

INTERPRETATIVE CHALLENGES REGARDING THE CONCEPTS OF „PSYCHOACTIVE SUBSTANCES” AND „INFLUENCE” IN NATIONAL JURISPRUDENCE: IMPLICATIONS FOR ROAD TRAFFIC OFFENCES

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Abstract

The jurisprudence of the High Court of Cassation and Justice has ruled that "psychoactive substances" encompass all substances capable of producing psychoactive effects, namely alterations in psychic functions, mental processes and behavior, or the creation of physical or psychological dependence. The consumption of narcotic, psychotropic or other psychoactive substances invariably produces physical, psychological and behavioral changes of varying but significant degrees; in consideration of these effects, operations involving such substances are either totally or predominantly restricted.

As such, the Romanian legislator has also presumed that, once consumed, any substance with a psychoactive effect affects the central nervous system to an extent incompatible with the safe conduct of activities that pose a high risk to human health - such as, among others, driving a vehicle on public roads. From this perspective, it has been held that a person is under the influence of psychoactive substances, within the meaning of Article 336 paragraph (2) of the Penal Code, whenever substances capable of producing psychoactive effects have been introduced into their body - through ingestion, injection, inhalation, smoking, or any other means.

However, what has sparked numerous jurisprudential and legislative controversies is the answer to the following questions: Regarding the material element of the offense of driving a vehicle under the influence of other substances, is the quantity of the substance consumed or detected in the perpetrator's biological samples after the incriminated act relevant? Is a minimum threshold of toxicological relevance necessary? Should the legislator distinguish between situations where the detected substances have a real effect on driving ability and cases involving only residual traces with no psychoactive impact? How is the social danger assessed for drivers receiving certain substances under medical supervision for the treatment of specific conditions?

The present study will analyze the legislative context and the incident jurisprudence to clarify the concepts of "psychoactive substances" and "influence" and, consequently, to examine the potential effects of consuming such substances regarding criminal liability under Article 336 of the Penal Code.

Keywords: *psychoactive substances, influence, road safety, legislation, jurisprudence, limits and effects.*

1. Introduction

Article 336 of the Criminal Code criminalizes the offence of driving a vehicle under the influence of alcohol or other substances, providing in paragraph (1) the following: "Driving on public roads a vehicle for which the law mandates the possession of a driving license by a person having a blood alcohol concentration of over 0.80 g/l of pure alcohol in the blood shall be punished by imprisonment from 1 to 5 years and the prohibition of certain rights." According to Article 336 paragraph (2), "the same penalty shall apply to a person, under the influence of psychoactive substances, who drives a vehicle for which the law mandates the possession of a driving license."

Since the phrase "under the influence of psychoactive substances" lacks a legal definition, its interpretation has sparked numerous controversies, given the dichotomy between the biological presence of a substance and the actual impairment of the ability to drive vehicles. The question arose: does being "under the influence" reside in the existence of a purely biological state (the simple presence of the substance) or does it also contemplate a functional state induced by psychoactive substances that endangers road safety?

In legal doctrine, the dilemma has been formulated as follows: can "influence" be established by the mere presence of the psychoactive substance in samples taken from the perpetrator (a first solution), or should this presence be "doubled" by the finding of impairment of the perpetrator's capacity to drive vehicles on public

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roads (a second solution)¹. The same author specified that a person is "under the influence" of psychoactive substances "when their action produces a change (an effect) upon them (upon their being). The presence of a psychoactive substance in a person's blood or urine, attested by a toxicological analysis carried out under the conditions provided by law, obviously represents a change, at least from a physiological point of view, at the level of that person's body. It is not by chance that toxicological analysis reports use the expression: positive for substance x."

Other questions have also sought answers: is it necessary to establish a certain threshold in the case of driving under the influence of psychoactive substances, similar to the offence of driving a vehicle under the influence of alcohol? What is the concentration level of psychoactive substances that affects the ability to drive? How could the impairment of driving capacity be determined in the case of psychoactive substance consumption? How long after consumption can the ability to drive still be considered impaired?

The regulation of Art. 336 para. (2) of the Criminal Code has been intensely criticized in doctrine, noting, among others, the following aspects: it could lead to the conviction of persons who pose no real danger to traffic safety, based solely on the residual presence of a substance in the body; thus, the legal text does not ensure a balance between the protection of road safety and the respect for individual rights, nor does it prevent situations where innocent persons could be sanctioned. Furthermore, the notion of "being under influence" is not clear and predictable, as there are medications that can be part of a maintenance treatment for certain conditions, and some substances can yield false positive results, leading to the unjust conviction of drivers who have psychoactive substances in their bodies resulting from the consumption of common medicines, food, prescribable treatments, or consumption that occurred even weeks prior, without affecting their driving capacity in any way. The psychoactive substances included in current Romanian legislation are not limited to illegal drugs but also include prescription medicines (antidepressants, antipsychotics) essential for psychiatric treatments, administered to patients suffering from mental conditions compatible with driving motor vehicles.

In essence, it has been highlighted that the legislative provisions do not distinguish between the mere presence of psychoactive substances in the body and their actual influence on the ability to drive, which can generate the unjust sanctioning of persons following medically prescribed treatments.

2. The legislative context and the evolution of national jurisprudence

Law no. 339/2005² on the legal regime of narcotic and psychotropic plants, substances, and preparations establishes the legal framework regarding the cultivation, production, manufacturing, storage, trade, distribution, transport, possession, offering, transmission, intermediation, acquisition, use, and transit on national territory of spontaneous or cultivated plants, substances, and preparations provided in Tables I, II, and III of the Annex which forms an integral part of this law. Art. 1 para. (2) of Law no. 339/2005 provides that the substances listed in Tables II and III of the Annex and their preparations are subject, when used for medical purposes, to other provisions applicable to substances and preparations for human or veterinary use, insofar as they do not conflict with the present law.

In accordance with the provisions of Art. 10 para. (2) of Law no. 339/2005, the Ministry of Health adopted Order no. 4169/2023, approving the List of preparations containing narcotic and psychotropic substances, provided in the Annex which forms an integral part of this order. According to Art. 2 of this order, the list of preparations containing narcotic and psychotropic substances shall be amended, upon the proposal of the National Agency for Medicines and Medical Devices of Romania, whenever necessary, in accordance with the classification of these preparations under the provisions of Law no. 339/2005, as subsequently amended and supplemented.

However, these substances provided in the Order are found in the composition of certain medications approved for use in Romania; thus, the impairment of the ability to drive vehicles is not objectively determined solely by the mere presence in the blood, in any concentration, of common substances such as codeine. Consequently, criminalizing the consumption of these substances that have a legal use may lead to negative

¹ Valerian Cioclei, *Sensul expresiei „persoană aflată sub influența unor substanțe psihoactive*, in *Analele Universității din București, Seria Drept, Forum juridic* no. 1/2024, DOI: <https://www.doi.org/10.31178/AUBD-FJ.2024.1.19>, <https://aubd.drept.unibuc.ro/wp-content/uploads/2025/04/1-2024-19.-Valerian-Cioclei-Sensul-expresiei-%E2%80%9Epersoana-aflata-sub-influenta-unor-substante-psihoactive.pdf>.

² Law no. 339/2005 on the legal regime of narcotic and psychotropic plants, substances, and preparations, published in the Official Gazette of Romania, Part I, No. 1095 of December 5, 2005

social consequences, such as the refusal of certain treatments out of fear of legal repercussions. These ambiguities in the interpretation and application of the law have led to an extensive body of jurisprudence from the High Court of Cassation and Justice and the Constitutional Court, in the challenge of delimiting the mere presence of a substance in the organism from the concrete effect on driving capacity, so as to avoid the sanctioning of those situations that do not represent a real danger to society.

The first clarifications were provided by Decision no. 138/2017³ of the Constitutional Court, which dismissed the exception of unconstitutionality regarding the provisions of Art. 336 para. (2) of the Criminal Code, holding that "in order to establish the consumption of psychoactive substances — as an essential requirement specific to this offence — a laboratory analysis is necessary, which must determine the existence of these substances in the body of the vehicle's driver. (...) Given the broad scope of products susceptible to having psychoactive effects, as reflected in the aforementioned special legislation, (...) the legislator cannot provide a minimum level of concentration of psychoactive substances as an essential requirement regarding the material element of the actus reus in the case of the offence of driving a vehicle under the influence of psychoactive substances (...). Consequently, the legislator intended to criminalize the act in any situation of driving a vehicle following the consumption of psychoactive substances (...)." ⁴

Furthermore, in the recitals of Decisions no. 101/2019⁵ and no. 154/2016⁶, the Constitutional Court explained that consumption is understood as the introduction into the human body of a product, regardless of whether it has been dissolved, impregnated, dispersed, or diluted, in one of the following ways: orally or by injection, inhalation, smoking, or external application to a person's body, in any other way, such that the product reaches the body of a person [Art. 2 lit. f) of Law no. 194/2011, republished]. It is irrelevant whether the state of the vehicle's driver, who is under the influence of psychoactive substances, is the result of abuse — which implies the consumption of plants, substances, and preparations containing substances susceptible to having psychoactive effects without a medical prescription — or is the result of medical use, which signifies the lawful use, based on medical prescription, of medications under the control of national legislation; this is because the subjects of the challenged legal text carry out an activity with permitted risk, for which purpose they undergo forms of training, thus being informed and diligent individuals who, for the duration of holding a driving license, have the obligation to remain up to date with the relevant legal norms.

Through Decision no. 48/2021⁷ regarding the issuance of a preliminary ruling on the scope of the phrase "psychoactive substances" within Art. 336 para. (2) of the Criminal Code, the High Court of Cassation and Justice clarified the scope of the notion of "psychoactive substances," as defined by Art. 241 of Law no. 187/2012 for the implementation of Law no. 286/2009 on the Criminal Code, as follows: "Psychoactive substances' shall mean substances established by law, upon the proposal of the Ministry of Health." These substances are those provided in the annexes to Law no. 339/2005, which include, firstly, substances "traditionally" referred to as drugs (i.e., narcotic or psychotropic substances) provided for in international conventions to which Romania is a party (Art. 3 of Law no. 339/2005) and which are also found in Law no. 143/2000 (Art. 1); and, secondly, plants and substances under national control—a term designating plants and substances with psychoactive properties introduced into the annexes of the law [Art. 2 lit. d1) and Art. 8 of Law no. 339/2005]. This second category also includes the substances referred to in Law no. 194/2011, but only to the extent that their character as a substitute is established according to the set procedure (in which case, according to Art. 9 of Law no. 194/2011, the Ministry of Health also takes the necessary steps for the respective substance to be included both in the annexes of Law no. 339/2005 and Law no. 143/2000).

³ Decision no. 138/2017 concerning the exception of unconstitutionality of the provisions of Article 336, Paragraph (2) of the Penal Code, published in the Official Gazette of Romania, Part I, No. 537, dated 10 July 2017

⁴ See also Tudorel Toader, Marieta Safta, *Dialogul judecătorilor constituționali*, Universul Juridic Publishing House, București, 2015, p. 45-47, Ioan Vida, *Obligativitatea deciziilor Curții Constituționale pentru instanțele judecătorești – factor de stabilitate a Constituției și a practicii judiciare* (Binding decisions of the Constitutional Court on the courts - a factor of stability of the Constitution and judicial practice), in *Pandectele Române* no. 3/2004; Silviu Gabriel Barbu, Andrei Muraru, Valentina Bărbășteanu, *Elemente de contencios constituțional*, C.H.Beck Publishing House, 2021.

⁵ Decision no. 101/2019 concerning the exception of unconstitutionality of the provisions of Article 336, Paragraph (2) of the Penal Code, published in the Official Gazette No. 405 of May 23, 2019

⁶ Decision no. 154/2016 concerning the exception of unconstitutionality of the provisions of Article 338, Paragraph (1) of the Penal Code, published in the Official Gazette No. 450 of June 16, 2016

⁷ Decision no. 48/2021 concerning the delivery of a preliminary ruling for the clarification of the scope of the term 'psychoactive substances' under Art. 336 para. (2) of the Penal Code, published in the Official Gazette No. 698 of July 14, 2021

In conclusion, the notion of psychoactive substances, defined clearly and predictably by Art. 241 of Law no. 187/2012, does not imply a restriction of the scope of application of the incrimination norm to the category of substances referred to in Law no. 194/2011; rather, the scope of the notion of psychoactive substances also encompasses the substances provided for in the content of special laws no. 143/2000 and no. 339/2005, including both narcotic and psychotropic substances within this category.

In the judicial practice of the High Court of Cassation and Justice⁸, it has been established that "psychoactive substances" shall mean all substances capable of producing psychoactive effects - namely, alterations of psychic and behavioral functions and processes, or the creation of a state of physical or psychological dependence.

The properties of the substances or mixtures of substances from the aforementioned categories, and the harmful effects of their consumption on the central nervous system - resulting in alterations of psychic functions, processes, or the consumer's behavior - represent objective elements, medically substantiated and unanimously accepted at both international and national levels.

The legal regime of psychotropic and narcotic substances and mixtures, as well as other substances susceptible to producing psychoactive effects, is thus currently subject to restrictive regulations. Operations involving substances from the first category are, in principle, prohibited, except for cases of medical interest (under the conditions provided by Law no. 339/2005), while those involving substances from the latter category are subject to strict authorization and operational conditions expressly provided by Law no. 194/2011.

In the normative context thus configured, the legislator has presumed that, once consumed, any substance with a psychoactive effect affects the central nervous system to an extent incompatible with the safe conduct of activities that pose a high degree of risk to human health, such as, among others, driving a vehicle on public roads.

The consumption of narcotic, psychotropic, or other psychoactive substances always produces physical, psychic, and behavioral alterations of various, yet significant, degrees, in consideration of which operations involving such substances are totally or predominantly restricted.

From this perspective, it has been held that a person is under the influence of psychoactive substances, within the meaning of the provisions of Art. 336 para. (2) of the Criminal Code, whenever substances susceptible to producing psychoactive effects have been introduced into their body - through ingestion, injection, inhalation, smoking, or by any other means - the quantity of the substance consumed or detected in the perpetrator's biological samples subsequent to the commission of the action constituting the material element of the analyzed offence being irrelevant in this regard.

Similarly, a person who has consumed such substances is considered to be under their influence even when the alterations to their cognitive functions or behavior are not visible or easily identifiable. This is because the rationale for incrimination is the protection of road traffic safety, an activity whose normal conduct is conditioned by the prohibition of driving vehicles by persons under the influence of substances prohibited by law, such as those in the category of psychoactive substances⁹.

The arguments of the High Court of Cassation and Justice were reiterated and adopted by the Constitutional Court in the recitals of Decision no. 452/2021[1] regarding the exception of unconstitutionality of the provisions of Art. 336 para. (2) of the Criminal Code. In essence, the Constitutional Court found that the phrase "psychoactive substances" within Art. 336 para. (2) of the Criminal Code is clear, precise, and predictable, as it refers to those substances that produce the effects regulated by Art. 2 lit. e) of Law no. 194/2011. The aforementioned provisions of Art. 2 lit. e) fulfill, according to the previously invoked jurisprudence of the Constitutional Court, the requirements for the quality of criminal law imposed by the provisions of Art. 1 para. (5) and Art. 23 para. (12) of the Constitution and by the provisions of Art. 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms¹⁰.

⁸ See also Iulia Boghirnea, The analysis of the notions of "divergent jurisprudence" and the "unitary jurisprudence", in *Studii Juridice și Administrative* no. 17/2017, p. 106-112; Analysis of the French Doctrine Regarding the Normative Power of the Opinions of the Court of Cassation, in *Agora International Journal of Juridical Sciences* vol. 16, no. 1/2022, p. 34-37.

⁹ Decision no. 365/RC/ din 16 octombrie 2020.

¹⁰ See also Elena Anghel, Challenges of Constitutional Justice in Romania, in *Proceedings of the 41 International RAIS Conference on Social Sciences and Humanities*, p. 152-159, <https://rais.education/proceedings-of-the-41st-rais-conference/>; Senia Mihaela Costinescu and Benke Károly, Efectele deciziilor Curții Constituționale în dinamica aplicării lor (The effects of Constitutional Court decisions in the dynamics of their application), in *Revista Dreptul* no.10/2012

3. The Reconfiguration of Jurisprudence through Decision no. 25/2025¹¹

Although the jurisprudence seemed consolidated, the High Court of Cassation and Justice was again called upon in 2024 to settle a question of law¹²: "In the case of the offence of driving a vehicle under the influence of psychoactive substances, provided for by Art. 336 para. (2) of the Criminal Code, for the fulfillment of the pre-existing essential requirement that the defendant was under the influence of psychoactive substances, is it sufficient to establish the presence of the psychoactive substance in the biological samples, regardless of its concentration - the influence on driving capacity being an absolute presumption - or is this presumption a rebuttable one, which may be contested through scientific evidence showing that, despite the presence of psychoactive substances in a minimal concentration, the person is not under the influence of psychoactive substances with an impairment of the capacity to drive vehicles on public roads?"

"Does the provision 'under the influence of psychoactive substances' within the offence provided for by Art. 336 para. (2) of the Criminal Code refer to a person who has consumed psychoactive substances, or to a person whose capacity to drive a vehicle (for which the law mandates the possession of a driving license) is impaired following the consumption of psychoactive substances?"

The Prosecutor's Office attached to the High Court of Cassation and Justice considered that the impairment of a person's behavior due to the consumption of psychoactive substances, in a manner incompatible with the activity of driving a vehicle on public roads, is absolutely presumed by the legislator, and is not a matter that must be established in concreto based on the particularities of each case.

Specialized literature has issued divergent opinions, essentially arguing the following:

Babeş-Bolyai University – Faculty of Law opined that the legal presumption established by the legislator through the provisions of Art. 336 para. (2) of the Criminal Code is a rebuttable one (*presumptio iuris tantum*), as the legislator's intent was not to criminalize the danger posed by consumption itself, but the existence of the influence of these psychoactive substances on the driver's condition by impairing the capacity to drive vehicles on public roads. Establishing an absolute presumption regarding the impairment of driving capacity, deduced from the related fact of identifying psychoactive substances in biological samples (regardless of concentration), would be equivalent to an implicit and indirect criminalization of psychoactive substance consumption, contrary to the state's criminal policy on this matter. Given that most psychoactive substances are detectable in blood or urine for a significant period after consumption and after the psychoactive effects have subsided (especially in the form of metabolites), an absolute presumption would represent a disproportionate interference with individual liberty, as the person would be under a driving ban even several days after the actual moment of consumption.

The University of Oradea – Faculty of Law opined that the presence of psychoactive substances in the blood can only constitute an indication of a criminal situation. Consequently, it is necessary for the criminal investigation bodies to continue administering evidence regarding the impairment of the perpetrator's psychophysical capacities, through the diminution of the ability to drive, to concentrate on traffic, or to react in order to prevent road events.

"Lucian Blaga" University of Sibiu – Faculty of Law opined that, as the incrimination norm in Art. 336 para. (2) of the Criminal Code is drafted, the mere consumption of psychoactive substances is not capable of determining an absolute presumption of the existence of an influence on driving capacity. Instead, it is necessary to prove, in each individual case, the circumstance that this consumption concretely affected the ability to drive, a proof to be provided through scientific means. The presumption of the influence that psychoactive substance consumption has on the body is a rebuttable one, which can be contested through scientific evidence.

The University of Bucharest – Faculty of Law argued that, for the fulfillment of the pre-existing essential requirement that the defendant was under the influence of psychoactive substances, it is sufficient to establish the presence of the psychoactive substance in the biological samples, regardless of its concentration and regardless of whether the capacity to drive vehicles on public roads was impaired. In support of this opinion, it

¹¹ Decision no. 25/2025 regarding the issuance of a preliminary ruling for the clarification of a point of law concerning the offense provided for by Art. 336 para. (2) of the Criminal Code, published in the Official Gazette No. 70 of January 28, 2025.

¹² Cornelia Dinu, National and European case law – a remark for the High Court of Cassation and Justice in preliminary judgments, in *Journal LEGAL AND ADMINISTRATIVE STUDIES* Supplement 2024, Editura C.H. Beck, pp. 440 - 453,

https://www.upit.ro/_document/305830/jlas_supplement.pdf. See also Constitutionality and referral in the interests of the law, in *LESIJ - Lex ET Scientia International Journal* no. XXIX, vol. 1/2022, p. 66-74, https://lexetscientia.univnt.ro/download/2022_XXIX_1_6_LESIJ.pdf.

was shown that a person is "under the influence" of psychoactive substances when their action produces a change (impact) upon them (upon their being). The presence of a psychoactive substance in a person's blood or urine, attested by a toxicological analysis conducted under the conditions provided by law, obviously represents a change, at least from a physiological standpoint, at the level of that person's organism.

The "Mina Minovici" National Institute of Legal Medicine (INML) opined that establishing the presence of a psychoactive substance or its active metabolites in biological samples is not sufficient to absolutely presume the state of being under the influence and the impairment of driving capacity. This is because such an assertion can be contested through scientific evidence showing that, despite the presence of psychoactive substances in a minimal concentration, the person is not under the influence of psychoactive substances with an impairment of the capacity to drive on public roads. The state of being under the influence of psychoactive substances and, implicitly, the impairment of the capacity to drive a vehicle on public roads depends on several factors, such as the type of substance, the concentration of the substance in the mixture used, the duration of consumption, the metabolic capacity of that person's liver, the tolerance of that person's nervous system to the use of that substance, interactions with other substances (medications), etc.

The supreme court settled these controversies, ruling that the phrase "person under the influence of psychoactive substances", which constitutes the essential requirement attached to the material element of the *actus reus* of the offence of driving a vehicle under the influence of alcohol or other substances (in the assimilated version provided by Art. 336 para. (2) of the Criminal Code), refers both to the presence of the psychoactive substance in the biological samples and to its aptitude to determine an impairment of the perpetrator's driving capacity.

In the reasoning of this decision, the supreme court held that the social value protected by the offence provided in Art. 336 para. (2) of the Criminal Code is the safety of road traffic participants, and the injury to this value can only be affirmed if, at the time of driving the vehicle, an abstract state of danger to road traffic safety can be established. However, in a situation where the identified psychoactive substances are no longer capable of producing any effect on the driver's behavior—because, although present in the biological samples, they no longer have the aptitude to affect the central nervous system - one cannot speak of a state of danger to the social relations protected by the incrimination norm.

4. Conclusions

"In concrete terms, what would it mean for the 'influence' of psychoactive substances to depend on the impairment of driving capacity? It would simply mean that the existence of the offence would depend on the 'opinion' of experts. However, it is inadmissible for the incrimination of an act to depend on an expert report. Such an approach would represent a flagrant violation of the principle of legality. It is the criminal law that defines which acts constitute offences, not an expertise, even a medico-legal one. Furthermore, the typicality of the offence must be established by the magistrate. With all due respect to forensic doctors, it must be stated emphatically that they do not have the competence to rule on the existence or non-existence of the constitutive elements of an offence. This competence belongs exclusively to the magistrate. I leave aside the fact that there are no objective standards whatsoever that can accurately determine the level of impairment of driving capacity or, quite simply, the existence of such impairment."¹³

Undoubtedly, the arguments held by the supreme court in Decision no. 25/2025 do not remain beyond criticism, especially since, as the aforementioned author specifies, "the solution of 'measuring' driving capacity would open Pandora's box in relation to Art. 336 para. (1) as well. It would not be out of the question for a medico-legal expert report to establish that a person with a blood alcohol concentration of over 0.80 g/l of pure alcohol does not have a diminished capacity to drive. (...) Yet, as formulated, the legal text in question conveys a very clear warning: if you want to consume, do not drive; if you want to drive, do not consume."

The analysis of the jurisprudential trajectory highlights a significant paradigm shift¹⁴, a transition from a formalistic interpretation of the incrimination text - based on an absolute presumption where the mere presence

¹³ See Valerian Cioclei, *op.cit.*

¹⁴ For more details see also Elena Anghel, *Reflecții asupra puterii creatoare a jurisprudenței*, in *Buletinul de informare legislativă al Consiliului Legislativ* no. 2/2025, p. 6-17, http://www.clr.ro/download/buletine/buletin_informare_legislativa_2025/BIL-2_2025.pdf; N. Popa, E. Anghel, C. Ene-Dinu, L. Spătaru-Negură, *Teoria Generală a Dreptului*. Caiet de seminar, 4th Edition, revised and enlarged, C.H.Beck Publishing House, București, 2023, p. 160-161; Elena Emilia Ștefan, *Legalitate și moralitate în*

of a psychoactive substance in the organism was equated with guilt - toward a more nuanced approach, centered on the concrete aptitude to impair driving capacity and, therefore, on the actual social danger of the act. To establish the existence of the offence, the mere finding of the substance's existence in the body is not sufficient; it is necessary to demonstrate that it possesses the concrete aptitude to alter the driver's cognitive, sensory, or motor functions. In the absence of this aptitude - as is the case with substances remaining several days after consumption or minute concentrations that no longer produce neurological effects - the legal object of the offence is missing: the state of danger to road safety.

This jurisprudential reconfiguration constitutes an important step toward ensuring a balance between the state's interest in protecting traffic safety and the protection of individual rights, particularly individual liberty. By refusing to absolutely presume a state of influence, the national courts align Romanian criminal law with European standards of clarity and predictability¹⁵, ensuring that criminal sanctions are applied only where there is a genuine danger to the protected social values.

Given the rationale for incrimination - road traffic safety - as well as the scale of psychoactive substance consumption among the population, the adoption of restrictive regulations regarding the legal regime of psychotropic and narcotic substances and mixtures, as well as other substances susceptible to producing psychoactive effects, pertains exclusively to the core considerations of criminal policy envisioned by the legislator.

However, aspects concerning the criminalization of driving under the influence of psychoactive substances must be analyzed through the lens of the guarantees that domestic legislation must offer to ensure a ratio of proportionality between individual fundamental rights, on the one hand, and the public interest represented by the necessity of protecting the rights and freedoms of other road traffic participants, their life, physical integrity, and health, as well as other significant values involved in road traffic.

In the section "Conclusions and Recommendations" of the Report¹⁶ titled "Human rights challenges in addressing and countering all aspects of the world drug problem," at point 68 lit. d), the High Commissioner for Human Rights refers to the International Guidelines on Human Rights and Drug Policy¹⁷ and notes that, where states adopt a policy of criminalizing the consumption of narcotic substances, they must ensure that offences are clearly defined by law and that penalties are proportionate to the gravity of the offences, taking into account mitigating and aggravating factors.

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¹⁵ Roxana Mariana Popescu, Claritatea, precizia și previzibilitatea – cerințe necesare pentru respectarea Constituției, a supremației sale și a legilor în România, in Revista Dreptul no. 9/2017, p. 78-87.

¹⁶ Prepared by the United Nations High Commissioner for Human Rights on August 15, 2023.

¹⁷ Developed by a coalition of United Nations Member States, the World Health Organization (WHO), the Joint United Nations Programme on HIV/AIDS (UNAIDS), UNDP, OHCHR, and drug policy experts.

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