

THE SPECIFICITIES OF THE NATIONAL LEGAL PROVISIONS IN FIGHTING ILLICIT DRUG USE AND TRAFFICKING

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Abstract

Crime caused by drug use, its consequences for social, economic, health, *cultural* and political causes significant damage to the general interests of society, threaten the lives and health of citizens and generate social instability, difficult to reverse; for this reason, *prevent and combat* illicit drug trafficking represent constant preoccupations of the contemporary society.

Key words: *drug, illicit drug trafficking, drug use, new psychoactive substances, drug design, organized crime, statistical elements, Penal Code.*

The importance of researching the main causes of illicit drug use and trafficking at global level and also finding some means and efficient methods for preventing and fighting this fleau, can be argued and supported by the analysis and the interpretation of at least three statistical categories of elements:

- Total number of drug consumers at global level
- Total number of deaths and decays as a result of drug consumption
- The total amount of illicit returns obtained as a result of drug use and trafficking.

From this triple perspective, the last evaluations of UNODC¹ showed that, globally between 162 million and 324 million people, corresponding to between 3.5 per cent and 7.0 per cent of the world population aged 15-64, had used an illicit drug, as shown below:

- Cannabis – 177,63 million of users
- Opioids - 33,04 million of users
- Opiates – 16,37 million of users
- Cocaine – 17,24 million of users
- Amphetamine-type stimulants (ATS) – 34,40 million of users
- Ecstasy – 18,75 million of users

The number of frequent drug users or of drug addicts or the ones who have behavioral disorders as a result of drug consumption is between 16-39 million persons.

The topic of drug addiction and consumption has to be analyzed in relation to the number of deaths and decays caused by drug use. According to the same analysis², it resulted that in 2012 an estimated number of 183,000 deaths have been reported as being related to drug use, the morbidity rate being 40 deaths/1 million among the population with the age of 15-64 years.

Out of the total number of drug users, 12,7 million persons inject the drugs as a consumption alternative and 13, 1% out these are infected with HIV.

If for the two evaluations – the numbers of drug users and the number of deaths and related decays – we are also taking into consideration the illicit returns obtained as a result of drug use and trafficking, the real perspective of the phenomenon becomes worrisome.

UNODC estimates³ that the total market value of illicit drugs is around 13 billion USD for production, 94 billion USD for gross sales and 322 billion USD for direct product sales, estimates which were realized based of the market prices and on the confiscations.

The income obtained from the drug industry are higher that the gross domestic product of 88% of the world's countries.

¹ World Drug Report 2014, www.unodc.org.

² World Drug Report 2014, www.unodc.org.

³ World Drug Report 2014, www.unodc.org.

The volume of drug gross sales represented the global equivalent of 12% of the chemical export, 14% of the agricultural products and exceeded the export of minerals of 2003. All these statistical elements reinforced the need for adopting legal provision at national level and the continuous enhancement afterwards.

In Romania, this was succeeded by the adoption of law 143/2000 regarding the prevention and fight against illicit drug use and trafficking⁴, a legal creation which set up, throughout its applicability period, a bench mark for the law enforcement agencies and for the courts.

Consequently:

a) Law 143/2000 reunites all the legal criminal provisions related to drugs in one legal act.

Art. 27 specifically nullifies art. 312 of the Criminal Code of 1969 regarding the stupeficient products and substances and any other opposite provisions. Consequently, the crime defined by art. 312 of the Criminal code of 1969 had as a marginal denomination “trafficking of toxic substances” and the provisions of art. 17 paragraph 2 of the law 73/1969 have been implicitly abrogated.

b) For the first time, in art. 1 of law 143/2000 it can be seen a detailed legal interpretation of the meaning of some terms and expressions from the respective law:

- substances placed under national control - the drugs and precursors listed in appendix-tables nos. I-IV, which are an integral part of the present law; tables may be amended by Government emergency ordinance, by entering a new plant or substance, removing a plant or substance or by transferring it from one table to another, based on the proposal from the minister of health or from the minister of interior

- drugs - narcotic or psychotropic plants or substances or mixtures containing such plants and substances, listed in tables nos. I-III;

- high-risk drugs - drugs listed in tables nos. I and II;

- risk drugs - drugs listed in table no. III;

- precursors - substances frequently used in drug manufacture, listed in table no. IV

- toxic chemical inhalants - substances listed as such by order of the minister of health;

- illicit drug consumption - consumption of drugs placed under national control, without a medical prescription

- drug user – a person who is administering to himself or is allowing others to administer him drugs, in an illicit manner, by swallowing, smoking, injection or any other ways that may allow the drug into his/her body.

- drug addict – the consumer who, as a result, of repeated drug administration and under the need or necessity, presents physical and psychological consequences according to the medical and social criteria.

c) Law 143/2000 incriminates 11 crimes which contain multiple legal ways which can infringe the drug regime, including aggravating forms succeeding as such to cover the entire panel of deeds which might infringe the legal regime of drugs.

d) In the same law 143/2000, it can be seen some medical measures which can be applied to illicit drug consumers.

All of these above mentioned points confirm that the law 143/2000 is the most important law adopted by Romania in the field of drug trafficking and fight against illicit drug consumption.⁵

Linked to the phenomenon of drug trafficking and drug use, the problem arisen in the last years in the internal consumption market of the substance with psychoactive properties (NPS), known as „ethnobotanical substances”, has to be mentioned; this denomination is agreed by the EU member states for the products sold through the „dream shops” and they apply to psychoactive substances which are available in a pure state or in a mixture.

⁴ Law 143/2000 on preventing and countering the illicit drug use and trafficking, published in the Romanian Official Gazette, 1st Part, no. 362 of 3 August 2000, law was republished in the Romanian Official Gazette no. 163 of 6 March 2014, according to art. 107 of Law 255/2013 for the application of the new Criminal Procedure Code, the text having a new numbering.

⁵ Codrut Olaru, *The particularities of organized crime in Romania*, 2nd edition, p. 154, Hamangiu Publishing 2015 .

The constant interest in documenting this new aspect is justified by the worrying increase of consumers of such substances mainly justified by a much lower price compared to the classic drugs while obtaining the same type of effects. Therefore, according to the last evaluation in the field⁶, the consumption of legal drugs among the young population of 15-24 years from the EU was of 5%, states like UK, Latvia, Poland and Ireland having higher percentages, more precisely 8%, 9%, 9% and 16%.

As a result of the investigations led by the European bodies with competences in this field, it has been showed that in 2012⁷, 693 shops were selling legal drugs on the internet for the EU consumers, in comparison to 314 shops identified in January 2011 and 170 in January 2010.

Nowadays, the early warning system – EWS, operated by EMCDDA and Europol is monitoring 280 new psychoactive substances from the category of phenethylamines (which have stimulant and hallucinogen effects, like PMMA and 2C-I), tryptamines (which mostly have and hallucinogen effect, like AMT and 5-MeO-DALT), piperazines (which have a stimulating effect like mCPP and BZP), cathinones (like mephedrone, methylone and MDPV which have stimulant effect), synthetic cannabinoids (which can have hallucinogen and depressive effects), etc.

From the EU legal point of view, the conceptual perspective became unitary with the adoption the Council Decision 2005/387/JHA⁸ of 10 May 2005 on the information exchange, risk-assessment and control of new psychoactive substances, which established that its provisions apply to substances which, in the present time, are not listed in any of the tables from the 1961 United Nations Single Convention on Narcotic Drugs which may represent a threat to public health comparable to the one represented by the substances listed in Table I, II or IV and the 1971 United Nations Convention on Psychotropic Substances that may pose a comparable threat to public health as the substances listed in Schedule I or II or III or IV thereof.

In accordance to this Decision, the national legislation in the field of fighting drug trafficking and consumption of NPS is represented by law 194/2011⁹ on countering the operations with products susceptible of having psychoactive effects, other than the ones provided by the documents in force, law which sets the legal framework applicable to the preparations, substances, plants, mushrooms and combinations thereof susceptible to have psychoactive effects similar to drugs or drug preparations or psychotropic, plants or substances under national control, others than the ones which have a legal regime established by the legal acts in force.

In an explicit manner, the special law defines, in the introductory part, the basic notions for this crime theme, like the concept of „psychoactive effects,, as being one of the following effects which a product can have when consumed by a person:

-the stimulation or inhibition of the nervous system of a person having as a result modifications of the mental functions and processes and of the behavior or the creation of an physical or mental addiction

And also the notion of *consumption* as follows:

- Introducing in the human body of a product, regardless of the method used, it could have been dissolved, impregnated, dispersed or diluted, in one of the following ways: orally or injected, inhaled, smoked or externally applied on the body, in any other way which introduces the product in the human body.

The incrimination and sanctioning provisions of the antisocial deeds which characterize the commerce with substances susceptible of having psychoactive effects are the following:

Art. 16

(1) The action taken by a person who performs operations with products that are known to him/her as suspected of having psychoactive effects, without an authorization issued in accordance with this law, shall be deemed a crime and it is punishable by imprisonment from 6 months to 3 years or by a fine, unless this action represents a more serious offence.

⁶ www.ana.gov.ro .

⁷ European Monitoring Centre for Drugs and Drug Addiction.

⁸ www.coe.int.

⁹ Republished in the Romanian Official Gazette no.140 of 26 February 2014.

(2) The action taken by a person who performs operations with products that he/she should or could have foreseen to be suspected of having psychoactive effects, without an authorization issued in accordance with this law, shall be deemed a crime and it is punishable by imprisonment from 3 months to 2 years or by a fine.

Art. 17

The action taken by a person who purportedly performs without any legal right operations with products that are suspected of having psychoactive effects, by pretending that or disguising them into products authorized in accordance to the law or whose trading is allowed by the law, shall be deemed a crime and it is punishable by imprisonment from one year to 5 years and the prohibition of certain rights, unless this action represents a more serious offence.

Art. 20.

Publicity made to any products by credibly claiming that their use entails psychoactive effects shall be deemed a crime and it is punishable by imprisonment from one month to one year or by a fine.

The main critique which may be brought to these incrimination norms and which, unfortunately, can be a real obstacle in the criminal investigation lead by the specialized structures, is the sanctioning regime which is far too soft compared to the seriousness of the alleged deeds.

In very concise terms which are strictly related to the similarity of the harmful effects of NPS on the human body comparable to the ones of the classical drugs, the limits of the punishments set by the law 194/2011 should have been comparable to the ones established for the crimes regulated by law 143/2000; furthermore, committing the deeds mentioned by law 194/2011 under the pretense of legality brought by activities performed allegedly in a licit manner, could justify, without significant critics, introducing higher limits for the punishments, higher than the ones foreseen in the present legal framework.

The need for higher punishments can be justified by investigative reasons and also for ensuring the dissuasive effect for the ones who might have the intention of committing such deeds. The present case law in the field has proven that, when it is not the case of crimes mentioned by art 16-17, art. 19 of law 194/2011 alongside the crimes mentioned by law 143/2000, which includes the commerce of the substance listed in annex tables no. I-IV, the punishments established for the defendants sent to court for these crimes are insignificant in lengths and most of them are order in non-execution regime, according to art. 91 of the Criminal Code.

Hence, in a future phase which will entail the modification of the Criminal Code and of the Criminal Procedure Code, it is imperative and justified the reevaluation of the sanctioning regime of law 194/2011 on countering the operations with products susceptible of having psychoactive effects.