

# ASPECTS OF CRIMINALISTIC TACTICS ON RESEARCH IN CASE OF TRAFFIC AND ILLEGAL DRUG CONSUMPTION

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## **Abstract**

*In the fight against trafficking and illicit drug use, internationally there have been numerous regulations in the field, with states focusing their efforts to combat this scourge. On February 19, 1925, the "International Opium Convention" was signed in Geneva. This Convention regulates the import licenses and export licenses for substances and products with a narcotic content, following a permanent surveillance of the drug movement on the plan. international. On March 30, 1961, in New York, the "Unique Convention on Narcotics" is adopted. In 1971, the Convention on psychotropic substances was adopted in Vienna in the plenipotentiary conference of 77 states with the participation of the World Health Organization, the International Narcotics Control Body and the International Criminal Police Organization (Interpol), the Convention coming into force on August 16, 1976. Countries in the world through legislative measures regulated the circulation and consumption of narcotic products, the 20th century has not undergone radical changes regarding the attitude of the population towards drugs. As a result of the intensification of the narcotics trafficking, it has determined the countries affected by this scourge to modify the internal legislation exercising tighter control. In this context, the Romanian legislation is also inscribed, a great responsibility regarding the application of the law being the duty of the judicial authorities.*

**Keywords:** *illicit drug use, fighting drugs traffic, drug effects, criminalistics tactics.*

**JEL Classification:** K14

## **1. Introductory aspects**

By Law no. 143 of July 26, 2000 on combating drug and drug trafficking, art. 312 of the former Criminal Code was totally repealed, although the legislature does not explicitly state this. From the wording it could be understood that the content of article 312 of the former Criminal Code is repealed only the name of "narcotic or toxic products or substances", these being replaced by the term "drugs". In reality, the provisions contained in Law no. 143/2000 totally repeals the provisions of article 312 of the Criminal Code, both regarding the normative modalities of committing, as well as regarding the minimum and maximum amount of the punishments. On the other hand, the law in question also incriminates the facts that are not found in the provisions of the Criminal Code<sup>2</sup>.

## **2. Problems to be clarified by the forensic investigation**

The criminal prosecution bodies that have been notified about committing offenses under this regime should clarify the following problems:

1. The aspects that the illicit activity covers;
2. Narcotic or toxic products or substances that have been the object of illicit activity;
3. The place and time of the crime. The operating modes used;
4. The perpetrators, their quality and the contribution to the commission of the crime. Form of guilt;
5. Existence of the crime contest;
6. The conditions and circumstances that favored the commission of the crimes<sup>3</sup>.

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<sup>2</sup> V. Bercheșan, *Unele considerații privind noile reglementări referitoare la combaterea traficului și consumului ilicit de droguri*, „Criminalistica”, no. 1/2001, p. 29-30.

<sup>3</sup> G. Vintilă, *Criminalistică*, Themis Publishing House, Craiova, 2001, p. 572.

### 3. The aspects of illegal activity

According to the regulations of Law no. 143/2000, it is the offense of drug trafficking to cultivate, produce, manufacture, experiment, extract, prepare, transform, offer, put up for sale, sale, distribution, delivery under any title, sending, transport, procurement, purchase, holding or other operations regarding the circulation of risk drugs<sup>4</sup>.

The law criminalizes these operations if they are performed "unjustly". Consequently, the research should clarify which of the mentioned situations are the perpetrators<sup>5</sup>.

By cultivation is meant the action of sowing, planting, caring for plants containing narcotic substances, working the soil, and harvesting these plants. Drugs must be obtained from them in order for the action to be illegal.

By drug production is understood to be the achievement of some activity (mixing, melting, boiling, burning, etc.) of one of the chemical compounds that fall into this category.

The manufacture involves the production of these substances in series and in large quantities, processing the raw materials and thus obtaining the illicit substances.

Experimentation consists of conducting experiments with narcotic products or substances, outside the legal framework. It is a crime and the experimentation of narcotic substances or products on one's own body, the law making no distinction in this regard, the social danger being the same as when one would experiment on another person. Speaking of experimentation, the law refers not only to laboratory experiments, but also to the experimentation of drugs or drugs on some patients in order to try to treat certain diseases.

Extraction means the removal of a prohibited substance from a compound, its separation, using various practical procedures.

The preparation refers to the combination of two or more substances, finally obtaining one of the substances provided as a drug in tables 1-3 of Annex 1 of the law.

The transformation consists in the modification, the change of some elements characteristic to a substance considered a drug, finally obtaining another substance of the same nature, but having different effects.

Offering means the action of proposing someone to receive or make available to this person any of the drugs considered drugs<sup>6</sup>.

The distribution of drugs is achieved through the action of sharing, distributing these substances in several places and to more people, which in turn will put them on sale and sell them effectively.

Delivery by any title represents the action of supplying, of delivering substances subject to national control.

By sending narcotic products or substances, we mean the act of arranging for a person to carry, transport, deliver to a certain destination these products. It is not necessary for the person to be aware of the contents of the transport. The transport of these drugs means the action of moving them, of carrying them from one place to another.

Procurement involves taking action, obtaining substances under national control.

By purchase is understood to be the action of taking possession of a narcotic substance considered to be part of the drug category, paying the amount required by the seller.

Detention consists in the act of the individual taking, at his home or elsewhere known to him, narcotic substances, whether or not he is a drug user and whether they belong to him or to another person.

Other operations are understood to mean any other activity that contravenes the legal circulation of substances under national control that are part of the drugs category.

Also, the material element of this offense, as it results from art. 10 of the law, is further

<sup>4</sup> N. Văduva, *Criminalistica*, Universitaria Publishing House, Craiova, 2004, p. 341.

<sup>5</sup> G. Vintilă., *op. cit.*, p. 573.

<sup>6</sup> A. Boroi, N. Neagu, V.-R. Sultănescu, *Infrațiuni prevzute de Legea nr. 143/2000 privind combaterea traficului și consumului ilicit de droguri*, Rosetti Publishing House, Bucharest, 2001, p. 57-58.

achieved by organizing, managing or financing the activities listed above.

The organization represents the steps that one or more persons make for the establishment of an association or group, as well as the effective establishment of this organization, its establishment, based on the agreement of the will of all participants.

By conducting such an activity is understood the action of one or more persons located at the top of the hierarchy of the organization, which supervises, directs and coordinates the illicit activities incriminated in art. 2.

The financing of these facts consists of the aid, the concrete material support, of any kind, granted by one or more persons to the active subject of the crime provided for in art. 2<sup>7</sup>.

In art. 3 are sanctioned both the introduction or removal from the country, as well as the import or export of drugs. By introduction is meant the action of bringing to the country from abroad by any means, of substances that are part of the drug category.

The removal of such substances from the country consists in the action of transporting them outside the territory of the country for illicit purposes.

The import or export of drugs means the introduction or removal of drugs from the country on the basis of commercial conventions, the carrying on of businesses that have as their object these substances.

For the existence of the material element, it is required that the action of one of the described actions be done "without right". There is no such offense in the case of natural or legal persons who import or export such products on the basis of a legal authorization<sup>8</sup>.

According to art. 5, it is a criminal offense to knowingly, by any means, provide a premises, a dwelling or any other arranged place, in which the public has access, for the illicit use of drugs or for tolerating the illicit use in such places.

By making available is meant the activity of the perpetrator to create an appropriate environment to attract drug users, contacting them to notify them in this regard. It is irrelevant whether or not the perpetrator charges a tax for the place intended for drug use or claims something else from the consumer.

Toleration involves the perpetrator's permission to use drugs by third parties in the place he / she owns or has available.

For the existence of the crime, the law stipulates that the perpetrator make available or tolerate the use of drugs "knowingly", that is to say that he has the representation that the provision or toleration are made for the purpose of drug use<sup>9</sup>.

According to art. 6, it is an offense to "prescribe high risk drugs with intent, by the doctor, without it being medically necessary". It is also an offense, according to par. (2) of the same article, "deliberately delivering or obtaining high-risk drugs based on a medical prescription prescribed under the conditions set out in the previous paragraph or a falsified medical prescription".

By prescribing high-risk drugs, it is understood that a prescription is issued by the doctor and handed over to the applicant. This activity should not be confused with a medical error, being a way by which the doctor facilitates, by way of medical prescription, the purchase of drugs or narcotic substances.

Release is the activity of the pharmacist to teach, based on the medical prescription, prescribed drugs.

Obtaining high risk drugs is their purchase based on a medical prescription.

The existence of the crime assumes as an essential requirement, in the case of par. (1), that the prescription of high-risk drugs be made without it being medically necessary.

In the hypothesis of the second paragraph, it is required that the release and obtaining of high risk drugs be made aware of how the prescription was made.

Also, obtaining high risk drugs can also be done based on a falsified medical prescription, in

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<sup>7</sup> *Idem.*, p. 58-59.

<sup>8</sup> *Idem.*, p. 62.

<sup>9</sup> *Idem.*, p. 66.

which case the provisions of art. 33 and 34 of the Criminal Code, regarding the crime contest<sup>10</sup>.

According to art. 7, is a crime "the administration of high risk drugs to a person, outside the legal conditions".

For the existence of the crime it is sufficient that this administration be done only once. It is irrelevant how the administration was performed and whether or not the person being given the drug has expressed their agreement.

In order to achieve the objective side of this crime, it is mandatory that the administration of high risk drugs to a person is done outside the legal conditions<sup>11</sup>.

Within the art. 8 is criminalized "the provision for the consumption of toxic chemical inhalants to a minor".

By supplying toxic chemical inhalants is meant the effective delivery of such a substance, the delivery thereof to the person to be consumed. For the existence of the crime it is necessary for the perpetrator to know that the person to whom the illicit substances are supplied has not reached the age of 18 and the activity of supplying the respective substances is for consumption<sup>12</sup>.

According to art. 11 constitutes an offense to the person who "urges the illicit use of drugs by any means, if followed by execution" and according to par. (2) of the same article is a criminal offense, even if it was not followed by execution.

The exhortation can be achieved both by determining a person to illicit drug use and by reinforcing his/her resolution to consume such substances. As it is clear from the rule of incrimination, it is not relevant to the existence of the crime how the exhortation was carried out, and any means can be used<sup>13</sup>.

In order to outline the crime, it is necessary that the action be committed in such a way as to create a state of danger for the public health, and this state of danger constitutes the immediate consequence in the content of the crime.

On the other hand, given the illicit activity carried out by the perpetrator and the concrete ways of accomplishing it, the research must clarify whether or not there is a causal link between the action or actions of the person concerned and the danger they create for public health<sup>14</sup>.

It should not be overlooked that the crime of drug trafficking is consumed when the action by which the traffic was committed was completely executed and, implicitly, the immediate consequence, ie the state of danger, appeared<sup>15</sup>.

#### **4. Narcotic or toxic products or substances that have been the object of illicit activity**

Noticed about the commission of such an offense, the problem of clarifying the nature of the product or the substance that forms the material object of the drug trafficking offense is placed before the criminal prosecution bodies. It is natural to do so, as long as their nature makes the drug trafficking offense subsist or not.

The nature of the substances or products on which the activity of the perpetrators was carried out is determined by the technical-scientific findings or the expertise available, but for the criminal prosecution bodies it is obligatory to know them and, especially, the way in which they are presented, of the methods that criminals use to evade control and identification<sup>16</sup>.

##### **4.1. Classification**

Drugs are classified according to the following criteria:

a) According to Law no. 134/2000, drugs fall into two categories:

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<sup>10</sup> *Idem.*, p. 69.

<sup>11</sup> *Idem.*, p. 71.

<sup>12</sup> *Idem.*, p. 73.

<sup>13</sup> *Idem.*, p. 78.

<sup>14</sup> G. Vintilă, *op. cit.*, p. 574.

<sup>15</sup> V. Bercheșan, C. Pletea, *Tratat de metodică criminalistică*, vol. I, Carpați Publishing House, Craiova, 1994, p. 185.

<sup>16</sup> G. Vintilă, *op. cit.*, p. 575.

- high risk drugs (heroin, morphine, amphetamine, etc.) drugs listed in table no. 1 and table no. 2;
- risk drugs (cannabis, cannabis oil, diazepam, etc.) drugs listed in table no. 3<sup>17</sup>.
- b) After the mode of action we have:
  - psycholeptics (depressive): hypnotic, neuroleptic, tranquilizers;
  - psychoanaleptics (stimulants): opiates, amphetamines;
  - psychodynamic (hallucinogenic):
  - hallucinogens themselves (hashish, mescaline, etc.);
  - depersonalizing hallucinogens (L.S.D., psilocybin etc.)<sup>18</sup>.
- c) By the way they are produced, they are known:
  - vegetable products: opiates (opium, morphine), heroin, cannabis, cocaine, etc. ;
  - synthetic products: mescaline, psilocybin, L.S.D.<sup>19</sup>

#### 4.2. The main categories of drugs, frequently encountered in drug trafficking

The opium poppy<sup>20</sup> - *papaver somniferum* - is amazing in itself. The raw opium obtained by coagulating the latex at the incision of the capsule, in contact with the air, becomes brown to brown. After harvesting, the raw opium is collected in lumps or bumps and after drying it becomes crumbly, with the soft interior. It has a bitter taste and an ammonia-like smell.

Most often raw opium is packaged in cellophane, plastic foil or other moisture-retaining material. The remnants of smoked opium resemble small pieces of charcoal or the seeds of burnt grapes.

Opium can also be found in the following forms: prepared opium, medicinal opium, yeast - opium yeast. The rest of smoked opium is also known as calcined opium.

Morphine - the main alkaloid of opium - can be extracted directly, so without going through the intermediate phase of opium production. It comes in the form of a fluffy powder, its color varying from dirty white to light brown to yellow.

It is a bitter-tasting substance, soluble in alcohol and sensitive to moisture. It can also be found in the form of tablets or cubes of different sizes. For therapeutic use morphine is transformed into salts in the form of white, crystalline, odorless, water-soluble powders and is administered either as tablets or as injectable ampoules<sup>21</sup>.

Heroin - the most powerful opium alkaloid - is obtained either by synthesis - from morphine - or directly from the capsules of *papaver somniferum*. It comes in the form of an extremely fine white crystalline powder, with a bitter taste, soluble in water and alcohol.

Acetic anhydride - a product essential for the manufacture of heroin - is a colorless liquid with a pungent odor, used in the dyes, medicines and cellulose acetate industry. From here, the bitter taste and weak vinegar smell of heroin.

On the illicit drug market, there are 4 heroin assortments for sale, named or coded with no. 1, 2, 3 and 4.

Given the lower purity in the active substance, heroin no. 1 and 2 are no longer sought by traffickers or addicts.

Heroin no. 3 and 4 show the same physical properties as the basic heroin, indicating that the last assortment closely resembles talc. Lately, heroin has appeared in illicit trafficking in different colors: brown, yellow, pink and even red<sup>22</sup>.

<sup>17</sup> N. Văduva, *op. cit.*, p. 342.

<sup>18</sup> V. Bercheșan, C. Pletea, *op. cit.*, p. 288.

<sup>19</sup> G. Vintilă, *op. cit.*, p. 575.

<sup>20</sup> *Papaver somniferum* is an annual plant that grows between 0.65 - 1.30 m, producing white, pink, purple or purple flowers with four petals. Only the plant that produces white flowers contains narcotic alkaloids. The opium poppy capsule has an almost spherical shape, slightly oval from top to bottom, it is enlarged by a nut and can be recognized by the small, toothed crown at the top. See V. Bercheșan, C. Pletea, *op. cit.*, p. 288.

<sup>21</sup> G. Vintilă, *op. cit.*, p. 576.

<sup>22</sup> The different color of heroin is due to the impurities that appear in the manufacturing process.

*Cannabis indica* contains at the tip of the stem, in young branches and leaves, as well as in flowers, substances called tetrahydrocannabinols (T.H.C.), with amazing hallucinogenic effect. In illicit traffic, this drug is found in the form of leaves or floral parts - marijuana -, powder or cake - hashish -, resins, or in liquid state. Their color ranges from light brown to brown<sup>23</sup>.

Cocaine - the main chemically extracted alkaloid from coca leaves - is a white, crystalline, alcohol-soluble substance, ether and chloroform. When presented as a powder, it can be consumed by squeezing, but most often, it is given by intravenous injections.

It can be recognized because, applied to the tongue or to the tissues of the nasal mucosa, it produces the sensation of cold and, due to local anesthesia, the respective tissues are blackened.

*Mescalina* - is obtained by extraction from the cactus called "Peyote", more precisely from the two discs that grow at the top of the plant and which, after harvesting, are chopped and dried. This hallucinogen can be presented as a white, crystalline, or liquid powder.

L.S-D. - lysergic acid diethylamide - in pure state, comes in the form of a colorless, odorless and tasteless liquid, but in illicit traffic it appears as dirty white powder, tablets or capsules of different sizes and colors. The L.S.D. is given orally, it can be injected, but most often it is used by soaking the pieces of sugar in this solution<sup>24</sup>.

In the illicit manufacture of drugs, the precursors, as well as the mixtures containing such substances, provided in annex 1 of Law no. 143/2000 (table no. IV).

## 5. The place and time of the crime. Operating modes used

One of the basic tasks of criminal prosecution bodies on the line of combating drug trafficking firmly is to know the main characteristics of illicit trafficking, the methods and means used to procure drugs - both nationally and internationally - the place and time when the deed was done.

Regarding the place of the commission, it has been found that, as a rule, such offenses can be committed in:

- border crossing points and surrounding land;
- ports, airports, stations C.F.R. and post offices;
- means of transport;
- places of accommodation and entertainment;
- factories and units that produce or prepare drugs based on drugs;
- medical-pharmaceutical units: hospitals, polyclinics, pharmacies etc;
- educational units with medical-sanitary or chemical profile;
- units specialized in the export and import of drugs;
- intermediate or final raw material deposits containing narcotics;
- lands cultivated with opiate poppy or plants containing toxic substances and so on.<sup>25</sup>

Determining exactly where the crime was committed is important for several reasons.

Thus, the place of the deed offers the most and most varied possibilities of identifying the traces and the means of evidence, their interpretation and use in order to elucidate all the circumstances of the case.

At the same time, knowing the place where the crime was committed offers the possibility of discovering the places where the narcotic or toxic substances or products, object of the illicit traffic, were hidden or stored.

On the other hand, the place of deed is the place of departure, both in the identification of witnesses and other perpetrators or drug addicts<sup>26</sup>.

It should not be omitted that, in relation to the specific circumstances of the case, the criminal investigation bodies may proceed to prosecute - both the persons reported to have committed such

<sup>23</sup> V. Bercheșan, C. Pletea, *op. cit.*, p. 290.

<sup>24</sup> G. Vintilă, *op. cit.*, p. 377.

<sup>25</sup> M. Bărbulescu, E. Prodan și I. Grigorescu, *Prevenirea, descoperirea și cercetarea infracțiunilor la regimul stupefiantelor*, Publishing house of the Ministry of Interior, Bucharest, 1979, p. 40.

<sup>26</sup> G. Vintilă, *op. cit.*, p. 578.

acts and the drugs trafficked - the main attention being directed, at least in the first phase of the research, to the places in the area where the deed was committed.

By knowing the place of the crime, the criminal prosecution bodies can take measures to identify the goods or values purchased with the amounts of money from the sale of drugs. The valorisation of the data regarding the place of the crime, the frequency of committing in a certain place, as well as the placement possibilities, determines the intensification of the surveillance measures of the suitable places, of the suspicious persons, the intensification of the controls, ensures the possibility of the flagrant finding of the crime.

Finally, knowing the place where the crime was committed gives the premise of a correct legal classification of the deed.

The question of time is of interest, both for determining the period during which the perpetrator has performed his illegal activity, and for establishing the amount of the damage caused and ensuring an adequate legal classification of the committed crime.

In their criminal activity, traffickers use the most diverse methods and procedures, either for procurement or drug trafficking. In order to be able to act successfully in the direction of the prevention or the operative discovery of the facts already committed, the criminal investigation bodies must know the methods used by the criminals.

Several sources of supply are known internationally:

- the diversion of the raw opium from the legal circuit, originating from the crops of flocks, but insufficiently controlled and its sale to traffickers;
- clandestine cultivation of opium poppy, cannabis, coca tree and other plants containing drugs;
- illicit processing of natural products or of natural origin in other drugs - morphine, heroin, hashish, etc.;
- the non-delivery, to the national body of control of the raw opium, originated from crops realized on surfaces greater than the declared and authorized or from the greater harvests obtained from the surfaces of land declared and authorized for cultivation;
- theft from the warehouses authorized to keep the natural narcotics intended for lawful processing;
- theft committed during the transport of natural drugs legally exported to non-producing countries;
- theft of products and narcotic substances from warehouses, hospitals, pharmacies;
- illicit manufacture of synthetic drugs in clandestine laboratories.

At the national level, the most common sources and methods of drug production are:

- from abroad, by their clandestine introduction into the country;
- through the working personnel from the medical-pharmaceutical units;
- prescribing prescription drugs for unreal treatment;
- filling in recipes the name of some people who came occasionally for consultations, of deceased persons and. a. and raising of drugs;
- theft of drugs from the patients in treatment;
- theft of prescriptions with a dry stamp, in white, on which the doctor's parapet is;
- falsification of medical prescriptions intended exclusively for drugs from warehouses, pharmacies, hospitals or rescue units and falsification of management documents, etc.;
- from the factories that produce or process them, by: "justifying" a lower quality of the plants from which they are extracted, the existence of high percentages of humidity and impurities, applying maximum coefficients of legal deficiencies;
- by removing the substances from the places where the products containing drugs are prepared using quantities smaller than those provided for in the technological norms and replacing them with other components - glucose, starch, etc., in the case of tablets or distilled water when the drugs are in the form liquidate;
- the removal of the substances in injectable form where, due to the organization of the production process, the vials pass through several sections until they are stored and the delivery of

the vials between the sections is not done by counting them, as it would require a large volume of work;

- other sources and methods used: stealing drugs from pharmacies or hospitals by forcing cabinets with the name "poison"; misleading doctors, who have the right to release prescriptions with a dry stamp, by simulating ailments with severe pain; determining or understanding between drug addicts and some patients with neoplasm to lend or give vials of drugs, or to appeal, for the same purpose, to the families of the deceased and others<sup>27</sup>.

In relation to drug hiding places and means, traffickers are very inventive. Choosing a place to hide depends on the quantity to be trafficked, the means of transport used, the existence of the controls to be subjected to and, last but not least, the level of preparation and ingenuity of the trafficker. The judicial practice revealed that for the transport of drugs the most diverse means of transport are used: cars, buses, trucks, passenger and freight trains, ships, boats or other small boats, commercial aircraft, belonging to companies or individuals.

Other times, drugs can be hidden in clothing, household goods, food, beverages, body, cigarette packs, matches, or even in the stomach, as was the case of the Romanian citizen arrested in Pakistan trying to hide drugs, swallowed the 38 capsules of heroin, weighing a pound and a half<sup>28</sup>.

In the last period, cases of drug concealment have been reported by impregnating them in tissues, paper and other media, as well as transforming narcotics - especially cocaine, into a liquid state<sup>29</sup>. Thus, the cotton fabrics are soaked in cocaine dissolved in pure alcohol, the liquid obtained having previously been passed through a paper filter. In the case of synthetic fabrics, the dissolution of the drug - cocaine or opium - is done in chloroform<sup>30</sup>.

## **6. The perpetrators, their quality and their contribution to the commission of the crime.**

### **Form of guilt**

The participants are the persons who contribute to the commission of certain acts provided by the criminal law, as perpetrators, instigators or accomplices.

The perpetrator is the person who directly commits the act provided by the criminal law.

The instigator is the person who intentionally causes another person to commit a deed provided by the criminal law.

The accomplices are the person who intentionally facilitates or helps in any way in committing a crime provided by the criminal law.

As for guilt, it comes in the form of intent<sup>31</sup>.

In our country, toxic and narcotic products and substances can be introduced by the following categories of people:

a) foreign citizens who came to the country as tourists, specialists, traders, artists, sportsmen, etc., who bring drugs for both their own consumption and for marketing.

b) foreign students studying in Romania, especially those from countries where drugs are currently cultivated and consumed.

c) foreign sailors, especially those from the countries of the East and Africa.

d) foreign drivers - especially Turkish and Greek - from TIR trucks, which are in transit through Romania.

e) foreign citizens visiting relatives or residing in our country;

f) some Romanian citizens who repeatedly make trips abroad and have the opportunity to buy drugs<sup>32</sup>.

<sup>27</sup> V. Bercheșan, C. Pletea, *op. cit.*, p. 292 - 293.

<sup>28</sup> [www.ziua.ro/archive/2003/10/01/docs/27885.html](http://www.ziua.ro/archive/2003/10/01/docs/27885.html), consulted on 1.10.2019.

<sup>29</sup> C. Tuhașu, *Moduri de operare inedite utilizate de traficanții de droguri*, „Buletinul informativ al poliției antidrog”, no. 1/1991, Ministry of Interior, Bucharest, 1991, p. 16 - 19.

<sup>30</sup> The recovery of the drug is done by soaking the fabric in an acetone solution - for 15 minutes - filtering the liquid and drying it in a container until the narcotic crystals reappear.

<sup>31</sup> G. Vintilă, *op. cit.*, p. 581.

<sup>32</sup> V. Bercheșan, C. Pletea, *op. cit.*, p. 294.



Among the people of Romanian origin who can commit such acts, we mention:

- a) the patients who were given the wrong drugs became drug addicts and, changing their treatment, they feel the need to continue to use drugs, procuring them illicit;
- b) persons detained in medical units for detoxification and who, after discharge, without will, continue to consume drugs, purchased illegally;
- c) doctors, pharmacists and medical personnel with average training, who, with greater possibilities of obtaining drugs, knowing that they have rapid soothing effects, initially consume small quantities. Later, they become drug addicts and seek to get it right from the workplace;
- d) the field personnel from the "Rescue" stations, which carry out treatment at the patient's home;
- e) the medical personnel from the veterinary units, who treat the animals with drugs and have the opportunity to evade significant quantities of such products, being able to justify them very easily;
- f) workers in drug factories, warehouses and outlets - having opportunities to buy drugs without too high risks;
- g) persons who have relatives or acquaintances abroad and receive packages of medicines or other goods, including drugs;
- h) customs workers or border control points - who know very well the places of drug concealment and who, corrupt, can promote illicit trafficking or place drugs - either directly to consumers or intermediaries;
- i) the business elements of all kinds - waiters, hotel receptionists, guides, etc., who see in the drug trafficking an easy way to obtain illicit income and have, by virtue of their professional attributions, the possibility of coming in contact with various traffickers;
- j) persons who produce, own, cultivate for processing, carry out operations on circulation or experiment with products with toxic substances and other<sup>33</sup>.

From the foregoing, it follows that the perpetrators of the crime of drug trafficking are very diverse, depending on the concrete ways of committing the crime. In some ways, the perpetrator can be any person, and in some cases the law (for example, prescribing a narcotic substance), the perpetrator can only be a qualified person. As such, besides the data related to the person of the perpetrator - name, surname, age, place of work, criminal record and so on. - the criminal prosecution bodies must clarify the occupation and nationality of the person concerned. The knowledge of the citizenship of the perpetrator of the crime is of particular importance.

Researching foreign citizens generally raises many problems. First of all, for the investigation, the beginning of the criminal prosecution, their detention and arrest, the legislation in force must be strictly observed. To the above is added the aspect, not at all negligible, that the perpetrators must be listened to through the interpreters, most of the documents being written in different languages, and the verification of some statements requires obtaining data from the police in other states.

The perpetrator, instigators and accomplices may participate in the commission of the drug trafficking offense, during the investigation the judicial body is obliged to establish precisely the contribution of each to the consumption of the criminal act - both to ensure an adequate legal classification and to create the conditions for achieving a justice. individualization of the punishment.

It should be noted, in the context of the above, that, according to the Romanian legislation<sup>34</sup>, drug addicts are not considered criminals, their act of consuming narcotic products or substances without medical prescription thus wearing a contravention aspect.

However, there is also an opinion contrary<sup>35</sup> to the one shown above, with the following arguments:

- a) It is true that the incriminating provisions stipulated in the criminal law<sup>36</sup> do not stipulate, among the modalities of the crime, the "use" of drugs, expressly. However, the same text prohibits "holding" and "operations" regarding the circulation of risk drugs as well as "buying them".

<sup>33</sup> G. Vintilă, *op. cit.*, p. 582.

<sup>34</sup> Law no. 143/2000.

<sup>35</sup> V. Bercheșan, C. Pletea, *op. cit.*, p. 296-297.

<sup>36</sup> Law no. 143/2000.

Therefore, in addition to the action of self-administering the drug, without a prescription, the drug user has previously carried out at least one of the prohibited activities: buying, holding or transporting such substances or products;

b) in other ideas, as long as the drug addiction has been proven, we consider that the activity of illicit trafficking has been proven, committed, obviously, at an earlier date, the criminal investigation bodies having the duty to elucidate all aspects related to the sources of supply, the mode of obtaining the drugs, the frequency in time, the concrete actions carried out by the addict from the moment of possession of the drug and until the moment of self-administration;

c) According to the instructions of the Ministry of Health, the units in which the addicts are admitted, who present themselves on their own initiative, are obliged to notify the criminal prosecution bodies, in order to track or detect the sources of procurement<sup>37</sup>;

d) The commission of this crime affects the social relations regarding the social value of the public health and the legislator has understood to impose a certain behavior in this field to all citizens. As the crime is consumed at the time of execution of one of the prohibited actions, the causal link results "ex re" from the committed action and does not require special evidence.

By entering the possession of the product or the toxic substance, the immediate follow-up also appeared, namely the creation of the state of danger of damaging the health of one or more persons, being irrelevant if the addict will use for himself or another the drug obtained in illicit traffic conditions. That subsequently he used only for himself the drug obtained illegally is a problem that belongs exclusively to his person and as such, his consideration of self-administering the drug without a prescription as a contravention is fully justified.

e) If this was desired, the legislator would have expressly provided for the possibility and conditions for the exemption of criminal liability of drug addicts or would have qualified their actions for procurement, detention, transport, etc. of drugs, all contraventions to this regime.

In order to be criminal, the act of drug trafficking must be committed intentionally. In other words, the perpetrator must have realized that he or she is lawlessly carrying out drug trafficking and must have foreseen that through his activity he harms the social relations regarding public health.

## 7. Existence of the crime contest

According to art. 38 of the new Criminal Code, the crime contest exists:

a) when two or more offenses have been committed by the same person, before being definitively convicted of any of them, there is competition even if one of the offenses was committed for the commission or concealment of another offense.

b) when an action or crime committed by the same person, due to the circumstances in which they took place and the consequences that it has produced, brings together the elements of several crimes<sup>38</sup>.

By the way it is conceived and realized, most of the times, the drug trafficking crime is committed in competition with other antisocial facts.

Thus, in the case of the introduction or removal of toxic or narcotic products or substances from the country, without authorization, the offender should be held, in addition to the drug trafficking offense, and the smuggling offense, which are in ideal competition.

As, as a rule, traffickers - especially foreigners -, in order to camouflage criminal activity, frequently use false identities, in such a situation the crime of false - material or intellectual -, use of false or false is to be kept, as appropriate regarding identity.

When the deed is committed by a doctor who prescribes - without needing - drugs or drugs, in his charge the crime of intellectual forgery will be retained, and when the conditions of prescriptions intended exclusively for drugs, the crime of drug trafficking are falsified will be detained in competition with the offense of false material in the official documents.

<sup>37</sup> See Instructions no. 103/1970, art. 88.

<sup>38</sup> C. Mitrache, *Drept penal român*, Șansa Publishing House, Bucharest, 2000, p. 248.

Similarly, the problem arises when the drugs are stolen from the ward rooms of the hospital units, an occasion with which the interested parties justify the use of drugs in some urgent cases, by entering into the unit and the record of consumption fictitious names, or real names of some people who went to the guard room but were treated with other drugs.

Other times, drug trafficking is committed in competition with theft - thefts from warehouses, pharmacies, sections of the factories, from the means of transport.

In the event that such products or substances are stolen from the management - by those who have them in custody or administration - the criminal offense should be retained for the perpetrator.

Not infrequently, drug trafficking is committed in competition with offenses under the regime of weapons and ammunition, precious metals, natural and precious semiprecious stones or with offenses of bribery.

There are, therefore, a multitude of other criminal acts that can be committed in competition with drug trafficking.

The criminal investigation bodies have the obligation to elucidate all aspects of the case, establishing the problem of clarity and specific activities for the administration of evidence in relation to each type of crime found, thus ensuring the settlement of the case under all its components<sup>39</sup>.

### **8. The conditions and circumstances that favored the commission of the crimes**

During the investigation of such offenses, the criminal investigation bodies must keep in mind the conditions that favored the committing of the facts, as well as the concrete circumstances that facilitated them<sup>40</sup>.

These include:

- improper organization of the production process in the profile units, which facilitates drug theft;
- the defective way of storing the raw materials and the finished products or not insuring them according to the legal provisions;
- failure to comply with the legal provisions regarding the conditions of employment of the managers of such products or substances;
- the non-verification by those in law of the accuracy of the surfaces cultivated with plants containing narcotic or toxic substances, in accordance with the authorization issued;
- not keeping up to date the records of the raw materials entered in the manufacturing or conditioning sections, of the resulting intermediate products and of the quantities of products recovered in the technological process<sup>41</sup>;
- systematic verification of the correlation between the scriptural and the factual stock;
- failure to monitor the return of non-consumed drugs - remaining from the deceased patients, within 10 days of death, by the doctors who issued prescriptions for lifting the products;
- non-observance of the legal regime established for dry stamp recipes;
- the non-keeping by pharmacies of all categories of daily records of the movement of narcotic products and substances in the register specially designated for this purpose, numbered and sealed;
- failure to draw up orders and invoices for products or narcotic substances on separate forms, as well as not keeping them separate from the other acts under conditions that guarantee their complete safety;
- the release of drugs and narcotic substances from pharmaceutical units without medical prescription;
- non-dismissal of the bodies of criminal investigation of the cases of drug addiction, by the sanitary organs that established these cases and other.

<sup>39</sup> G. Vintilă, *op. cit.*, p. 584 - 585.

<sup>40</sup> V. Bercheșan, C. Pletea, *op. cit.*, p. 298.

<sup>41</sup> The instructions no. 103/1970 of the Ministry of Health, art. 34, letter d).

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