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## **TOTAL WEIGHT OR NET QUANTITY OF A NARCOTIC SUBSTANCE? ISSUES OF QUALIFICATION OF A CRIMINAL ACT**

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Over the past 25 years, the scope of illegal activities related to narcotic and psychotropic substances has increased significantly. There has been a considerable growth in the number of offences committed by criminal organisations, groups and individuals in relation to unlawful possession of narcotic and psychotropic substances.

Chapter XXXVII of the Criminal Code of the Republic of Lithuania (Articles 259 through 269) deals with crimes and criminal offences of possession of narcotic, psychotropic, toxic or incapacitating substances [1]. Part of these Articles are related to the determination of amounts of narcotic and psychotropic substances.

Qualification of a criminal act is the main and most important matter in criminal cases of this category. In deciding on qualification of a criminal act, pre-trial investigation institutions and courts of Lithuania rely on net quantity of narcotic or psychotropic substances rather than on total weight of the substance.

Article 269(2) of the Criminal Code presents an official authentic clarification by the legislator. According to this clarification, in deciding on what quantity of narcotic or psychotropic substances should be deemed to be small, large or very large, guidance must be taken from recommendations approved by the Ministry of Health of the Republic of Lithuania. The version of the recommendations approved by Order No V-1033 of 14 December 2007 [2] as amended is currently in effect.

In terms of a criterion of quantity of narcotic/psychotropic substances, it is important to take account of a note contained in the said recommendations to the effect that, unless stated otherwise, the substances' amounts are specified in the tables upon recalculation into net quantity. Therefore, in determining the amount of the subject of criminal acts under Articles 259, 260 and 263 of the Criminal Code, Lithuanian courts rely on the net quantity of narcotic/psychotropic substances contained in the substances that have been

found and seized. Such clarification is in line with the definition of a subject of a criminal act, i. e. the substance that is a narcotic/psychotropic substance, and not any substance with an admixture of narcotic/psychotropic substances, is recognised as the subject of the criminal act [3, p. 506].

The Public Prosecutor's Office of the Republic of Lithuania, however, does not agree with such case law of Lithuanian courts.

The Public Prosecutor's Office holds that such approach of the courts is incorrect as the person's intent is aimed at a specific quantity of the prohibited substance acquired or distributed by the person, i. e. the price of the narcotic/psychotropic substance is determined by its total amount, therefore, qualification of the criminal act should be based on the total weight of the prohibited substance [4, p. 16; 5, p. 38].

As stated by the Public Prosecutor's Office, the person's liability should be linked with the weight of the mixture of the narcotic/psychotropic substance as the offender acquires (or realises) the mixture not knowing the substance's content of the mixture. Thus, the person's intent is always aimed at the quantity of the mixture being purchased/realised rather than at the quantity of the pure substance in the mixture [6, p. 35].

In the opinion of the Public Prosecutor's Office, existing legal regulation and case law of Lithuanian courts do not enable prosecution of offenders for all the criminal acts in this category. The quantity of pure narcotic substance can only be determined by an expert analysis. Furthermore, such analysis is only possible after the narcotic/psychotropic substance has been found or seized from the offender. The Public Prosecutor's Office considers such practice inappropriate and ineffective as offenders usually purchase/realise a mixture, formation or another product without knowing the net quantity of the narcotic/psychotropic substance therein, and the price of the narcotic/psychotropic substance (mixture) is determined only by the type and total weight of the substance [7, p. 10].

In analysing prosecution and sentencing practices in judicial cases concerning unlawful possession of narcotic or psychotropic substances, the Public Prosecutor's Office sought to draw the legislator's attention to the case law regarding differentiation of criminal liability based on the quantities of narcotic/psychotropic substances unlawfully possessed [4, p. 16]. Therefore, the Public Prosecutor's Office has proposed that amendments to legal acts on determination of small, large and very large quantities of narcotic and psychotropic substances should be initiated, as a basis for the development of case law. In the opinion of the Public Prosecutor's Office, this would have a positive impact on the prevention of relevant criminal acts and would reduce the length and costs of pre-trial investigations [5, p. 38].

Thus one can see that the Public Prosecutor's Office raises the question of amendments to legal acts and case law, its main argument being that the offender's intent is always aimed at the quantity of the mixture being acquired/realised rather than at the quantity of pure substance in the mixture. As an additional argument, the Public Prosecutor's Office points out that an analysis of other countries' case law and delivered judgments has shown that courts of other countries rely on total weight of narcotic/psychotropic substances in the qualification of criminal acts related to unlawful

circulation of narcotic substances and in delivering judgments. Therefore, an analogous practice should be applied to the qualification of criminal acts according to the Lithuanian law [4, p. 16]. The Public Prosecutor's Office, however, does not cite specific examples of foreign courts that apply the rule of total weight of narcotic/psychotropic substances.

The main purpose of the study is to analyse whether the proposal for amendments to legal acts and case law made by the Public Prosecutor's Office is well-founded.

For this purpose, the following tasks have been set by the authors of the study:

1) analyse international and national regulation of qualification of offences and sentencing in cases of unlawful possession of narcotic/psychotropic substances;

2) analyse foreign countries' case law on qualification of offences and sentencing in cases of unlawful possession of narcotic/psychotropic substances;

3) analyse works of Lithuanian and foreign scientists on qualification of offences and sentencing in cases of unlawful possession of narcotic/psychotropic substances.

Fighting unlawful possession of narcotic/psychotropic substances and ensuring public safety and public health remain priority tasks of the State.

The issues of the offender's intent and determination of the amount (total weight or net quantity) of a narcotic/psychotropic substance influences both correct qualification of the criminal act and sentencing.

As the Public Prosecutor's Office has raised the question of amendments to legal acts and case law, justification for such amendments must be analysed. Results of the study will be relevant to both jurisprudence and case law in Lithuania, and it is expected that they will be of interest to foreign scientists and practitioners as well.

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