

INTERNATIONAL TRAFFIC OF NARCOTICS

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Abstract

The present essay tries to analyze the infringement referring to the international traffic of narcotics, an infringement regulated, together with other infringements regarding the traffic of narcotics, by Law no 143 of July 26, 2000 with regard to the prevention and fight against the illicit traffic and consumption of narcotics. Article 3 of this Law stipulates that the bringing in and the taking out of the country, as well as the import and export of dangerous narcotics without a legal approval are punished with prison from 10-20 years and with the interdiction of certain rights. In paragraph 2 of the same article it is mentioned that whether the deeds enumerated in paragraph 1 refer to narcotics of a very high risk, the prison penalty is from 15-25 years and the interdiction of certain rights. The analysis of the infringement referring to the international traffic of narcotics is made in conformity with the structure mentioned in the doctrine and includes: the object and the subject of the infringement, the constitutive content: the objective aspect including the material element, the immediate consequence and the casualty connection; the subjective aspect of the infringement, as well as form and modalities of these infringements and the respective applicable sanctions.

Keywords: *traffic, trafficker, dangerous narcotics, high risk narcotics, infringement*

Introduction

All through history the narcotics phenomenon had an ascending evolution; although in antiquity the healers used them with medical and therapeutic aims, nowadays they are cultivated, manufactured and commercialized by transgressive networks akin to the organized criminality.

Today, the traffic of stupeficients has turned into a rough reality for the contemporary world. After 1990 Romania has changed from a transit country into narcotics consuming country: from the lighter to the high risks narcotics consumption.

The consumption of various categories of narcotics - of a vegetal or synthetic origin - has disastrous consequences for the human body and for the social relationships the addicts participate in.¹ The gravity of this addiction or flagellum - as it is rightly considered to be - arouses the interest of the states and of the whole international community. Various measures have been taken: from social and medical, involving the police or the army to a war declaration against the producers of cocaine or opium.²

A large quantity of narcotics is already known, but the effects of the highly advanced technologies are the appearance of newer and more numerous synthetic substances. The clandestine labs permanently change their locations for not being traced and, the costs for the manufacturing of certain narcotics are higher in the detriment of others. Some categories of narcotics are manufactured more frequently than the others: opium, morphine, heroine, cannabis, cocaine, L.S.D. – dextro-lysergic acid diethylamide, mescaline and ecstasy.

The illicit traffic of narcotics is considered to belong to “the highly serious criminal transboundary branches” - mentioned by the Reform Treaty of the European Union, signed in Lisbon

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¹ The term “addict” defined by Law no 143/2000 on the illicit traffic and consumption of narcotics was replaced with “consumer” by art 1, point 2 of Law no 522/2004.

² Emilian Stancu – *Introduction in General Criminology*, IInd edition, (Bucharest: ”Dimitrie Cantemir” Christian University, 1996), p. 112.

on December 13, 2007 in art 69 B, in the attempt of giving it a unique definition and with a view to create a common basis for improving the cooperation among the European countries.

Content

In the current speech the *drugs* are the products and the stupeficient or toxic substances, given the same definition and prohibited by the national and international legislations.

In the Dictionary of Penal Law and Penal Procedures³ the *drug* is defined from two aspects: 1) a substance used in the preparation of pharmacy/medicinal drug products 2) a name applied to certain substances (cocaine, morphine) which then when swallowed inhibit the nerve centers and produce a state of physical and psychical inertia. Within certain conditions, such types of disturbances can lead to acts of penal irresponsibility. The drugs that are considered to be stupeficient are submitted to a special legal regime.

The Dictionary of Criminology⁴ offers a definition taken over from DEX to which the following specification is added: "They can be identified by modern methods offered by physics and chemistry, as gas – chromatography, thin layer of chromatography, infra red spectrophotometry, etc."

In the opinion of the World Health Organization⁵ the *drug* is the substance that, once absorbed by a living organism, modifies one or several functions of the respective organism. In agreement with certain recommendations given by this International Body, substances or classes of psychoactive substances (drugs) that produce such modifications and generate addiction are: alcohol, opium containing substances, compounds of cannabis, sedatives and hypnotics, cocaine, hallucinogens, volatile solvents, other psychoactive substances and substances belonging to different classes, used in a mix association.

In a strictly pharmacologic way, the *dug* is a substance used in medicine, whose abusive consumption can produce physical or psychological addiction or serious troubles of the mental activity, perception and behaviour.⁶ In this context, the name of *drug* is applied to the substances that are also known as *stupeficients*.

In conformity with art 1 of Law no 143/2000, *drugs* are defined as being plants and stupeficient or psychotropic substances or mixtures containing such plants and substances (included in tables I - III), classifying drugs into two large categories:

1. *High risk drugs: heroine, mescaline, morphine, amphetamine, cocaine, codeine, opium, phencyclidine, etc*

2. *Dangerous drugs: cannabis, cannabis resin, cannabis oil, diazepam, meprobamat, etc.*

Very many persons are involved in activities connected with drugs traffic and consumption; for them there are no national or geographical frontiers especially because the two already mentioned activities disregard the frontier and have a transboundary character.

The transport of drugs is made in various ways: from the human body to land vehicles, aircrafts or ships. They use false matriculated land vehicles wearing transit numbers or private automobiles which do not appear in the police records. The drugs are also hidden in auto-trains (of

³ George Antoniu, Costică Bulai – *Dictionary of Penal Law and Penal Procedure*, (Bucharest: Hamangiu Printing House, 2011), pp. 301-302.

⁴ Nicolae Dan, Ion Anghelescu (coord.) – *Dictionary of Criminology*, (Bucharest: Scientific and Enciclopedic Printing House, 1984), p. 62.

⁵ Founded in 1948, it is the specialized Health Agency of the USA. Its aim is to ensure that all the nations get the highest health level. The WHO has a decisive role in adopting prophylactic measures for preventing and fighting against the abusive usage of drugs and the setting forth of methods for treating the addicts. In conformity with the provisions of the Unique Convention on Stupeficients of 1961, the WHO appoints a number of five persons, out of which two are members of the International Organization for the Control of the Stupeficients.

⁶ See more in Ioan Dascălu, Cristian-Eduard Ștefan, Cătălin Țone, Maria Surduleac – *Drugs and the Organized Crime*, (Craiova: Sitech Printing House, 2009), p. 31.

the TIR type) with or without the knowledge of the driving personnel, in general, scattered among perishable nutriment for not being kept in the customs for a too long time.

The transports entering or leaving Romania without an import or export certificate, as well as those that do not correspond to the certificate specifications are retained by the competent authorities until the legal justification or until the final decision of the Court which decided their confiscation.⁷

The fight against the illicit drugs traffic and consumption used to be and still is a really complex social national and international preoccupation. Its evolution, its effects and the ways meant to solve all these aspects are the main concerns of all the institutions of the states as well as of the public opinion, because this is an utterly serious and dangerous phenomenon with negative effects for the sanity of the population and for the economic and social stability, as well for the favorable evolution of the states' democratic institutions.

Since very ancient times people knew about the proprieties of the drugs⁸ but, it is round the second half of the XIXth century that the states of the world realized the proportions of this phenomenon and it was no longer than the XXth century that initiatives meant to control - at the planetary level - the traffic of stupefacients appeared.

In the striving efforts to control and - at the same time - adapt the international legislation to this situation, the Romanian law-maker adopted Law no 143 of July 26, 2000 on preventing and fighting against illicit drug traffic and consumption.⁹ Through the Decision of the Government no 860 of July 28, 2005¹⁰ the Regulations to apply the dispositions of Law no 143/2000 regarding the prevention and fighting against the illicit traffic and drug consumption, together with its further modifications was approved.

The Legal Content of the infringement regarding the international traffic of drugs

Art 3 of Law 143/2000 stipulates that „bringing or taking drugs off the country, as well as the import and export of dangerous drugs, without authorized certificated can be punished with prison from 10-20 years and with the interdiction of rights.

If the deeds stipulated in paragraph 1 refer to high risk narcotics, the penalty is from 15-25 years followed by the interdiction of rights.”

⁷ Traian Dima, Alina-Gabriela Păun – *Illicit Drugs (Law no 143/2000, Jurisprudence and Commentaries)*, (Bucharest: Universul Juridic Printing House, 2010), p. 187.

⁸ For more details about the history of the drugs, see Emilian Stancu – *quoted work*, pp. 615-619; Ioan Gârbuleț – *Traffic and Illicit Drug Consumption. Essay on Legislation, Doctrine and Jurisprudence*, (Bucharest: Hamangiu Peinting House, 2008), p. 7 and next.; Bercheșan, Vasile Bercheșan, Constantin Pletea – *Drugs and the Traffickers of Drugs*, (Pitești: Paralela 45 Printing House, 1998), pp. 90-112.

⁹ Published in the Official Gazette no 362 of August 3, 2000. Amended by Law no 169/2003 on modification and completion of the Penal Code, of the Penal Procedural Code and of some special laws; Law no 39/2003 on preventing and fighting against organized criminality; Law no 522/2004 for modifying and completing Law no 143/2000 on preventing and fighting against the illicit traffic and consumption of drugs; the Emergency Ordinance of the Government no 6/2010 for the modification and completion Law no 143/2000 on preventing and fighting against the illicit traffic and consumption of drugs and for the completion of Law no 339/2005 regarding the juridical regime concerning herbs, substances and the stupefacient and psychotropic substances; Law no 92/2010 about the approval by the Emergency Ordinance of the Government no 6/2010 for modifying and completing Law no 143/2000 and for completing Law no 339/2005 regarding the juridical regime concerning herbs, substances and the stupefacient and psychotropic substances; the Government Decision no 575/2010 for actualizing the Annex of Law no 339/2005 regarding the juridical regime concerning herbs, substances and the stupefacient and psychotropic substances, as well as the Annex to Law no 143/2000 on preventing and fighting against the illicit traffic and consumption of drugs, The Emergency Ordinance of the Government no 105 of November 30, 2011 for the modification of art 1 of Law no 143/2000 on preventing and fighting against the illicit traffic and consumption of drugs, as well as of art 8 of Law no 339/2005 regarding the juridical regime concerning herbs, substances and the stupefacient and psychotropic substances, published in the Official Gazette, Part I, no 855 of December 5, 2011.

¹⁰ Published in the Official Gazette of Romania, Part I, no 749 of August 17, 2005.

The Object of Infringement

The *juridical object* of the infringement stipulated in art 3 of Law no 143/2000 consists of the social relations connected with the public health, whose existence and normal evolution depend on the strict observance - by all those whom the law addresses to - of the legal dispositions regulating the regime of drugs traffic, as well as the social relations referring to the health of the drugs addicts.¹¹

By the deed incriminated in art 3 of Law 143/2000 the customs juridical regime is also involved. Thus, Law no 86/2006 - Customs Code of Romania¹² - stipulates in art 271 that “the illegal bringing or taking off the country of weapons, ammunition, explosives, drugs, precursors, nuclear materials or other radioactive and noxious substances, debris, residua or any other dangerous chemical materials, is considered a qualified smuggling infringement and is punished with prison from 3-12 years and with the interdiction of rights, unless the penal law does not stipulate a greater punishment.”

The Romanian law-maker intended to protect - through penal law norms - the social relationship that appear in connection with the establishment of certain interdictions regarding the transbordering of the goods subordinated to special regimes, such as narcotics, and which cannot be brought or taken off the country without observing the conditions imposed by the law.

The two incriminatory laws create a set of qualifications meant to be solved according to the principle of subsidiarity. The incriminatory norm included in art 271 of the Customs Code is applied only when the penal law does not stipulate a greater penalty; this means that art 3 of Law no 143/2000 has priority as it stipulates a greater penalty than the one applicable for the infringement of qualified smuggling.

The *material object* of the infringement is the dangerous drugs and the high risk drugs as stipulated in the Annex Tables of Law no 143/2000 that is I, II and III, which are submitted to the national control.

In case the forbidden activities which become the material element of the objective aspect of the infringement stipulated in art 3 of the above mentioned law are using other plants, substances, products or medicine that are not considered by the law maker to be narcotics submitted to the national control, then the deed could not be counted among the infringements connected with the international traffic of narcotics.

The penal investigation body is obliged to order a technical and scientific analysis in conformity with art 112 and 113 of the Penal Procedural Code in order to establish whether it is about dangerous drugs or high risk drugs. These results will finally decide for their juridical specification.

Subjects of the infringement

The law maker does not ask for any special quality from a subject as to consider that his deed is an infringement, so that the direct *active subject* of this infringement is not qualified. Then when the active subject is a member of the medical personnel or is a member of an organization which is legally involved in the fight against drugs or exercises an office investing him with public authority, and the deed was committed while he exercised his office, one can speak about the aggravating circumstance stipulated in art 14 of Law 143/2000.

This infringement is liable to penal consequences in all its aspects: co-participation, instigation and complicity.

The *main passive subject* is the state. The *secondary passive subject* is the natural person who suffers the already produced consequences or those to be produced because of the committed deed that could endanger his health.

¹¹ Mihai Adrian Hotca, Maxim Dobrinouiu – *Crimes Provided in Special Laws. Commentaries and Explanations*. 2nd edition, (Bucharest: C.H. Beck Printing House, 2010), p. 160.

¹² Published in the Official Gazette Part I no 350 of April 19, 2006, with further modifications.

The objective aspect

The bringing or taking off the country, the import or export of dangerous drugs - without a certificate - is practically the *material element* of this infringement.

The bringing or taking off the country dangerous drugs or high risk drugs is, in fact, that action through which they are introduced in the country.

The taking off the country of these drugs is that action through which the dangerous or the high risk drugs are taken off the country.

The import¹³ means the total operations with a commercial character through which goods produced in or bought from other countries are introduced in another country.

The export¹⁴ is that operation with a commercial character through which part of the goods produced, processed, completed or repaired in one country are sold in the markets of other countries.

In agreement with art 20 of Law no 339/2005 regarding the juridical regime of plants, substances and stupefacient and psychotropic compounds, the import-export with plants, substances and compounds included in Tables I, II and III of the Annex of this law are made in the basis of a export-import license, issued by a specialized department of the Ministry of Health for each and every operation, in conformity with the pattern stipulated by the methodological norms of this law.

Art 21 stipulates that all import-export operations with plants, substances and compounds included in tables I, II and III of the annex can be made only by the holder of the license mentioned by the law, in the limit of the annual estimations.

In agreement with art 27 the commercial, customs or transport documents, as well as other expedition documents shall mention the names of the plants and of the substances - the way they are inscribed in the tables of the international conventions - and, depending on the situation, the commercial name of the products, the exported quantities from the national territory or of those to be exported, the name and address of the exporter, of the importer and of the receiver.

According to art 28 of Law no 339/2005 regarding the juridical regime of plants, substances and stupefacient and psychotropic products it is forbidden the storing in warehouses and in the free zones of the plants, substances or products containing stupefacient or psychotropic native or imported substances. On the territory of Romania there also forbidden imports simulating transports directed to a customs warehouse; the only exception is when the competent authority of the importing country mentions its approval in the license accompanying the transport.

In art 29 of the above mentioned law it is mentioned that the transports entering or leaving Romania - without an import - export license - as well as those which are not in conformity with the accompanying license are retained by the competent authorities until the transport is justified and legal or until the definitive and irrevocable decision of the court shall order the confiscation of the transport.

In conformity with art 31, a transport crossing the Romanian territory with plants, substances or products containing substances mentioned in tables I, II and III of the annex to Law no 339/2005 is allowed only if the import-export license accompanying the transport is presented to the customs checking points. The destination of a transport that transits Romania can be modified only if a new import-export license is issued by the competent authority of the exporting country. No transport of plants, substances or products containing substances mentioned in tables I, II and III of the annex to Law no 339/2005 transiting Romania cannot be submitted to any treatment meant to alter its nature or packing.

In agreement with art 32 of Law no 339/2005 the above mentioned regulations are not in force in case of a transport by air. In case the aircraft lands or is submitted to an emergency landing,

¹³ *DEX - Explanatory Dictionary of the Romanian Language IInd*, (Bucharest: "Univers Enciclopedic" Printing House, Academy of Romania, 1998), pp. 478.

¹⁴ *Idem*, pp. 359.

the transport will be considered the same as any other transport from Romania to the country of destination only in unloading conditions or if the circumstances require such a procedure.

The immediate consequence of the infringement provided by art 3 is applicable in case the public health and the health of the consumers are endangered; it is also available for the national customs regime.

In the present case the *casualty implication* shall not be proved, as it derives in the ex re, by the very deed committed, so that the state of risk in case of committing such infringements is inevitable.

The subjective aspect

From the subjective point of view, in case of an international traffic of drugs infringement, the described deed shall be committed intentionally. Intention means that the doer knew about the nature of the products or of the substances his action was aimed at. The intention can either be direct or indirect.

The *mobile* that determined the action of the doer and the *aim* in view do not influence the existence of the subjective aspect of the international traffic of drugs infringement. They can be taken into account in the individualization of the judiciary penalty.

Forms. Modalities. Sanctions

Forms

Both preparatory deeds and the attempt are incriminated.

The infringement mentioned in art 3 paragraph 2 of Law no 143/2000 is committed in the form of an attempt not in the form of a committed deed then when the infringement was discovered on the corridor leading to the exist from the country, before crossing the border of Romania.¹⁵ The attempt is punished, in conformity with art 13 of the above mentioned law. The production or the obtaining the means or instruments, as well as the measures taken with a view to committing these infringements is also considered to be attempts in the international traffic of drugs infringement.

Modalities

In practice, beside the norms analyzed in the paragraph about the material element, there can be other numerous modalities for committing such infringements. The incriminatory text includes two types of infringements/ crimes: simple and aggravating.

In the case of the simple type the traffic of drugs refers to dangerous risks and, in the second case it refers to the high risk drugs. The difference between these two types is given by the object of the crime/ infringement.

Sanctions

Bringing or taking off the country, as well as the import or the export of dangerous drugs - without legal permission - is punished with 10-20 years and the interdictions of rights.

If the deed refers to high risk dugs, the punishment is prison for a period of 15-25 years and the interdiction of certain rights.

The Court can dispose the security measure of expulsion in case of foreign citizens, as stipulated in art 117 of the Penal Code.

The drugs, as well as other goods that were the object of the crime mentioned in art 3 are confiscated, as provided in art 17 of Law no 143/2000. In case these things are not found, the convict is obliged to pay their equivalent value. There are also Money confiscated money, values or any other goods obtained through the selling of drugs or of other goods that made the object of the infringement mentioned in art 3. The sums resulted from the confiscated money and goods are considered incomes of the state budget and are put in a special account of the state budget.

¹⁵ The High Court of Justice and Cassation, Penal Department, decision no 4914/2003, Penal Law Magazine no1/2004, p. 174. For *in extenso* content of this decision see a www.scj.ro.

Conclusions

The evolution of our country with regard to the traffic of drugs was influenced by several factors: social, politic and economic but also by her geographical position in the European continent, by the insufficient legislative measures able to regulate the drugs problem in the post-totalitarian years, by the lack of a police specialized in fighting against such crimes and by the lack of necessary technical devices.

In conformity with the national reports regarding the drugs, the traffic is in a remarkable ascension proved by the increasing number of confiscations.

Firm measures shall be taken - at the level of the society - for making the people aware of the risks deriving from the drugs traffic and consumption. The state institution shall also cooperate and have common actions in order to fight against this phenomenon. This flagellum can be eradicated from the very beginning, but it can be kept under a drastic control.

The necessity of incriminating and penalizing the bringing and taking off the country, as well as the import or export of dangerous drugs and of high risk drugs is materialized by the already analyzed text of law, especially because this phenomenon afflicts the public health, the order of law and economic security of any state.

References

- George Antoniu, Costică Bulai – *Dictionary of Penal Law and Penal Procedure*, (Bucharest: Hamangiu Printing House, 2011).
- Vasile Bercheșan, Constantin Pletea – *Drugs and the Traffickers of Drugs*, (Pitești: Paralela 45 Printing House, 1998).
- Nicolae Dan, Ion Anghelescu (coord.) – *Dictionary of Criminology*, (Bucharest: Scientific and Enciclopedic Printing House, 1984).
- Ioan Dascălu, Cristian-Eduard Ștefan, Cătălin Țone, Maria Surduleac – *Drugs and the Organized Crime*, (Craiova: Sitech Printing House, 2009).
- Traian Dima, Alina-Gabriela Păun – *Illicit Drugs (Law no 143/2000, Jurisprudence and Commentaries)*, (Bucharest: Universul Juridic Printing House, 2010).
- Ioan Gârbuleț – *Traffic and Illicit Drug Consumption. Essay on Legislation, Doctrine and Jurisprudence*, (Bucharest: Hamangiu Peinting House, 2008).
- Mihai Adrian Hotca, Maxim Dobrinoiu – *Crimes Provided in Special Laws. Commentaries and Explanations*. 2nd edition, (Bucharest: C.H. Beck Printing House, 2010).
- Emilian Stancu – *Introduction in General Criminology*, IInd edition, (Bucharest: "Dimitrie Cantemir" Christian University, 1996).
- *DEX - Explanatory Dictionary of the Romanian Language* IInd, (Bucharest: "Univers Enciclopedic" Printing House, Academy of Romania, 1998).
- Law no 143/2000 regarding the prevention and fight against the illicit traffic and consumption of drugs, published in the Official Gazette no. 362 of August 3, 2000, with further amendments.
- Law no 86/2006 – Romanian Customs Code, published in the Official Gazette of Romania Part I no 350 of April 19, 2006, with further amendments.