescribed by the doctor, or the completion of the application time prescribed by the doctor).

The objective side of the crime, stipulated by Article 324 of the Criminal Code of Ukraine, is juvenile coercion to use of stupefying means. According to paragraph 12 of the Resolution of the Plenum of the Supreme Court of Ukraine No. 2 of February 27, 2004, coercion should be understood as any intentional non-violent actions of the accused, aimed at excitement of another person's desire to take these means at least once.

3. The sanction of Article 210.2 of the Criminal Code of the RSFSR provides the punishment in the form of imprisonment for a term up to 5 years, whereas Article 324 of the Criminal Code of Ukraine provides for a less severe punishment, which consists in restraint of liberty for a term up to 3 years or deprivation of liberty for the same term.

Modern society needs not only support for health, continuous improvement of the level of physical and spiritual potential of citizens, conditions for a healthy lifestyle of both modern and future generations, but it also requires that social needs of normative regulation are based on scientifically substantiated and reliable data reflecting qualitative changes of economic, political, socio-psychological nature.

Taking into account the information mentioned above, it is possible to make some conclusions:

1. The historical analysis of counteraction to juvenile coercion to use of stupefying means can separate the stages of the emergence and development of responsibility for the crime under consideration.

The first stage (pre-Soviet) reaches the first codified sources of criminal law, namely, the time of the existence of the “*Ruska Pravda*”, continuing until the formation of the Soviet Union. The legislation of this period is characterized by the existence of separate, general norms aimed at the protection of the rights of minors.

The second stage (Soviet) is connected with the creation and construction of the Soviet and post-Soviet state and law. From the beginning of this period to 1987, there were only certain rules concerning liability for crimes against minors. But the spread of toxicomania forced the legislator to establish a criminal prohibition to extend this phenomenon. For example, in 1987, Article 210.2 of the Criminal Code of the RSFSR provided the criminal liability for juvenile coercion to non-medical use of medical and other means, which cause stupefying. Such a late appearance of liability for these acts can be explained by the lack of an expanded system of norms regarding crimes against juveniles, a low level of institutionalization of conduct rules, conservatism in regulating social relations, as well as a low level of development of industrial relations and public consciousness, which did not allow paying due attention to the protection of minors' rights.

The third stage (modern). The stage of evolution of the norms of the criminal legislation concerning responsibility for the involvement of minors in the non-medical use of medical and

other means of stupefying related to the Convention on the Rights of the Child, adopted on the 20th of November, 1989 at the 44th session of the UN General Assembly and ratified by the Verkhovna Rada of Ukraine on the 27th of February, 1991, and the Constitution of Ukraine (1996). The Criminal Code of Ukraine accepted on the 5th of April, 2001, for the first time in the history of domestic criminal law, established criminal liability “for juvenile coercion to use of stupefying means”.

2. The establishment of criminal liability for juvenile coercion to use of stupefying means is conditioned by the social and legal nature of normative human activity and the natural process of formation of a legal norm. Grounds for criminal prohibition of actions falling under the features of Article 324 of the Criminal Code of Ukraine are:

- the gaps in the current criminal law, which by eliminating (to a certain extent) the causes of the spread of drug addiction and alcoholism, did not provide for the prevention of toxicomania;
- the emergence of new socially dangerous acts that contributed to the spread of toxicomania;
- the dynamics of the spread of toxicomania and its socially harmful consequences for society;
- the social legal consciousness determined by legal traditions and scale of toxicomania.

Conclusion. It is impossible to counteract the problem of juvenile coercion to use of stupefying means only by general social measures. There are well-established historical preconditions for recognizing this phenomenon as a crime and counteracting it with rather severe criminal methods. Undoubtedly, the legislator had all the grounds to criminalize juvenile coercion to use of stupefying means. However, the study of the current state of the problem, the history of liability, reasons and principles of criminalization of juvenile coercion to use of stupefying means convince that criminal liability for legal regulation of this phenomenon needs further improvement.

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