

# **Aspects that need to be clarified through criminal investigation in the case of crimes regarding traffic and illicit drug use**

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## **Abstract**

*The knowledge and consumption of drugs are not issues emerged in the contemporary world, are recent phenomena that suddenly appeared and experienced an explosive development. Drug use appeared with the existence of mankind as a rational being. Although these substances still have a scientific attraction for scientists, they also claim a scheme of measures to combat their illicit traffic, measures that only reach their intended purpose to a small extent. At first, mankind as a rational being, has seen the properties and effects of drugs and toxic substances extracted from various plants and minerals. This knowledge came from his desire - which allowed the evolution of mankind - to know the surrounding world and, implicitly, himself.*

**Keywords:** drug use, fighting drugs traffic, drug effects, illicit drug use.

**JEL Classification:** K14

## **1. Introductory aspects**

By Law no. 143 of 26 July 2000 on combating drugs and narcotics trafficking, art. 312 of the old Criminal Code has been completely repealed, although the legislator does not explicitly state this. From the wording, it may be understood that the term "narcotic or toxic products or substances" is abrogated from the content of Article 312 of the old Criminal Code and replaced by the term "drugs". In fact, the provisions of Law no. 143/2000 completely repeals the provisions of Article 312 of the old Criminal Code, both as regards the normative rules of the offense and as regards the minimum and maximum amount of punishments. On the other hand, the law in question also criminalizes the facts that do not find a correspondent in the provisions of the Criminal Code<sup>2</sup>.

## **2. Pre-existing conditions**

### **A) The object of the offenses**

a) The generic legal object of the offenses provided for in Law no.

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<sup>2</sup> V. Bercheșan, *Unele considerații privind noile reglementări referitoare la combaterea traficului și consumului ilicit de droguri*, „Criminalistica”, no. 1/2001, p. 29-30.

143/2000 is the whole of the social relations whose normal formation and development are conditioned by compliance with the norms of social coexistence related to public health.

Public health is one of the social values of particular importance within society. It has been shown in the literature that public health means, on the one hand, all the conditions and measures meant to ensure the health of an organized social group as much as possible and, on the other hand, the condition that the group has in terms of its health<sup>3</sup>.

b) The specific legal object differs according to the specificity of each offense. In the situation foreseen in the aggravation of art. 12 paragraph 3, the special legal object is complex in its content, besides the social relations related to the public health, and the social relations related to the life of the person.

c) The material object consists of substances under national control. These are provided in art. 1 of the Law, as well as in the annexed tables that are an integral part of this normative act.

### **B) Criminal Subjects**

a) The active subject is any person who fulfills the legal conditions of criminal liability. Criminal participation is possible in all forms.

A special quality (physician) must be actively involved in the offense referred to in art. 6 par. 1 and in par. 2.

Also, in the aggravation provided in art. 14 requires the perpetrator of the offenses covered by Chapter II of Law to be a person who performs a function involving the exercise of public authority.

b) The passive subject is mainly the state, as guarantor and protector of public health, and secondarily the person suffering the consequences of trafficking, as well as other illegal operations with substances under national control<sup>4</sup>.

### **C) Time and place requirements**

For the aggravation provided for in art. 14 letter c), the facts provided in art. 2-9 and 11 must be carried out in a medical, educational, military, detention facility, social care, re-education or medical-educational institution or place where students, students and young people perform educational, sports activities, social, or near these places.

There are no time requirements for the existence of the offenses provided by the law.

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<sup>3</sup> V. Dongoroz and collaborators, *Explicații teoretice ale Codului penal român*, vol. IV, All Beck Publishing House, Bucharest, 2003, p. 588.

<sup>4</sup> A. Boroi, N. Norel, *Infrațiuni prevăzute de Legea nr. 143/2000 privind combaterea traficului și consumului ilicit de droguri*, Rosetti Publishing House, Bucharest, 2001, p. 40 - 41.

## 2. Constitutive content

### A) The objective side

a) The material element of the objective side, trafficking offenses or other illicit operations with substances under national control consists of an action that can take the form of cultivation, preparation, production, manufacture, experimentation, extraction, transformation, import, export, sale etc.

#### b) Essential requirements

The existence of the material element of the offenses provided in art. 2-4 implies that activities are committed "without right", that is to say persons who are not entitled to carry them out. Also, for the existence of the offenses provided in art. 5, 9, 11, the consumption, cultivation, production or manufacture of drugs must be "illicit", and in art. 7 it is foreseen that drug administration should be done "outside legal conditions".

c) The immediate consequence is the creation of a state of danger for the public health, ie the existence of an objective state of harm to the health of one or more persons who illegally acquire substances under national control to consume them.

In secondary, the facts provided in art. 2-7, 9 and 11 may result in the death of the victim.

#### d) Causal link

There must be a causal link between the action taken and the immediate follow-up. The offenses provided in art. 2-9 and 11 being dangerous, the causal link results from the commission of the incriminated action.

For the aggravating option provided in art. 12 paragraph 3 the causal link must be proven.

### B) Subjective side

The offense involves the active or direct intention of the subject as a form of guilt.

The offenses provided in art. 8, 2-7, 9 and 11 are committed with a direct, qualified, goal-oriented intent.

For the aggravation provided in art. 12 paragraph 3 the form of guilt required by the text of incrimination is praeter intention.

There is no provision for the existence of any mobile as a condition of the content of the offenses in this law. The mobile and the purpose will be taken into account in the individualization of punishment.

For the existence of the offenses, the person who traffics these products or substances is required to know that they are substances under national control<sup>5</sup>.

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<sup>5</sup> *Idem.*, p.43.

### **3. Forms. Ways. Sanctions**

#### **A) Forms**

Preparatory acts are possible and punishable, being assimilated, as a sanctioning legal regime, to the attempt.

Attempts to the offenses provided in art. 2-7, 9 and 10 are punished.

The preparatory and attempting acts for the offenses provided in art. 8 and 11, although possible, are not sanctioned.

Crimes are consumed when the execution of any of the incriminated actions is completed, resulting in an immediate consequence.

The offenses provided in art. 2, 4, 5, and 9 have the character of continuing crimes. The offenses in this law are likely to take on the continued form.

#### **B) Methods**

The offenses provided by the law on combating illicit trafficking and illicit drug use are committed in several normative ways (cultivation, production, manufacture, etc.). Each of the normative procedures described can be used in various factual ways, determined by the concrete circumstances in which the deed was committed.

The offenses in this law are likely to take on aggravating forms.

#### **C) Penalties**

For offenses under this law the primary punishment is imprisonment, ranging from a crime to an offense ranging from 6 months to 25 years, or even life imprisonment or imprisonment between 15 and 25 years (Article 12, paragraph 1)

For the offenses provided in art. 8 and 11 (2) the prison sentence alternates with the penalty of the fine.

The drugs raised for confiscation are destroyed. Retaining counter-claims is mandatory (article 18 paragraph 1).

In art. 27 par. (2) of the present Law provide for two special security measures to be taken in the case of persons who use drugs unlawfully: detoxification cures and medical surveillance.

In art. 15 of the present law provides for a cause of non-punishment, and at art. 16 provides for a cause of attenuation of punishment.

### **4. Proposal *de lege ferenda* on the legalization of drug use**

In recent years, the idea of liberalizing narcotics control has emerged internationally in order to try more lenient forms of control, such as non-criminalization of the possession of small quantities of drugs for their own use, the possibility of prescribing these substances to the addicts, by doctors, or selling drugs without restrictions.

The proposals were aimed at non-criminalization of the possession for personal use and consumption of small quantities of drugs, while the

commercialization would still be considered an offense. In practice, this would lead to the purchase of some drugs on the street. It is further advanced the idea that doctors legally have the possibility of prescribing narcotic substances to those known and registered as drug addicts. Legalization should also be a complete abolition of government control and allowing free sale or the manifestation of this monopoly as alcohol, imposing increased taxes, age restrictions, etc.

All of these proposals were based on several arguments, on economic, philosophical and social considerations that we will endeavor to enumerate below<sup>6</sup>.

Addressing drug use as a crime can have both negative and positive consequences associated with drug use:

- due to the fact that drugs can only be bought from the black market, their composition and their strength are unknown, which can cause overdose or other negative consequences for the consumer;

- fear of criminal punishment and high drug prices incite users to use drugs in more efficient ways, such as injection, which is a high risk activity for HIV transmission;

- since sterile injection equipment is not always available, drug users may need to share the needles and equipment, which contributes to the spread of the infection;

- significant law enforcement resources are consumed at the expense of prevention programs or the extension of treatment facilities for drug users<sup>7</sup>;

- the risks associated with moderate drug use have been greatly exaggerated. Research over the last few decades has shown that all types of narcotics are detrimental to health, causing dependence and unable to achieve moderate consumption, as the body still requires the drug even if it is harmful. As we know, alcohol, cigarettes (tobacco) and even coffee create addiction and are detrimental to the body, and yet they are legalized (production, marketing, consumption). Probably some think that these drugs<sup>8</sup> do not compare to the drugs themselves, but they also act on health, and moreover it has been found that a cigarette (tobacco) is much more harmful than a marijuana cigarette;

- it is wrong to prohibit and punish the illness itself (drug addiction), but in some laws the operations and the use of drugs are criminalized and not the addiction itself. This argument is irrelevant because drug addiction is criminalized by criminalizing the operations and the use of implicit drugs. The most pronounced effect is to push drug users to the edge of society. For this reason, it is difficult for them to be approached by educational messages: consumers are afraid to access health or social services; service providers avoid providing them with education about safe consumption methods, for fear of being considered defenders of drug use; in addition, marginalization favors negative attitudes towards the consumer;

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<sup>6</sup> *Ibidem.*, p. 91.

<sup>7</sup> [www.adislaw.ca/Maincontent/romanian/r.droguri.pdf](http://www.adislaw.ca/Maincontent/romanian/r.droguri.pdf), consulted on 1.10.2018.

<sup>8</sup> J. Drăgan, *Dicționar de droguri*, Național Publishing House, Bucharest, 2000, p. 16, 44, 261.

- a society has no right to forbid its members to consume drugs to influence their psyche;
- if addiction has bad effects, then it is a self-destructive activity, and the responsibility lies only with the addict. However, non-medical use will always have consequences on other people, such as relatives, colleagues and neighbors of the addict;
- drug control has created an opportunity for enrichment for the trade unions of the crime and has generated serious crimes that would disappear if drugs were legalized;
- by lawfully prescribing drugs for addicts under medical supervision, society would take them out of the black market and free them from the need to commit crimes to pay for their drugs. Some countries have tried to implement this system by prescribing drugs to addicts, and they are free to consume them as they wish, but the results have been catastrophic. Thus, drugs have reached new groups, being consumed without restriction. For example, a project implemented in Stockholm between 1965-1967 led to the extraordinary spread of drug abuse, in one year the number of addicts by injection doubled and an increase in deaths was recorded<sup>9</sup>.

Some states are adjusting their legislation in line with the spectacular rise in cannabis use. Portugal has decided to disincite private consumption, as is the case in Spain. Belgium also stepped in January 2003. In France, the steady increase in cannabis use has prompted major daily newspapers to launch a law reform campaign.

But the most surprising decision was taken on 9 March 2003 by the Swiss Government, which sent Parliament a bill to legalize not only the consumption and sale - as is the case in the Netherlands - but also production. Adopting such a law will certainly revolutionize the market for hash and would mean the end of a golden age: the so-called recreational cannabis, consumed for some time in semi-land. Cultivation of hemp will be more carefully monitored and producers will no longer have the right to export.

This law could make the Cantonese Country a European pioneer in depressing cannabis use. It has been estimated that a nationalized cannabis-controlled consumption would require an agricultural area of 4000 ha. Although it seems to be enormous for some, the figure represents only one percent of the cultivated land of Switzerland.

The deputy head of the federal health office in Switzerland said the future law will not lead to such an increase of "agriculture": "We know there is an important export of cannabis. Therefore, the future law will specifically prohibit such practices by introducing strict controls. This part of cannabis production will be diminished."

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<sup>9</sup> Al. Boroi, N. Norel, *op. cit.*, pp. 92-94.

Paradoxically, the much-announced depenalization will mean pressure exerted on cultivators: they will be required not only to declare the smallest cultivated areas, but also to check the THC (tetrahydrocannabinol) concentration of the product and, last but not least, to tell who is buyer. In addition, the earnings obtained must not exceed 500 000 Swiss francs (300 000 USD) per hectare<sup>10</sup>.

After legalizing the use of marijuana for medical purposes, Canada is now seeking to depenitate its consumption of this substance. Attitude contrasts with the intransigence displayed by the United States. to this problem.

The Canadian Minister of Health is said to have opened a Pandora's box since it proposed - at federal government level - the legalization of marijuana use to alleviate pain caused by some incurable diseases. However, the specialists draw attention to the fact that this is not legalization, but only depenalization. The difference - they say - is essential. For example, if a certain quantity of marijuana or hash is discovered on a Canadian, he risks being killed for life with a criminal record, which, in addition to immediate consequences, would foreclose access to professions such as medicine or law in the future. Disincrimination of possession will mean the transformation of an offense considered to be serious in a mere contravention punishable by a fine.

Canadians have become more tolerant towards light drug use. A recent poll published in the *Globe and Mail* daily suggests that almost 50% of Canada's population is in favor of legalization.

This is not the first time that Canada is talking about light drugs. In the 1960s, Prime Minister Pierre Elliot Trudeau also studied the issue of legalization and proposed decriminalizing the possession of light drugs for personal use. The bold initiative for those times led to the sudden end of Trudeau's career. In fact, the drug policy in Canada has been all the time influenced by its great neighbor from the south, which continues today to be the victor of the fight against the scourge<sup>11</sup>.

After three years of heated debate, the Supreme Court of the United States has confirmed the federal ban, in 1998, on the use of marijuana for medical purposes. California and eight other US authorizing states are trying to evade this decision.

The Supreme Court, however, considered that medical imperatives can not prevail over a federal law banning the production and distribution of marijuana. California states include Alaska, Washington, Oregon, Hawai, Main, Nevada, Colorado and Arizona.

Earlier this year, the Belgian government decided to ban the holding and consumption of cannabis for personal use. This is not a complete depenation. The only incriminated facts are those related to attracting minors in such occupations and trafficking or export of the substance. However, Belgian law is considered revolutionary because it allows not only possession of cannabis for personal use, but also planting, manufacturing and even importing it<sup>12</sup>.

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<sup>10</sup> [www.lumea.ro/nr.9/2001/dosar.html](http://www.lumea.ro/nr.9/2001/dosar.html), consulted on 1.10.2018.

<sup>11</sup> *Idem*.

<sup>12</sup> *Idem*.

In Romania, some proposals have been made to amend the legislation on narcotics. In this regard, we specify that it is proposed that those who have small amounts of drugs for their own consumption should not "benefit" from the same treatment as the big drug dealers. This proposal aims at reviewing the prison sentence for possession of light drugs in the sense of replacing it with other means of punishment. For example, instead of imprisonment, those who are trapped in small amounts of small drugs for their own consumption may be fined or perform community work. In this respect, even an amendment to the Law no. 143/2000, calling for a clear demarcation between the drug dealer and the drug user for his own consumption.

In the field of drugs, the legal framework of offenses is regulated in Romania by Law no. 143/2000. It does not punish consumption, but only the illegal possession of narcotic substances. The penalty is between 1 and 5 years. However, there is an article dealing with drug trafficking, which punishes 10 to 20 years' imprisonment by introducing or removing lower risk drugs such as hashish or marijuana from the country, and 15 to 25 years of introducing or removing high-risk drugs from the country - cocaine, heroin - or synthetic - extasy.

A clear distinction should be made between drug traffickers and those who introduce or remove small quantities of drugs from the country for their own consumption. There are many foreigners, but also Romanians working abroad and entering the country with a cigarette with marijuana, sometimes forgotten in their pockets. He risks over 10 years in prison, theoretically the same as the trafficker who has tens of kg of drugs.

In this respect, we consider the example of a 20-year-old girl from Germany, who was trapped at the exit of Romania with 4 grams of hashish and an extasy tablet on her. They were drugs for their own consumption. The amount of hashish was negligible, so that, after the analyzes carried out, there was nothing left of the substance. In Germany, the punishment was contraventional, and the young woman was forced to follow a drug-related consultation. In Romania there are years of imprisonment. It is a big difference<sup>13</sup>.

Drugs are at present the greatest social danger, with the spread and temptation of drugs, so that one can talk about a drug market with all its elements: demand, offer, price and even competition.

In this context of drug market development, the public sector recognizes two key issues, namely market legalization and sanctioning drug distributors. Companies, while generally condemning this market, are facing its forms, less visible by their illegal character, and consider the punishment of traders to be insufficient.

Specialists separate the drug market into two distinct parts, depending on their nature, in soft drugs and hard drugs.

In the soft drugs market, the balance is manifested as any commodity and service market. When the price increases, the required quantity decreases and the

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<sup>13</sup> [www.arhiva.monitorulcluj.ro/2002/2002.07.22/local2.html](http://www.arhiva.monitorulcluj.ro/2002/2002.07.22/local2.html), consulted on 1.10.2018.



quantity is increased. Legalizing this market would alter supply-demand balance, because tempting individuals, who have abstained in illegal market conditions, now express their demand, and new bidders are tempted to enter the new legal market. As a result, both demand and supply grow.

The equilibrium price will fall below the level of the illegal market and the quantity will increase. Of course, price can also be higher if demand increases more than supply, but quantity increases in any situation, which means that society as a whole is more insecure.

On the hard drugs market, the balance knows other meanings because the demand itself has another elasticity. These products create a strong dependence on drug users of a certain amount, which means that demand is inelastic and rigid, without being modified by market mechanisms. In addition, the offer shows an approximately unitary elasticity, which means that the price increase by 1%, the quantity offered also increases by 1%. Legalizing this market leads to a new offer, and the quantity of equilibrium is slightly rising, while the price decreases.

By legalizing transactions, there may be a slight increase in demand on this market, much lower than the supply, which will be reflected in a greater reduction in the equilibrium price.

That is why the political factors tighten the control of the hard drugs market and impose more public policies and more severe sanctions. Through these actions, a period of time is maintained to maintain the offer because new distributors are slowed down in their actions, and, if more restrictive restrictions are imposed on consumers, demand diminishes a little, only to the occasional consumers. Therefore, the equilibrium price and balance quantity are slightly diminished<sup>14</sup>.

We appreciate, as a result of the above, that any drug legalization could have a number of negative consequences, but the question is whether these negative consequences will be more numerous than those present at the moment when drugs are consumed illegally?

## 5. Conclusions

Is it therefore appropriate, in the context of drug use, to resort to criminal law rather than to other means of social intervention?

In the report of the Canadian Government entitled *Criminal Law in Canadian Society*, it is stated that criminal law should be invoked only when the other ways of social intervention are inadequate or inappropriate and in a way that interferes with individual rights and freedoms only to the extent which is necessary to achieve its purpose. This statement seems to exclude the use of criminal law for at least some of the drug-related activities. There are other, less damaging, ways to fight drug use while preserving (or even improving) social order and protecting the public.

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<sup>14</sup> University of Bucharest - [www.unibuc.ro/eBooks/StiinteADM/platis/S.htm](http://www.unibuc.ro/eBooks/StiinteADM/platis/S.htm), consulted on 1.10.2018.

Other approaches are possible. For example, in the context of current prohibition policies, without the need to change the current legal framework, it is possible to criminalize de facto the possession of cannabis for personal use, medical prescription of heroin, explicit education programs, etc.<sup>15</sup>

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<sup>15</sup> [www.aidslaw.ca/Maincontent/romanian/r-droguri.pdf](http://www.aidslaw.ca/Maincontent/romanian/r-droguri.pdf), consulted on 1.10.2018.