

ANALYSIS OF OFFENCES CONCERNING DRUG TRAFFICKING IN ROMANIAN LEGISLATION

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Abstract

The study is carrying out an analysis of the drug trafficking offences referred to in Articles 2 and 3 of Law no.143/2000 on preventing and combating trafficking and illicit drug use. For the purpose of this analysis, the provisions of Article 31 letter a) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988 and the provisions of Article 2 of Council Framework Decision 2004/757/JHA of the Council of the European Union laying down minimum provisions on the constituent elements of criminal acts and penalties applicable to illicit drug trafficking.

At the same time, through this analysis, the study tries to establish whether the provisions of Articles 2 and 3 of Law no.143/2000 on preventing and combating trafficking and illicit drug use have adapted to the provisions of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988 and the provisions of Council Framework Decision 2004/757/JHA of the Council of the European Union laying down minimum provisions on the constituent elements of criminal offences and sanctions applicable to illicit drug trafficking.

Keywords: *drug trafficking; offences; drugs.*

§1. Preliminary considerations

According to the World Health Organization, the drug is the substance that, being absorbed by a living organism, alters one or more bodily functions. In a pharmacological sense, the drug is a substance used in medicine, of which abusive use can create physical or psychic addiction or serious disorders of mental activity, perception, and behaviour. In this regard, the name of *drug* shall apply only to substances which may be designated and also by the general term *narcotics*. The term *narcotic* has a legal and a pharmacological meaning. In the legal sense, a *narcotic* is considered a drug when its potentials in terms of abuse and drug addiction are highlighted. It is used in national and international legislation on drug control².

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² Stancu, Emilian (2010). *Forensics Treaty*, Fifth Edition, Bucharest: Universul Juridic, p. 685.

Article 1 letter b) of Law no.143/2000³ on combating trafficking and illicit drug use defines drugs as “narcotic or psychotropic plants or substances or mixtures containing such plants and substances as listed in Tables I to III” of this law.

In accordance with the provisions of Article 1 letter c) and d) of Law no.143/2000 on preventing and combating trafficking and illicit drug use, drugs are classified into two main categories: *high-risk drugs* (heroin, mescaline, morphine, amphetamine, cocaine, codeine, opium, phencyclidine, etc.); *risk drugs* (cannabis, cannabis resin, cannabis oil, diazepam, meprobamate, etc.). Also, Article 1 (e) defines the term *precursor* which refers to “substances frequently used in the manufacture of drugs, listed in Table no. IV” of this law.

For the purposes of international conventions, a drug means a substance of those controlled by the United Nations Convention on Narcotic Drugs of 1961 and as well as one of the psychotropic substances controlled by the United Nations Convention on Psychotropic Substances of 21 February 1971.

According to the classification of the United Nations Convention on Psychotropic Substances of 21 February 1971, psychotropic substances are divided into three groups of drugs:

- Stimulants (amphetamines and their derivatives).
- Depressants (barbiturates, alcohol, tranquilizers).
- Hallucinogens (lysergic acid diethylamide-LSD-, MDMA-Ecstasy, mescaline, psilocybin, phencyclidine, marijuana).

Other authors⁴ add to this classification a new category, namely that of *narcotics* including morphine, heroin, codeine, methadone.

Psychotropic substances are substances of synthetic or natural origin (almost exclusively vegetal) capable of actively influencing human psyche and behaviour. In a narrow sense, psychotropic substances are those substances whose pharmacodynamic action involves pronounced effects on mental and emotional processes.

Depending on their nature, drugs were classified as follows:⁵

a. **Analgesics**, intended to alleviate pain, whether severe or mild, without the user losing consciousness, are non-selective depressants of the central nervous system (CNS).

b. **Sedatives** are non-selective depressants that at normal therapeutic doses produce diminished psychomotor hyperexcitability and are intended to reduce to normal the functional tonicity of CNS. At high doses, sedatives strongly depress CNS.

³ Republished in the Romanian Official Gazette, Part I, no. 163 from the 6th of March 2014.

⁴ Saferstein, Richard (1995). *Criminalistics: An Introduction to Forensic Scienc* New York: Prentice Hall, Upper Saddle River, pp. 248-249.

⁵ Moise, Adrian Cristian; Stancu, Emilian (2017). *Forensics. Methodological elements for investigating offences. University course*, Bucharest: Universul Juridic, pp. 133-134.

c. **Hypnotics (sleeping pills)** are depressant substances of CNS and cause sleep. Barbiturates, metaqualone and chlorhydrate are hypnotic. Many drugs can be sedative and hypnotic at the same time.

d. **Stimulants** activate CNS and increase neuro-cerebral activity. Certain stimulants have a legal therapeutic use such as anorexigens, indicated in weight loss, psychic depression, being psychostimulant. Amphetamines and cocaine are the main drugs of this kind.

e. **Hallucinogens** act on the CNS, causing distortion of perceptions and sensitivities. Known as *psychedelics*, lysergic acid diethylamide-LSD-, phencyclidine and psilocybin are among them.

As they act on the human body, the drugs are divided into:

- *Psycholeptics* (depressants) - barbiturates and tranquilizers.
- *Psychoanaleptics* (stimulants) - amphetamine, opiates, cocaine.
- *Psychodysleptics* (hallucinogens), which, in turn, are divided into hallucinogens and depersonalization hallucinogens.

At international level, the most important legal instruments to fight drug-related crime are the following: the United Nations Convention on Narcotic Drugs, 1961, the United Nations Convention on Psychotropic Substances of 21 February 1971 and the United Nations Convention against illicit trafficking in narcotic drugs and psychotropic substances of 20 December 1988. These three Conventions have been ratified at national level through [Decree no. 626⁶ of 1973](#) for Romania's ascension to the Single Convention on narcotic drugs of 1961 and the Protocol on the amendment of it and by Law [no. 118⁷ of 15 December 1992](#) for Romania's accession to the Convention on psychotropic substances of 1971 and the Convention against illicit traffic in narcotic drugs and psychotropic substances of 1988. The offences related to drug trafficking are provided under article 3⁸ point 1

⁶ Published Official Bulletin no.213 from the 31st of December 1973.

⁷ Published in the Romanian Official Gazzette, Part I, no. 341 from the 30th of December 1992.

⁸ Article 3 (1) a) from the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances stipulates: „Each Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally: a) i) The production, manufacture, extraction; preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention; ii) The cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs contrary to the provisions of the 1961 Convention and the 1961 Convention as amended; iii) The possession or purchase of any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in i) above; iv) The manufacture, transport or distribution of equipment, materials or of substances listed in Table I and Table II, knowing that they are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances; v) The organization, management or financing of any of the offences enumerated in i), ii), iii) or iv) above”.

letter a) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

At the European Union level, the most important legal instrument in the fight against drug trafficking is Framework Decision 2004/757/JHA⁹ of the Council of the European Union laying down minimum provisions on the constituent elements of criminal offences and sanctions applicable to illicit drug trafficking. In Article 2¹⁰ of Framework Decision 2004/757/JHA provides for offences related to drug and precursor trafficking, which resume offences under Article 3 of Convention United Nations against the illicit trafficking of narcotic drugs and psychotropic substances in 1988, with a major difference: the Framework Decision excludes from its scope the actions that are committed exclusively for the personal consumption of their authors.

The offences related to drug trafficking are provided in Article 2 and Article 3 of Law no.143/2000 on preventing and combating trafficking and illicit drug use of Chapter II, entitled Penalties for trafficking and other illicit operations with substances under national control. The texts of Articles 2 and 3 of the Law no.143/2000 set out two different offences: domestic drug trafficking and international drug trafficking.

The text of Article 2 of the Law no.143/2000 provides: “(1) Cultivation, production, manufacture, experimentation, extraction, preparation, transformation, offering, sale offering, sale, distribution, delivery by any title, dispatch, transport, procurement, purchase, holding or other operations related to the circulation of risk drugs, without right, shall be punished by imprisonment from 2 to 7 years and the prohibition of certain rights. (2) If the facts provided at par. (1) have high-risk drugs, punishment is imprisonment from 5 to 12 years, and prohibition of certain rights”.

The text of Article 3 of the Law no.143/2000 provides: “(1) The introduction or removal from the country, as well as the import or export of risk drugs, without

⁹ Council Framework Decision 2004/757/JAI of 25 october 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking, Official Journal of the European Union, L 335, 11.11.2004.

¹⁰ Article 2 from the Council Framework Decision 2004/757/JAI stipulates: „1. Each Member State shall take the necessary measures to ensure that the following intentional conduct when committed without right is punishable: (a) the production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of drugs; (b) the cultivation of opium poppy, coca bush or cannabis plant; (c) the possession or purchase of drugs with a view to conducting one of the activities listed in (a);

(d) the manufacture, transport or distribution of precursors, knowing that they are to be used in or for the illicit production or manufacture of drugs.

2. The conduct described in paragraph 1 shall not be included in the scope of this Framework Decision when it is committed by its perpetrators exclusively for their own personal consumption as defined by national law”.

right, shall be punished by imprisonment of 3 to 10 years and the interdiction of certain rights. If the facts provided at paragraph (1) concern high-risk drugs, the penalty is imprisonment from 7 to 15 years and the interdiction of certain rights”.

§2. The legal analysis of drug trafficking offences

2.1. The pre-existing conditions

➤ The object of the crime

The **special legal object** of the two drug trafficking offences consists in the social relations regarding public health whose normal existence and deployment depend on the observance by all persons of the legal provisions related to the drug regime¹¹. We note that drug trafficking offences also have one *secondary special legal object*, which refers to the circulation of risk and high-risk drugs. The offence of international drug trafficking has as its special legal object the social relations related to customs operations and to the import-export operations¹².

The **material object** of drug trafficking offences it is the risk and high-risk drugs. We highlight the fact that, in some ways of committing domestic drug trafficking offences, such as cultivation, production, manufacturing, experimentation, extraction, preparation and transformation, drugs are the product of the crime and not the material object of the offence. Thus, in these situations, the material object of the drug trafficking offence refers to plants which are cultivated or are being subjected to production, manufacturing, experimentation, extraction, preparation or transformation.

➤ The subjects of the crime

The *active subject* of drug trafficking offences can be any person who fulfils the general conditions of criminal liability. Criminal participation is possible in all its forms: co-author, incitement and complicity.

In the case where the perpetrator of the drug trafficking offence has a special quality, performing a function involving the exercise of public authority, and the fact was committed in the exercise of this function or the fact was committed by a healthcare professional or a person who has, according to law, powers in the fight against drugs, the aggravating circumstances will be retained according to the provisions of Article 13, paragraph 1 and letter a) and letter b) of Law no.143/2000. We point out that drug trafficking offences can also be committed in the case of the organized crime group, being incident the provisions of Article 367 of the Romanian Criminal Code and the rules of the conjuncture of offences.

¹¹ Buzatu, Nicoleta Elena (2012). *Trafficking and illicit drug use. Multidisciplinary aspects*, Bucharest: Universul Juridic, p. 213.

¹² Cășuneanu, Florin Daniel (2013). *Organized crime in European criminal law*, Bucharest: Universul Juridic, p. 169.

The main passive subject of the drug trafficking offences is the State, and the secondary passive subject can be any natural person who suffers the consequences of committing deeds, being endangered his/her health¹³. In the case where the secondary passive subject holds the risk drugs for own consumption, it will also become an active subject of the offence related to the illicit drug use provided by Article 4 of the Law no.143/2000.

2.2. The constitutive content

➤ The objective side

In the case of the domestic drug trafficking offence, **the material element** refers to the following activities referred to in Article 21 of Law no.143/2000: cultivation, production, manufacture, experimentation, extraction, preparation, transformation, offering, sale offering, sale, distribution, delivery by any title, dispatch, transport, procurement, purchase, possession or other operations related to the circulation of risk drugs, without right.

Cultivation refers to activity of seeding, plant care until harvesting. In order to meet the conditions of the offence, the cultivation activity must aim at the extraction of the drugs from the plants. The cultivation of plants containing drugs is carried out under legal conditions in Romania only on the basis of an authorization issued by the Ministry of Agriculture and Rural Development. Thus, it is allowed to cultivate plants containing substances prohibited by national legislation only if they are processed for technical, medical and scientific purposes.

Production of drugs is an activity that ultimately results in drug-making, which is part of the category of those subject to national control.

According to the provisions of Article 2 letter k) of Law no.339/2005¹⁴ on the legal regime of plants, narcotic and psychotropic substances and preparations, *manufacture* refers to "all operations other than production that make it possible to obtain narcotic or psychotropic substances, including the purification and transformation of narcotic drugs or psychotropic substances into other narcotic or psychotropic substances; this term also covers the manufacture of preparations other than those which are made on a prescription in a pharmacy". Therefore, the manufacture of drugs is an industrial activity, which involves the use of many technological operations to obtain drugs in large quantities, involving a large number of people¹⁵.

Experimentation of drugs refers to testing of drugs or plants that constitute drugs. Experimental activity is only allowed for human, scientific and veterinary purposes, based on the authorization issued by competent bodies, such as the Ministry of Health.

¹³ Buzatu, Nicoleta Elena (2012), *op. cit.*, p. 224.

¹⁴ Published in the Romanian Official Gazette, Part I, no. 1095 from the 5th of December 2005.

¹⁵ Cășuneanu, Florin Daniel (2013), *op. cit.*, p. 216.

Extraction refers to the process of removing drugs from plants containing them.

Preparation consists of the process of mixing certain substances, resulting in the drug being consumed.

Transformation of drugs involves the process of turning a risk drug into a high-risk drug.

Offering drugs refers to the activity of a person providing drugs free of charge to another person for the purpose of consumption.

Sale offering is the activity of putting the drugs into the commercial circuit, usually with the dealers working within the organized criminal group.

Sale of drugs is the action by which the transfer of drugs to other people is made for a fee.

Distribution of drugs refers to the activity of placing quantities of drugs, usually not very high.

Delivery, by any title, is the action of transmitting drugs to others, free of charge or for consideration.

Dispatch refers to the activity of dispatching drugs through courier services or through some persons.

Transport of drugs refers to the activity of moving drugs from a locality to another locality within the same country, where the domestic drug trafficking offence will occur or refers to the movement of drugs from one country to another country, in which case there will be a crime of international drug trafficking.

Procurement of the drug is the activity of the offender to get possession of some drugs through his/her own forces.

Purchase of drugs means buying them all the time by the offenders.

Possession of drugs refers to the activity of a person who possesses these prohibited substances in order to convey them to others.

By the phrase *other drug trafficking operations* are meant any other activities with drugs that endanger public health.

In the case of the international drug trafficking offence, **the material element** refers to the following regulatory modalities referred to in Article 31 of Law no.143/2000: introduction or removal from the country as well as import or export of risk drugs.

Introduction of drugs refers to the action of passing drugs from a foreign state into the national state of the offender. *Removing* drugs from the country refers to the passing of drugs from the national state to the foreign state. However, *importation* of risk or high-risk drugs refers to the introduction into a state of risk or high-risk drugs produced in other states, and the *exportation* consists of removing risk or high-risk drugs from the state where they are produced¹⁶.

¹⁶ Idem, p. 176.

We emphasize that in all the normative forms presented above, the actions must be carried out without right.

Immediate consequence of the offences referred to in Articles 2 and 3 of the Law no.143/2000 consists in creating a state of danger for public health, public order, social security, and, in the event of aggravation under Article 11 Law no.143/2000, the deed must result in the death of the victim.

There must be a **causality link** between the activity of the offender and the consequence that results from the materiality of the crime.

➤ **The subjective side**

The offences related to drug trafficking are committed with the guilt form of intention, both direct intention and indirect intention. Concerning intention, in order to intervene in criminal responsibility, we emphasize that it is mandatory for the offender to know the illicit nature of the substances he/she uses in his/her activities.

2.3. The forms of the offence

The preparatory acts are possible, but they are not criminalised and thus they are not punishable.

The attempt is possible and is punished according to the article 12, paragraph 1 of the Law no.143/2000. Pursuant to the provisions of Article 12 par.2 of Law no.143/2000, we note that assimilated to attempt are also the production or procurement of the means or instruments, as well as the taking of measures for committing the domestic and international drug trafficking offences.

Consumption of the crimes of drug trafficking takes place at the moment when the material element of the objective aspect was achieved, which is composed of a series of actions and the immediate consequence happened. Therefore, the offences are consumed when the material element is carried out and the socially dangerous result is produced.

The exhaustion of the crimes of drug trafficking occurs at the time of committing the last act criminalised by law. The offence can be committed in continuous (in respect to the following normative modalities: cultivation, preparation and possession) or in continued form.

We note that both drug trafficking offences, which are danger offences, also present one **aggravating form**, which is highlighted by the material object of the two offences: in the case of the standard variants, the material object consists in the risk drugs, and in the case of the aggravating forms in Article 2 and Article 3, the material object is the high-risk drugs. Another aggravating form of drug trafficking offences is that provided by Article 11 of the Law no.143/2000 when the two offences caused the death of the victims. Also, according to Article 13 of Law no.143/2000, the following situations constitute aggravating circumstances: "the person who committed the offence was serving a function involving the exercise of

public authority, and the deed was committed in the exercise of this function; the deed has been committed by a healthcare professional or a person who is responsible under the law in the fight against drugs; the drugs were sent or delivered, distributed or offered to a minor, a mentally ill person, a person placed in a therapeutic program or have performed such other activities prohibited by law with respect to one of these persons or if the deed has been committed in an institution or education, medical, military unit, prison, welfare centres, re-education or medical-educational institutions, places where pupils and students, carry out educational, sports, social activities or in their vicinity; the use of minors in the commission of the deeds referred to in articles 2 and 3; the drugs were mixed with other substances that they have increased the danger to the life and integrity of persons”.

According to the provisions of Article 133 of Law no.143/2000, in the case of an aggravating circumstance related to the perpetration of deeds in an educational institution or in places where pupils, students and young people carry out educational, sports, social activities or in their vicinity, the Romanian legislator has determined that at the special maximum stipulated by the law may add an increase that may not exceed 5 years in the case of imprisonment or the general maximum in the case of the fine.

2.4. Modalities

The drug trafficking offences present the following normative modalities, according to Articles 2 and 3 of Law no.143/2000: cultivating, producing, manufacturing, experimenting, extracting, preparing, transforming, offering, offering for sale, selling, distributing, delivering, dispatching, transporting, procurement, purchasing, possession or other operations on the movement of risk drugs, introducing or removing from the country, as well as importing or exporting risk drugs, without right.

To these normative modalities may correspond various fact modalities.

2.5. Sanctions

In the case of the offence of domestic drug trafficking, provided for in Article 2 of the Law no. 143/2000, the punishment stipulated by the law is imprisonment from 2 to 7 years and the prohibition of certain rights in the case of the variant-type, and imprisonment from 5 to 12 years and the prohibition of certain rights in the case of the aggravating variant.

In the case of international drug trafficking offence, as provided by article 3 of the Law no. 143/2000, the punishment stipulated by the law is imprisonment from 3 to 10 years and the prohibition of rights in the case of the variant-type and imprisonment from 7 to 15 years and the prohibition of rights in the case of the aggravating variant.

§3. Procedural aspects

The criminal prosecution initiates ex officio.

§4. Conclusions

Following the carried out analysis, we found out that the text of Articles 2 and 3 of Law no.143/2000 on domestic drug trafficking offences and international drug trafficking offences adapted almost entirely to the provisions of the text of Article 31 letter a) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988 and to the provisions of Article 21 of Framework Decision 2004/757/JHA of the Council of the European Union laying down minimum provisions on the constituent elements of criminal offences and sanctions applicable to illicit drug trafficking.

Regarding the sanctioning regime, we noticed that the penalties stipulated by Articles 2 and 3 of Law no.143/2000 are much more severe than those proposed through Article 4 of the Framework Decision 2004/757/JHA. Thus, we highlight the decision of the Romanian legislator to increase the minimum and maximum limits of drug trafficking offences through the latest amendments to the Law no.143/2000, in view of the serious and cross-border nature of these crimes.

We noticed that the text of Article 13 of Law no.143/2000, on aggravating circumstances adapted to the text of Article 3¹⁷ point 5 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988.

¹⁷ Article 3 (5) from the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances stipulates: „The Parties shall ensure that their courts and other competent authorities having jurisdiction can take into account factual circumstances which make the commission of the offences established in accordance with paragraph 1 of this article particularly serious, such as: a) The involvement in the offence of an organized criminal group to which the offender belongs; b) The involvement of the offender in other international organized criminal activities; c) The involvement of the offender in other illegal activities facilitated by commission of the offence; d) The use of violence or arms by the offender; e) The fact that the offender holds a public office and that the offence is connected with the office in question; f) The victimization or use of minors; g) The fact that the offence is committed in a penal institution or in an educational institution or social service facility or in their immediate vicinity or in other places to which school children and students resort for educational, sports and social activities; h) Prior conviction, particularly for similar offences, whether foreign or domestic, to the extent permitted under the domestic law of a Party”.

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6. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988.
7. Framework Decision 2004/757/JHA of the Council of the European Union laying down minimum provisions on the constituent elements of criminal offences and sanctions applicable to illicit drug trafficking.
8. Law no.143/2000 on preventing and combating trafficking and illicit drug use.
9. The Romanian Criminal Code.