

# **SOCIO-LEGAL ASPECTS OF DRUG TRAFFICKING AND ILLICIT USE**



**TRITONIC**

**Tritonic Books**

București - 2023

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Due to the complexity of the effects and the multitude of areas and social relations affected, the phenomenon of drug trafficking and illicit consumption has lately gained an increasing magnitude, both the legislator and institutions, non-governmental organizations and professionals in the field trying to regulate this phenomenon as adequately and efficiently as possible.

Since ancient times, there has been an attraction and concern of man for substances that had properties that could alter perceptions, sensations, way of thinking, physiology, overcoming one's own limits, social conduct. As the interest and desire to procure such substances grew, so did a system of production, storage and trafficking of these substances. Consequently, intervention to prevent and combat drug trafficking and illicit consumption has always been built on two synergistic components: measures to combat all forms and modalities of illicit drug trafficking, but also complex actions to prevent and treat illicit drug use, carried out by multidisciplinary teams.

The management of this complex phenomenon involves trying to achieve a difficult balance between the specifics of contemporary social conduct, a conduct which is increasingly receptive to addictive phenomena and legal regulations, through which addictive social behaviours can be controlled and combated. Due to the specificity of the development mechanisms, normative acts are implemented at a slower pace, compared to the increasing dynamics of this social phenomenon. Also, the specificity of regulation in this area

imposes certain limits: as we are talking about the criminalization of substances, the annex tables of such normative acts are strictly configured according to the chemical formulas of the structure of such substances. In practice, manufacturers and traffickers are constantly inventive, bringing to the market new substances with the same (or even stronger) effects, but configured according to other chemical formulas, which are not included in the annex tables listing prohibited substances in anti-drug normative acts. In the period needed for their identification and regulation (in domestic normative acts) or notification (in the procedure provided for by international normative acts), these substances can already produce very serious bio-psycho-social effects. The correlation between combat and control is also a difficult imperative to manage. At international level, there is a growing trend towards decriminalisation of the production and use of substances that had long been criminalised, such transformation shifting the management of the phenomenon from criminalisation and combating to control. This kind of context is even more complicated, from a socio-legal point of view, as illicit trafficking (without any control of production, distribution, traceability) continues in parallel with that carried out in the legal context for such substances.

The regulation of this phenomenon through normative acts is difficult to completely achieve, especially in the context of the models of addictive social conduct intensively promoted on numerous communication channels. Even if the acts of social conduct promoted are initially situated in the sphere of deviance, these can later produce effects related to crime.

“Deviance is the set of behaviours and states that members of a group judge as not in accordance with their expecta-

tions, norms or values, and which, consequently, risk arousing reprobation and sanctions on their part “(Boudon, et al., 1997, p.440).

The legislator also has the difficult task of achieving a balance of regulation, between establishing the legal framework required for the implementation of preventive measures and means of intervention and treatment, on the one hand, and an entire sanctioning assembly, on the other hand. Many times, the situations in the practice of anti-drug activity are complex, the same person being both a trafficker of illicit substances and an addicted user, the subject in question being the perpetrator of a crime, but also an addicted person, who requires the intervention of the multidisciplinary team, for treatment and social reintegration.

Drug trafficking and illicit use is a phenomenon with multiple implications and effects: from psychological and medical peculiarities that appear in the life of the drug user, to changes in the social behaviour of the individual, changing the structure of his/her social relationships, risk of crime, and, at macro-social level, there are important socio-economic effects, or even risks on national security.

The last period also brings into debate the legalization of substances of the type considered illicit, but which (in other forms) could constitute licit substances, used for therapeutic purposes. Beyond the strictly medical effect highlighted, the psycho-social effects of this legalization process, the relativization of prohibitions related to the use of illicit substances and the effective possibility of control and traceability in the production, transport, sale and consumption of such substances remain to be analysed.

The evolution of the regulations contained in the internal normative acts on preventing and combating drug trafficking and illicit consumption was determined, on the one hand, by the social specificity of the extension of this phenomenon at national level, and on the other hand, by the regulatory framework of international normative acts in the field.

In the social context after 1990, the most important normative act (due to the complexity of the regulation, at the time of adoption) regulating the prevention and combating of drug trafficking and illicit consumption is Law no. 143 of 26 July 2000 on preventing and combating drug trafficking and illicit consumption. This, together with the rules laid down in Decision no. 860 of 28 July 2005 approving the Regulation implementing the provisions of Law no. 143/2000 on preventing and combating drug trafficking and illicit consumption, represents the basic framework for internal regulations, in relation to the main elements that configure illicit drug trafficking and consumption.

The evolution and diversification of illicit drug production, trafficking and consumption have also determined the alignment of the regulatory framework to this context, the most relevant normative acts adopted after Law no. 143 of 2000 being Law no. 339 of 29 November 2005 on the legal regime of plants, narcotic and psychotropic substances and preparations, together with the rules of Decision no. 1.915 of 22 December 2006 for the approval of the Methodological norms for the implementation of the provisions of Law no. 339/2005 on the legal regime of plants, narcotic and psychotropic substances and preparations.

Also, the new realities in terms of illicit drug trafficking and use determined the adoption of Law no. 194 of 7

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November 2011 on combating operations with products likely to have psychoactive effects, other than those provided for by normative acts in force.

The accentuated dynamics of this phenomenon, at socio-economic, medical and psycho-social level, determines a permanent need to synchronize legal regulations with new realities and a permanent adjustment of legal norms to the specifics of social conduct, marked more and more by the influence of the phenomenon of illicit drug trafficking and consumption.

The internal regulations on drug trafficking and illicit use are aligned with the framework of international normative acts in the field, aiming at a permanent harmonization and updating in relation to these international provisions.

- **The general framework of regulations, according to the provisions of Law no. 143 of 26 July 2000 on preventing and combating drug trafficking and illicit consumption**

This normative act was adopted in a specific of social reality that made it necessary to adopt a much better and more complex elaborated set of legal norms compared to previous regulations. In the context of the particularities of the multiple changes in the years of the post-December society, the phenomenon of illicit drug trafficking and consumption was more and more present and more extensive in the Romanian society, a society that was no longer just a transit space, but became, more and more, a country of consumption. The freedoms of democratic society (especially free movement, migration and a growing set of cross-border economic activities) came with numerous risks, dangers, pitfalls in the area of antisocial conduct, illicit drug trafficking and consumption, organized crime, all of which were indications that the scourge of drugs has greatly extended its tentacles in Romanian society, and therefore, a very well developed regulatory framework in the field is first of all needed, which would subsequently allow activities of prevention, control, treatment and combating drug trafficking and illicit consumption.

“The scourge of drugs is one of the most complex, profound and tragic phenomena of the contemporary world. Drugs are harmful substances for humans, and the phenomenon of addiction increases the risk of these negative effects, whether it is physical, mental illness or social exclusion, as a result of behaviours that are difficult to accept” (Alexandru, 2019, p. 85).

The effects of drug trafficking and illicit use are very complex, with implications not only for the individual and his/her family, but also for the healthcare system, social assistance, the economy and the phenomena of deviance, delinquency and crime.

”Drug use increases healthcare costs, the number of unemployed people and the number of the persons assisted, a deviant behaviour being observed, which affects the individual, relational, health and social contexts” (Baciu, Pungă, 2017, p. 113).

In a context of multiple socio-economic and medical effects caused by this phenomenon, the role of legal regulations is very important to prevent and combat this scourge through normative acts as efficient as possible.

Law No 143 of 26 July 2000 on preventing and combating drug trafficking and illicit consumption specifies, first of all, the meaning of the terms and expressions used in the law, a very important aspect in the context of regulations in the field of addictions, given that terminological clarifications or authentic official interpretation acquire all the greater importance, the more prone the text of the normative act is to a wider area of interpretation and application, terminological clarifications or authentic official interpretation greatly diminishing the area of interpretability and, implicitly, the risk of defective application or inoperability of the law.

From the very first article, the legislator states the meaning of the terms and expressions used in the legislation:

- “substances under national control – drugs, precursors listed in Annex Tables No. I–IV, which make an integrant part of this Law; the tables may be amended by listing a new plant or substance, deleting a plant or substance or

transferring them from one table to another, no later than 6 months after the submission of the proposed amendment by the Minister for Health or the Minister for Home Affairs; the Minister submits the proposal to amend the tables as soon as it receives the notification of the competent international bodies, respectively as soon as it receives the technical documentation issued by the competent bodies in the field on which the measure is based;

- 'drugs' means narcotic or psychotropic plants and substances, or mixtures containing such plants and substances, listed in Tables Nos. I–III;
- high-risk drugs – drugs entered in Tables Nos. I and II;
- risk drugs – drugs listed in Table No. III;
- 'new psychoactive substance' means a substance in pure form or in a preparation, not covered by the 1961 United Nations Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, nor by the 1971 United Nations Convention on Psychotropic Substances, but which may pose risks to health or society similar to those posed by substances covered by those Conventions;
- preparation – a mixture containing one or more new psychoactive substances;
- precursors – substances commonly used in the manufacture of drugs, listed in Table No. IV;
- toxic chemical inhalants – substances established as such by order of the Minister of Health;
- illicit drug use – consumption of drugs under national control without a prescription;
- user means a person who illicitly administers or allows drugs to be administered by swallowing, smoking, injecting, sniffing, inhaling or other routes by which the drug may enter the body;

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- dependent user means a user who, as a result of taking the drug repeatedly and under necessity or need, presents physical and mental consequences according to medical and social criteria;
- integrated program for assistance to drug users and addicts – any and all health services and psychological and social assistance services provided in an integrated and coordinated manner to drug users, through medical, psychological and social, public, private and mixed units;
- integrated circuit of assistance to drug users and addicts – the totality of integrated assistance programs provided to users and addicted users in order to improve the state of health in terms of physical, mental and social well-being of the individual;
- therapeutic program – all integrated medical and psychological services and measures, individualized through evaluation, planning, monitoring and continuous adaptation for each dependent consumer, in order to interrupt consumption, remove mental and/or physical dependence and/or reduce the risks associated with consumption;
- psychological and social program – all individual or group evaluation, counselling and psychotherapy services and social services and measures, individualized through evaluation, planning, monitoring and continuous adaptation for each consumer, in order to eliminate addiction, rehabilitation and social reintegration;
- therapeutic circuit – the set of therapeutic programs applied to the drug addict in a complex, multidisciplinary, multisectoral and continuous manner, aimed at improving the state of health;
- evaluation – determination of psychological and social characteristics of the user by drug prevention, evaluation and counselling centres, in order to include and super-

vise the user in a psychological and social program by the case manager;

- national program for prevention and medical, psychological and social assistance of drug users – instrument for strategic and financial planning of public antidrug policies, representing the set of multiannual actions aimed at developing and strengthening the integrated national system of drug prevention and assistance services for drug users, implemented by the National Antidrug Agency;
- program of national interest for prevention and medical, psychological and social assistance of drug users – instrument for strategic and financial planning of public antidrug policies, representing the set of multiannual actions that respond to national priorities in the field by ensuring the complementarity of drug prevention projects and assistance services for drug users, implemented by civil society” (Art. 1 of the Law No 143 of 2000 on preventing and combating drug trafficking and illicit consumption).

The content of the normative act has been permanently completed and updated, in relation to the extension of all anti-drug activities and institutions, in close connection with the emergence of new substances from the illicit sphere of addictions and new forms of antisocial conduct.

In configuring the incriminated acts as crimes, the legislator identifies several situations that may present social danger, the scope of crime in this field being very varied, and usually associated with a segment related to production, illicit trafficking, sale or prescription outside the legal framework, other crimes associated with crime in the field of illicit drug trafficking and consumption.