

# *Typification Analysis of Act of Offering Narcotic and Psychotropic Drugs through the Network*

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**Abstract:** The use of the network to provide narcotic and psychotropic drugs has contributed to the drug-related crime of addictive substance abuse. However, the limitations of the qualitative provisions of *Kunming Conference Minutes*, the controversy over the judgment of narcotic and psychotropic drugs which are used for self-use and medical and conviction bias of overall behavior basing on the stage behavior have affected typification analysis of act of offering narcotic and psychotropic drugs. In order to solve the above-mentioned practical dilemma, taking the stage as the dividing standard, the act of offering narcotic and psychotropic drugs through the network should be categorized into act of publishing trading information about narcotic and psychotropic drugs, act of selling narcotic and psychotropic drugs and act of transporting narcotic and psychotropic drugs, which are respectively punished by the crime of illegal use of information network, crime of drug trafficking and crime of drug transporting. At the same time, each stage behavior has the relationship of means and purpose. As a result, act of offering narcotic and psychotropic drugs should be established as implicated offenders, comparing the severity of the charges and give a heavier punishment.

## **1. Introduction**

Narcotic and psychotropic drugs are chemical substances that can produce a dependent anesthetic effect, easily leading to psychological or physical dependence or addiction and are regulated by the state.[1] When narcotic and psychotropic drugs are illegally used and abused, narcotic and psychotropic drugs have drug property. At present, different from the previous offline drug trading, network is gradually becoming a channel due to drug crime trading. Online transaction of narcotic and psychotropic drugs have realized separation of people, narcotic and psychotropic drugs and money, which has increased difficulty of crime control, leading to the rise of the crime cases involving narcotic and psychotropic drugs or other addictive substances. Relying on network, Relying on the Internet, actor contact foreign buyers for negotiations and transactions and narcotic and psychotropic drugs are sent to the buyer through the network. However, offering narcotic and psychotropic drugs through network has qualitative controversy, which leads to phenomenon of different cases. In this regard, in order to promote high-quality governance of drug crimes, the act should comprehensively consider the new situation of network crimes and drug crimes, apply accurate specific charge and promote the criminal governance of network ecological space.

## **2. Crux of Judicial Identification about Offering Narcotic and Psychotropic Drugs through the Network**

### **2.1. Disputes Over Scope of Narcotic and Psychotropic Drugs for Self-Use and Medical Use**

The narcotic and psychotropic drugs are under the control of the State and are addictive to people. Their categories are based on Catalogue of Narcotic Drugs, Catalogue of Psychotropic Drugs and other documents. On the contrary, narcotic and psychotropic drugs cannot be classified as drug property as following conditions: (1) disease treatment; (2) personal use within a reasonable quantity; (3) medical and other legal purposes. At present, the scope of narcotic and psychotropic drugs for self-use and medical is mainly disputed in three aspects: first, it may produce harmful consequences, resulting in criminal transformation space between legal use and abuse. Second, although domestic pharmaceutical market can not supply narcotic and psychotropic drugs, patients need to long-term self-use. Thus, the use of behavior should not be identified as a drug crime, with clobazam as an example. Third, unregulated psychoactive substances have psychoactive and pharmacologic properties similar to drugs, but they are not listed as controlled classes. Clearly, the restricted designation model may allow the abuse and illegal circulation. Therefore, the scope of list is insufficient to address the current drug-related crime of addictive substance abuse.

### **2.2. Conviction Deviation of Whole Behavior Determined by Stage Behavior**

In judicial practice, the judicial conviction is often limited to a certain stage behavior, with "Hu Mou illegal business case" and Pan Mou illegal use of information network crime "as typical cases:

Case 1: Defendant Hu's daughter suffers from epilepsy and takes Hebutine treatment daily. In May 2019, in the process of buying medicine for his daughter, Hu contacted the personnel who sold chlorbazam abroad. In order to obtain benefits, Hu Mou bought chlorbacam and Xibao from overseas personnel at a low price, evading customs supervision, mailing them in batches to their designated personnel in China ,forwarded them by relevant personnel to the address provided by Hu Mou and then sold them to the families of epilepsy patients through wechat group at a higher price. At the time of the incident, the public security officers seized a total of 155 boxes, 7,750 capsules and 105,000 milligrams of chlorbacam purchased by Hu from abroad. The court ruled that his behavior should constitute the crime of illegal business operation according to law.

Case 2: Defendant Tang was suffering from mild bone hyperplasia of cervical vertebra and disc herniation and had been abusing psychotropic drugs such as telerine and tramadol for a long time and forming addiction. On January 5, 2020, Tang, knowing that tramadol is a psychotropic drug controlled by the state, still purchased 2 boxes of pills containing tramadol from abroad from others through wechat. Subsequently, EMS Post International Express sent the pills purchased by Tang from abroad to the address designated by Tang in China. On January 9, Chaozhou Airport Customs inspected the incoming mail. After inspection and identification, the mail items were Tramadol OD tablets, 2 boxes with 10 boards each, 10 capsules each, a total of 200 capsules, each weighing 380mg. Tang's behavior was punished for crime of smuggling drugs.

In summary, with the help of the network, the actor contacted the foreign seller, reached an online transaction of anesthetic drugs and finally sent narcotic and psychotropic drugs to the buyers by Courier. Taking stage as the type standard, offering narcotic and psychotropic drugs through the network can be broken down into act of publishing trading information about narcotic and psychotropic drugs, act of selling narcotic and psychotropic drugs and act of transporting narcotic and psychotropic drugs. However, judicial judgment did not break down the whole act, but simply evaluated the act in a certain stage, ignoring the social harm and legal interest infringement of the whole act.

### **3. Theoretical Premise of Qualitative Act of Offering Narcotic and Psychotropic Drugs through the Network**

#### **3.1. Drug Property of Narcotic and Psychotropic Drugs**

Narcotic and psychotropic drugs have the multiple properties of medicine, drug and chemistry. Not only endanger human life, health and freedom, but also threaten national security and social order.[2] the drug property of narcotic and psychotropic drugs should have the form conditions of drugs: (1) state control. The list of control is mainly based on the List of Narcotic Drugs and the List of Psychotropic drugs. (2) addiction. This is the basis of evaluation factor. Lack of addiction, narcotic and psychotropic drugs can not cause substance abuse, dependence of harmful results, will not endanger public health or social order; (3) social harm.[3] In addition to the formal conditions, the narcotic properties of narcotic drugs should also have substantive condition to distinguish them from medicinal and chemical properties.

#### **3.2. Distinction between Drug-Related Crimes and Acts Consistent with Medical Purposes**

To judge whether offering narcotic and psychotropic drugs through the network is a drug crime, this mainly grasps substantive condition, that is, medical purpose. There are disputes about the testing criteria for medical purposes, mainly including: (1) subjective criteria, with the subjective purpose of treating diseases; (2) objective criteria, substantively used to treat disease; (3) subjective and objective unified standards, sold for the purpose of curing disease and actually used for medical purposes. The identification of multiple properties of narcotic and psychotropic drugs requires professional knowledge, which is difficult for ordinary people to understand. Therefore, the testing criteria for the medical purpose of narcotic and psychotropic drugs need not recognize specific attributes or recognize the list controlled by the State, but recognize the substantive us .

#### **3.3. Type of legal Interest Infringed by Offering Narcotic and Psychotropic Drugs through the Network**

The type of legal interest infringed by offering narcotic and psychotropic drugs through the network is subject to narcotic and psychotropic drugs. First of all, narcotic and psychotropic drugs may be used in the manufacture and processing of chemical products. Taking into account the risk of possible abuse, the operation and processing of narcotic and psychotropic drugs require a business license. Without the business license, it may cause damage to the business order. Secondly, the domestic pharmaceutical market may not be able to supply some of narcotic and psychotropic drugs, which has led to illegal trade. Even if narcotic and psychotropic drugs are used for medical purposes, offering narcotic and psychotropic drugs through the network still undermines order of medicine management. Finally, when narcotic and psychotropic drugs are used as substitutes for drug consumption, it infringes on the comprehensive legal interests of public health, social stability, and national security.

### **4. Qualitative Classification of Offering Narcotic and Psychotropic Drugs through the Network**

The act of offering narcotic and psychotropic drugs through the network can be classified into act of publishing trading information about narcotic and psychotropic drugs, act of selling narcotic and psychotropic drugs and act of transporting narcotic and psychotropic drugs. The final applicable charge is determined by the qualitative analysis of each stage.<sup>[4]</sup>

## **4.1. Previous Stage: Act of Publishing Trading Information about Narcotic and Psychotropic Drugs**

### **4.1.1. Degree of "Serious Circumstances" of Crime of Illegal Use of Information Network**

According to the provisions of judicial interpretation, the degree of "seriousness" of the crime of illegal use of information network should be based on the number of groups and users. In combination with the above cases, the defendants Hu Moumou and Tang Moumou respectively used wechat groups and separate private chat wechat to release the trading information of narcotic and psychotropic drugs. However, the degree of "seriousness" of the two people's act is also different. After all, compared with private wechat, wechat group is open and can accept more trading parties. Obviously, the use of a large number of wechat groups to provide trading information is more likely to reach the degree of "serious circumstances". In addition, actor released trading information to a large number of users through private wechat, which may also reach the degree of "serious circumstances".

### **4.1.2. Concurring with the Act of Enticing or Abetting Others to Take Drugs**

With multiple properties of medicine, drug and chemistry, act of publishing trading information about narcotic and psychotropic drugs may induce the visitors to commit addictive drug crimes. Judgement key is the content of network information. If the network information is advertised for drug use, the act may induce others to take drugs and then the reality is the harmful result of enticing and abetting others to take drugs. As a result, the act may also establish the crime of enticing, abetting, cheating others to take drugs. In addition, even if network information advertised it as a non-drug use such as medicine, the actor knew purpose of buyer for smoking, injecting and other drug crime. Then, the actor is also established the crime of enticing, abetting, cheating others to take drugs.

## **4.2. Metaphase: Act of Selling Narcotic and Psychotropic Drugs**

### **4.2.1. Act of Selling Narcotic and Psychotropic Drugs without Permit**

If narcotic and psychotropic drugs are illegally distributed and abused, it will bring a number of criminal risks. Therefore, operation of narcotic and psychotropic drugs needs to obtain the corresponding license. The operation license can be divided into two kinds. One is the operator's qualification. If the operator's illegal sale disturbs the national management order, it should be punished as the crime of illegal business. Another is that narcotic and psychotropic drugs themselves are approved by the state and can be circulated and used. If the operator who has corresponding qualifications actually sells unlicensed those, it may lead to problem on counterfeit drugs. The judgment of whether narcotic and psychotropic drugs are counterfeit drugs mainly depends on the medical purpose and substantial harm. [5] At the same time, narcotic and psychotropic drugs have not obtained approval documents and are actually used for medical purposes, the act should be established to crime of hinder drug management.

### **4.2.2. Subjective Intent of Crime of Drug Trafficking**

Because narcotic and psychotropic drugs have multiple properties of medicine, drug and chemistry, subjective intent of selling narcotic and psychotropic drugs is difficult to be clear. Thus, it has also become a difficult problem to prove the crime of drug trafficking. However, the use of objective aspects to prove subjective content can not only make the content of subjective intent clear, but also provide evidence for the proof of crime. In short, the subjective intent of actor should

be determined according to actual needs of the narcotic and psychotropic drugs, since online transaction of narcotic and psychotropic drugs is designed to meet the actual needs of the buyer.[6]As a result, around the buyer's actual needs, specific properties of narcotic and psychotropic drugs can be determined. As an exception, if buyer intends to use narcotic and psychotropic drugs for medicine, drug and chemistry purposes. However, the buyer is actually used for the crime of smoking and injecting drugs. If actor does not know actual need when buyer is pursuing for narcotic and psychotropic drugs, actor does not have subjective intent of selling narcotic and psychotropic drugs.

#### **4.2.3. Accomplished Crime Standard of Purchasing Narcotic and Psychotropic Drugs on Behalf of Others**

Different from the transaction of money and goods, purchasing narcotic and psychotropic drugs on behalf of others has space and time difference considering actual transfer of narcotic and psychotropic drugs. Even if the online transaction order is completed, narcotic and psychotropic drugs is not placed within the buyer's control of assignment.[7]Taking into account the purpose of the online transaction, it is intended that the buyer actually accepts narcotic and psychotropic drugs. Therefore, whether purchasing narcotic and psychotropic drugs on behalf of others or ordinary online trading, the online order of narcotic and psychotropic drugs is only the establishment of the crime of drug trafficking, rather than the completion of the crime .After narcotic and psychotropic drugs are actually placed under the control of the buyer, purchasing narcotic and psychotropic drugs on behalf of others can be identified as the completion of the crime of drug trafficking. On the contrary, the seller completed the network sale of narcotic and psychotropic drugs, but could not complete the actual delivery. The act of purchasing narcotic and psychotropic drugs on behalf of others shall be considered as the attempted crime of selling drugs.

### **4.3. Later Stage: Act of Transporting Narcotic and Psychotropic Drugs**

#### **4.3.1. Nature of Network Cross-Border Transportation Actor**

The qualitative dispute is network cross-border transportation actor separating people and goods[8],taking "Han moumou smuggling, selling, transporting drugs" as an example. For illegal profit purposes, Han purchased narcotic and psychotropic drugs from overseas and then those to buyers all over the country through express delivery. However, the court characterized the cross-border network transportation of narcotic drugs and domestic express transportation as crime of drug smuggling and crime of drug transporting respectively. However, whether it is network cross-border transportation actor or the domestic express transportation of narcotic and psychotropic drugs, it essentially speeds up the circulation of narcotic and psychotropic drugs, making them easier for buyers to obtain.[9]Therefore, there is no essential difference between cross-border network transportation of narcotic drugs and domestic express transportation. So crime of drug smuggling has evaluated cross-border network transportation, there is no need to repeat the evaluation with crime of drug transportation.

#### **4.3.2. Standard of Criminal of Carrying Excessive Narcotic and Psychotropic Drugs: Principle of Proportionality**

Even if actor carry narcotic and psychotropic drugs too much for own use or medical purposes, it may lead to drug abuse. Whether it exceeds the reasonable medical dosage is the degree of distinction between carrying excessive administrative violations and criminal violations.[10] Therefore, quantitative judgment should be made according to the principle of proportion, which can not only realize active and effective prevention of drug crimes, but also meet the security and



practical needs of narcotic and psychotropic drugs.

The principle of proportionality includes the sub-principles of appropriateness, necessity and equilibrium.[11]First, the principle of appropriateness should help to realize the protection of legal interests. At present, drug-related crime caused by narcotic and psychotropic drugs has become a new drug crime trend. Taking into account the purpose of medical treatment and drug crimes, the degree of quantity should be expanded as much as possible. Second, the principle of necessity requires the adoption of the least damaging means to punish drug crimes. When the amount of narcotic and psychotropic drugs does not meet the medical regulations, carrying act is necessary for criminal punishment and its criminal punishment is determined according to the degree of violation. This makes the act subject to preventive control and punishment in order to avoid the occurrence of more dangerous drug abuse. Third, the principle of equilibrium seeks to punish the profits brought by drug crime, the essence is to balance the cost of criminal law intervention and the effect of protection interest. [12] Comparing the benefit and cost of drug crime control, the benefit of punishing drug crime should be greater than the loss of drug crime control.

## 5. Conclusions

At present, the act of offering narcotic and psychotropic drugs through the network endangers the general trend of improving drug situation, physical and mental health of public and network environment. Based on limitations of the qualitative provisions in *Kunming Conference Minutes*, disputes over the scope of narcotic and psychotropic drugs for self-use and medical use and conviction deviation of the overall act determined by the staged behavior, which led to crux of judicial identification of the act. In view of this, the act should be broken down into act of publishing trading information about narcotic and psychotropic drugs, act of selling narcotic and psychotropic drugs and act of transporting narcotic and psychotropic drugs, combined with illegal use of information network crime and other crimes to analyze. Various stages of act have relationship of means and purposes, comparing the severity of the charges and give a heavier punishment.

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