

## Some Aspects of the Criminalization of Drug Trafficking

**Tiberiu Viorel POPESCU**

*Romanian Academy – Ph. D. in Legal Sciences, “Academician David Davidescu” Center for Studies and Research in Agro-Forestry Biodiversity, Bucharest, Romania  
tpopescu2005@yahoo.com*

**ABSTRACT:** Drug trafficking expresses, in a juridical - criminal context, the situation in which an individual or a group of individuals commit acts of non - observance of the legal regime of movement of substances with psychoactive effects under legal control. Trafficking is essentially, but not limited to, the action of some people to produce, transport and/or put into circulation an illicit commodity. The criminological analysis of the way in which drug trafficking is regulated at the international, European and national level reflects the lack of a clear definition of this type of crime, a situation also encountered in other types of crimes such as human trafficking, organized crime or large criminality. There are several ways to address the trends that encouraged incrimination at one point, and legalization at another point of certain drugs, and the analysis of legal instruments offers interesting milestones.

**KEYWORDS:** Criminology, Drug Trafficking, Law, Organized Crime

### Introduction

Under the sign timeliness and practical utility we propose an analysis of drug trafficking in terms of the following aspects (See also criminological analysis in Popescu 2018, 257-263): the evolution from prohibition to legalization of drugs (1), the repressive reaction (2), the criminalization of light drugs (3). *Licit drug* and *illicit drug* terms have been used since the criminalization by law of psychotropic drugs. Illicit drugs are psychotropic substances whose consumption or sale is not incriminated by law. Illicit drugs are drugs whose consumption or sale outside the legal framework entails criminal liability of individuals, constituting offenses. Depending on the laws of different states, the illicit nature of drugs is varied (Buzatu 2015, 9).

### From prohibition to legalization

The analysis of the drug situation shows that the phenomenon is far from being possible to be managed. Priority should be given to understanding and deepening the trends that encouraged incrimination at one point and to legalization at another point. In this regard, within the limit of the available data, we analyze the changes in the circulation system of drugs, namely of cannabis, emblematic in this respect, it and the vision of the legislator and the society that formed the basis of this legislative fluctuations.

Drugs such as cannabis or opium, for example, have not always been forbidden. Repression represented a necessary consequence of marketing and consumption excess, not of cannabis, but of opium. In 1729, Chinese emperor Yung Cheng issued an edict through which opium smoking and his domestic sale was forbidden, except for use as a medicine (Buzatu 2012, 31). In the 18th century, England controlled Indian opium production, which was mainly exported to China. If at the end of the 18<sup>th</sup> century the export to China amounted to 4,000 tons, by the middle of the 19<sup>th</sup> century the export increased to 40,000 tons. In this period, the opium was used as a recreational, analgesic drug or for fever relief. It is therefore about a commodity appreciated as a desirable,

very lucrative commodity, whose beneficiaries were traders and England (Brochu and Beauregard 2017, 131-150). The export was so important that England declared war on China when it closed the gates of import, triggering what had historically been called the “opium wars”.

The “opium war” initiated by England, however, was not the only element that triggered the change of the drug perspective to prohibition. Also in the 19<sup>th</sup> century there have been numerous technical and scientific discoveries such as: morphine and heroin extraction, hypodermic syringes, or extraction of the alkaline substance from the coca leaf. All these innovations have helped to increase the number of users, increase consumption, increase the visibility of the number of addicts, and thus, a change in attitudes towards drugs and consumers has been quickly reached.

The 1909 Shanghai Convention was only the first international document on the prohibition of drugs. In 1925 when the Geneva Convention took place, the fate of opium was followed by cannabis and other drugs that were placed under legal control. Opium and cannabis is among the many drugs that the 1961 Convention, as amended in 1972 and the 1988 Convention, put under legal control. In this way, drug repression has gradually been globalized in order to limit the effects of their use and trade.

The repression applied for a century has had limited effects on consumption and trade. Drugs became over time, despite these measures, more accessible, more concentrated as ever, and cheaper, as evidenced by the statistical data contained in the international and national reports of the specialized institutions. As the repressive reaction did not have the expected effects, a number of countries are turning to alternative policies.

On the American continent, steps have already been taken in this direction. According to the INCB Report in 2015, a law on the regulation of the import, production, storage, sale and distribution of cannabis for therapeutic recreational purposes appeared in Uruguay in 2013. In the USA, as we recalled, four states have legally licensed cannabis for recreational purposes as early as 2014 (Colorado, Washington, Alaska and Oregon). In November 2016 California, Nevada and Massachusetts voted for legalization.

In Canada, the autumn 2015 talks on legalizing cannabis for recreational purpose were materialized by submitting in the spring of 2016 a draft law aiming to legalize cannabis as of the summer of 2017 (Brochu and Beauregard 2017, 131-150). This new orientation has passed the ocean, with several European countries adopting a series of more tolerant policies on drug consumption and trade. In England, for example, the police can send the drug-addicted offender to a treatment unit instead of arresting him. Other countries, such as France, Norway or Malta, provide for the possibility of suspending legal proceedings if the consumer agrees to participate in public awareness campaigns on the dangers of drugs.

Some countries have adopted innovative policies on decriminalization. In the Netherlands it is possible to purchase a quantity of 5 g of cannabis for recreational consumption, which can be bought from the many coffee shops. Portugal has opted to permit possession of a quantity equivalent to normal consumption for ten days. In this country, drug offenses come under the scrutiny of committees consisting of three-member, a lawyer and two members from the medical and social field. Should the person shows signs of drug addiction, the doctor and the sociologist (in the case of primary offenders) direct the person to the treatment services. In the event of a recidivism, choice will be made between a fine and community work.

Policies on illicit drug use and trade adopted in the 20<sup>th</sup> century and the mentioned repressive measures seem to get nuanced at present. In the case of cannabis,

after a century of repression, there is a change of vision that leaves room for a more tolerant attitude.

### **Repressive reaction**

Drug consumption and trafficking have moved from the status of marginal phenomenon to the recognized status of social problem. Awareness of the implications of this phenomenon was of decisive importance in the cohesion of the forces at the international level that have the power to change people's perception about drugs and the dangers associated with them.

The change of the mentalities and the undesirability of drugs has been generated by the aforementioned aspects that have prompted the worldwide ban by adopting international legal instruments in the field since the twentieth century. These are just some of the most important moments of the international developments on the establishment of a common language, especially in the legal field, regarding the phenomenon of trafficking and drug use, the decisions thus adopted being transposed in the legislative and administrative plan by the majority countries, in accordance with local and regional specifics and interests.

Recognizing that drug supply reduction efforts have been limited in efficiency, there is a clear need to step up strategies that can effectively reduce drug-related risks. The analysis of the link between illicit drug use and drug trafficking reflects the implications of the two sides in social terms. Nowadays, illicit drug crime is associated too easily with criminality. Criminality in the matter of drugs can have as its source the illegal nature of drugs (systemic crime), the need of drugs (economic-compulsive crime) or the addiction caused by drugs (psycho-pharmacological crime) (Labrousse 2004).

The criminological studies that approached this issue started from the relationship that can be established between drug use and drug related crime (Brochu 1995). Starting from criminogenic risk factors that may favor drug use and ultimately drug trafficking and related crime, the quoted study highlighted that the relationship of drugs to crime cannot be reduced to a straightforward linear relationship, since most drug users only commit the crime of purchasing the drug on the illicit market. The analysis puts into question an integrative model of intervention that proposes a conceptual break with the positivist paradigm that previously proposed a set of reductionist theories. In this context, there are proposed political-judicial interventions on the relativisation and nuancing of drug criminalization, on the one hand, and psycho-socio-sanitary, curative and preventive interventions on the other hand.

There is a link between the abuse of psychoactive substances and crime, the exact nature of which has not been elucidated, and the research of the relationship between them goes through a paradigmatic crisis (Brochu 1997, 303-314).

By reviewing the occasional consumer, the consumer who uses drugs in current manner and the problematic drug consumer (drug addict) the quoted study concludes that the relationship of the drug with crime is not easy to understand as it would seem at first glance, *this being a triangular relationship between a person, a product and a behavior.*

The issue cannot be exhausted by reducing the analysis of the relationship between illicit drugs and crime only to the examination of general public statistics. Although the association between alcohol and illicit drug use and crime is frequently made, drug use needs to be seen differently: it can take the form of occasional intoxication - which can be circumscribed to the psychopharmacological model, or the form of drug addiction or substance abuse - which is the economic compulsive model. The first model combines intoxication with the diminishing of the cognitive and control

functions that can result in the release of aggressive and even violent impulses, a model explained by the theory of disinhibition. The second model refers to an economic need encountered by a drug addict who engages in a criminal activity to obtain the money needed to acquire drugs from traffickers (Brochu 1997, 303-314).

We notice a connection between drug use and drug trafficking: in the first case, to the extent that drugs that cause intoxication come from the illicit market and in the second case, where the users reach, by any means, to purchase drugs for their own consumption from the illicit market, or to resale drugs to finance their own consumption. Although the legal instruments have regulated the licit system of producing, distributing selling and using drugs, illicit trade has continued, as evidenced by the upward trend of the phenomenon that can currently be described as a world system parallel and opposed to licit trade (Boivin 2010, 93-114).

The explosion of drug trafficking has had consequences both at macro-social, micro-social level and individual level. Negative effects have manifested itself on those who, for various reasons, have made the decision to engage in drug trafficking and on those who, taking advantage of the availability of drugs on the illicit market and falling prey to the persuasion of vendors, have become consumers and ultimately drug addicts, and implicitly victims of trafficking.

The problem of drug trafficking control is complex and involves many obstacles. Currently, one of the viable measures refers to prevention of the destructive consumption of risk and high risk drugs, as well as to preventing illegal trade, which are the causes that generate serious social, health and economic problems.

Destructive drug use is drug abuse that ignores the risks involved. The researchers' error lies in the belief that the products are responsible for the motivation of consumption and that it would be necessary to dispose of the product in order to solve the problem. This reasoning reverses the motivation of drug use by presenting the harmful effects, avoiding the discussion of living conditions and social norms that animate some people towards self-destruction through drug use for example. Ultimately, they prefer to consider consumers as delinquents (Beauchesne 2007, 13-14). Sometimes the harmfulness of the product is exaggerated, and the effects are not correlated with the frequency of consumption, ingested quantity or with the environment. It is true that a cannabis joint is three times worse than a cigarette, but the joint is not usually smoked as intensely or as often as a cigarette. Thus, even regular tobacco consumption can become problematic.

### **Disincrimination of soft drugs**

The explanation of criminal behavior, at least with regard to criminal associations offering illegal goods and services such as drugs, seems to be similar to the behavior encountered in the case of any legal businessman. If legal possibilities to provide these goods and services would exist, the political corruption on which this type of crime is based would become useless.

When they pronounce themselves for the disincrimination of soft drugs, the followers of this trend do not challenge the hard drugs. Soft drugs are products foreign to the economy that have been banned, not products more dangerous than the legal drugs. The question is why legal drugs, sometimes more dangerous, are not prohibited. The foregoing results in a classification of drugs based on concentration and harmfulness regardless of type of consumption. Harmfulness comes from bad use contrary to health and from a lifestyle related to excessive consumption. In this context, the classification of drugs after harmfulness becomes subjective and useless (Beauchesne 1989, 67-83).

Having in mind that the drug use is treated as an abnormal behavioral, the intervention mechanisms to restore normality can be medical, psychological, social or legal, ultimately criminal, according to the principle of minimal intervention (Streteanu 2008, 48-53). According to this latter principle, criminal law can be used when other means of regulating social conflicts are insufficient or ineffective. So far, no objective reasons were identified for prohibiting cannabis, when alcohol is legal and sometimes cause more serious consequences. On the contrary, maintaining the cannabis illegal will not allow consumers to know the quality, the correct price, the appropriate dose or the consequences of a possible abuse.

Bans on cannabis use, though still valid, have become increasingly discredited in the media. Arguments that cannabis is less harmful than alcohol and a presumed minimum dependence, represent a powerful advertising which increased the consumption and the pressures for its legalization.

As shown in the statistical data, the repressive reaction on drugs did not decrease the number of consumers; more than that, it has led some consumers to commit crimes to get the money they need to pay a high price on the black market. Corruption and violence are effects that accompany illicit drug trafficking that generates substantial costs, all of which are borne by society. In order to prevent these shortcomings we are analyzing here the general aspects of the decriminalization of cannabis cultivation for personal and commercial purposes.

*Cultivation for personal purposes.* The criminalization of cannabis cultivation for personal or commercial purposes are two topics to be analyzed, considering the steps taken by some states in this respect. From the beginning it should be noted that the desincrimination of cannabis conflicts with the three international legal instruments. This is why this issue was discussed at the UN Assembly on 20 April 2016 in New York. The attitude of the participants was not like the one they had in 1988, when the assembly adopted an action plan based mainly on drug criminalization. However, regarding the vision of desincrimination of cannabis, the assembly recommended the advocates to deeply reflect on it.

Authorizing cannabis crops for personal purposes is not a measure taken in all states where cannabis has been legalized. In Colorado, for example, cannabis is associated with several shortcomings such as smuggling, pesticide use, or other hazards related to inappropriate production conditions. In Canada, the sale of cannabis is only allowed to adults, the control in this country being made with difficulty with respect to the compliance with rules regarding own production, as this production does not require a special permit.

*Cultivation for commercial purposes.* Legal cultivation of cannabis for commercial purposes has the effect of creating a legal market. The legal market is in competition with the illegal market. The adhesion of the customers to the legal market will be based in particular on four aspects that have to be analyzed: the price, the THC - tetrahydrocannabinol concentration, the variety of products available and, last but not least, the availability (Brochu and Beauregard 2007 131-150).

*a) The price.* Based on the analysis of the statistical data and according to the quoted study (Beauchesne 1989, 67-83), the price depends on the supply-to-demand ratio and the level of taxation. The quoted study mentions that, initially, the drug production, i.e. the offer on the legal market, did not cover the demand, which led to the price increase. A few months later, with the increase in supply, the price dropped by half, it being close to the black market price. Taxation is a major issue for all governments that predict drug decriminalization. Taxes are the way of reimbursing the expenses inherent to the regulations, but it is also used to feed the state budget. It should be noted that high taxes can generate traffic as in the case of alcohol and

tobacco. The “legalized” soft drugs would have to be taxed by the State according to its effects, mode of consumption and concentration. This mechanism would have to provide for a system of taxation proportionate to health risk.

At the same time, the state would have to not encourage consumption, hoping to increase the proceeds from taxes on the sold products. Additionally, the adoption of drug marketing laws should prioritize consumer information through precise labeling. The counterpart must be a minimum selling price in order not to encourage the irresponsible consumption. Setting a price based on the THC concentration also falls in the same logic.

b) *THC concentration*. The THC level of products on the legal market being known and engraved on the packaging attracts consumers to this market. The level varies depending on the plant type, soil, production technique etc. The legal market offers a quality product obtained in optimal conditions and without pesticides or fertilizers harmful to health.

c) *Variety of products*. Variety also influences market and consumption. Traffickers will invest in covering the poorly covered sectors of the legal market. It can be considered that the ban on the sale of products will favor traffic. These various cannabis-containing products, such as biscuits, chocolate, fruits with chocolate, etc., in the legal market have already gained popularity in the States of Colorado or Washington. It is hard to believe that a state that has decriminalized cannabis can continue to ban this type of trade without favoring illicit trade.

d) *Availability*. The ease with which the product is accessed is an element to be considered. It is important to ban the opening of cannabis shops near schools, kindergartens, social care centers or detention facilities. Product availability on the market should therefore be considered in the context in which we refer to vulnerable groups that are prone to abuse (young people in schools, recreation areas or imprisoned people).

Also, the location of this type of shops in residential ensembles should be avoided. At the same time, it should be noted that an increased density of these trading venues may encourage excessive consumption. Consumers must be forced to come personally to buy such products, which is why the development of courier services for the delivery of this type of product cannot be accepted. Under no circumstances should the sale of such products be accepted for minors.

Appropriate drug education is a poorly studied issue, as knowledge in this area is deficient. In principle, drug studies come from the medical area and, although they concern institutionalized people in most cases, they tend to generalize the effects and conclusions. Preventive education and information on consumption could provide the best control of it.

Correlatively, there could result a critical examination of the right to social intervention that has contributed to the ban on cannabis. Last but not least, legalization would require the commercial dynamics of drugs redefining (Beauchesne 1989, 67-83).

## Conclusions

Awareness of the danger of drug abuse and the emergence of international legal instruments as a social reaction against the dangers posed by the development and consequences of illicit drug trafficking all allow us to draw some conclusions.

Drugs have always been present in society, they being initially of plant origin and they have been viewed as any other product and perceived as desirable, with a functional and utilitarian role, with no harmful effects. Medical utility is undeniable especially in the case of opium derivatives, but consumption has evolved into abuse and drug

dependence. These two effects favored the use of psychoactive substances beyond the legal framework and represented at the same time a lucrative opportunity for traffickers. In our opinion, conferring a functional character on the soft drugs such as alcohol and cannabis is an error, as their contribution to socialization is illusory. Functionality can only exist in the medical field, drugs such as morphine, contributing to the development of surgical medical acts and, in some cases, to the reintegration of patients into the community.

Drugs have become a problem when the consumption burst. In order to meet the market demand, chemical synthesis and production have taken place, which has generated stronger products, with potential for addiction and more harmful effects to consumers, which has imposed their classification according to the degree of risk. The natural consequence of the emergence of the danger of strong, risk and high-risk drugs was the authorities' response to community protection by putting these products under legal control.

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