

**THEORETICAL AND PRACTICAL ASPECTS REGARDING  
CONTRAVENTIONS STATED BY LAW NO 143/2000 REGARDING THE  
PREVENTION AND THE REBUTAL OF THE ILLICITE DRUG  
TRAFFICKING WITH THE ADJUSTMENTS BROUGHT BY LAW  
522/2004**

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**Abstract:**

*In order to respond to the social needs the regulators in the drug department have been widely debated in the doctrinaire plan have been emitted several theories regarding their juridical treatment, especially the prohibition theory, the theory of reducing risks , the disincrimination theory, and the controlled legislation theory.*

*In Romania the rebuttal of traffic and illicit use of drugs has been regulated by law 143/2000, law that has been completed and modified by law 169/2002, law 39/2003 and law 522/2004. considering the fact that this law has been interpreted in several articles and monographies we will eliminate to the modifications that appeared because of the modification of the law522/2004.*

*The first novelty brought by this law consists of the title's modification, changing the search aim from a repressive to a preventive one. This way, the law's title regards the prevention and rebuttal of traffic and illicit consuming of drugs, opposing the old titulature which referred only to the phenomenon's rebuttal.*

*In practice, the use of drugs has three forms: experimental use of drugs, recreational use of drugs and use of drug problem, the last two being of our interest. The recreational use represents the illicit use of drugs as attribute of modern life and of the relaxation and it is characterized by the absence of addiction.*

**Key words:** contraventions, law, prevention, drugs.

In order to respond to the social needs the regulators in the drug department have been widely debated in the doctrinaire plan have been emitted several theories regarding their juridical treatment, especially the prohibition theory, the theory of reducing risks , the disincrimination theory, and the controlled legislation theory.

**A.** Prohibition that along history has been applied to tobacco, alcohol, and lately to drugs is based on the fact that the retrenchment of the offer through a general interdicting abuse, production and commerce under the threat of penal punishment. This theory is based on several fundaments.

Firstly, the moral fundament is born from the social- religious practices, abstinence

being a virtuous act of resisting pleasures. Another fundament is the epidemical one among the collectivity. The supporters of this theory say that toxic- mania is a contagious disease which can spread from the drug consumers (the sick ones) to other members of the society. Other theses which support the idea of prohibition is the one of climbing, according to which any light drugs consumer will finally end up consuming stronger drugs.

**B.** The theory of reducing risks is based on a pragmatically Anglo-Saxon doctrine which can be defined as the sum of all individual and collective actions, medical and social which regard to minimize the negative effects brought by the illicit drugs consumption. This theory has several fundaments too. Firstly the medical one: from abstinence to substitution, which is based on the fact that not all consumers can refrain themselves from it as the law requires and is preferable to reduce the risks than can affect their health-HIV, overdoses, any sort of abuse, hepatitis. There have been initiated actions of giving free syringes or substituting drugs with methadone as a substitute and as a first step to rehab.

The medical fundament is followed by the social one which regards the social introduction of the drug addict.

**C.** Disincrimination has regarded both the sum of any nature actions which regard drugs, which is unacceptable and also only the part which refers to the drug consumption being under the power of the penal law.

**D.** The final theory, the one of controlled legalization regards a system which wants to replace the actual prohibition, which refers to drugs through a settlement of production, commerce and consumption, in order to limit abuses which harm the society. This theory doesn't modify the product's characteristics, it still being dangerous for the public health and for the society also, but consumption moderation and realizing the consequences can decrease the negative effect, also we can add the economical factor through controlling a special market and bringing it to the legal zone. The most known model which is trying to practice this theory is the Dutch one, which permits the consumption of cannabis in coffee-shops specially built. The effects of the incriminating laws don't apply to all types but only to illicit drugs. A short classification of drugs divides them in three categories: recreational drugs (tobacco, alcohol), utility drugs (pharmaceutical products, chemical products) and illicit drugs (heroin, cocaine) each category having its own classification.

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recreational use of drugs and use of drug problem, the last two being of our interest. The recreational use represents the illicit use of drugs as attribute of modern life and of the relaxation and it is characterized by the absence of addiction. The consumers of problem drugs are the persons who illicitly consume drugs and who, to their actions of social or economical nature attract the attention of the decision factors of a state and to whom the preventive measures are destined.

These distinctions between the consumer of drugs and the addicted person determined that the past regulators didn't contain a coherent sanctioning treatment. Through the modification elaborated by the man of law, the situation has been improved by the consumer's type classification. This way, by the letter H of the article describes the consumer as being the person who administers or accepts to have administered his drugs, in an illicit way, through swallowing, smoking, injecting, inhaling or other ways, through which the drug can reach the organism was introduced letter H which shows that by an addicted consumer we define the consumer who, as cause as the repeatedly administration of drugs under the necessity or need presents physical and psychical consequences according to medical and social criteria.

Furthermore, the man of law added several paragraphs to the article and has modified the content of others in order to respect the demand of the law 143/2000 regarding the submission of consumers to some measures of medical nature. In the letter H reference is made to the existence of an integrated program of assistance to consumers and addicted consumers consisting of all health services and psychological and social assistance services in an integrated way and coordinated to drug consumers, to medical units, psychological and social public, private and mix. At letter H is mentioned an integrated assistance circuit of consumers and drug addicted consumers and that consists of all integrated assistance programs assured to consumers and addicted consumers in order to improve the state of health in the sense of physical, psychological and social wellbeing of the person.

The therapeutically programs which represents all services and medical measures and psychological integrated individualized by evaluation, organizing, observing, and continuous adoption to it, addicted consumers in order to interrupt the use, eliminate psychic or physical addiction or reducing risks associated to use referred at letter I has replaced the rehabilitation cure and medical treatment existing in the old formula. Through Law 522/2004 have also been introduced letter L, M, N which adds to the regulators mentioned the psychological and social program, the description of therapeutically circuit and also the evaluation modality to which the measures motioned to be applied.

The undercover investigator's institution was modified, the present text showing that undercover investigators are policemen chosen to make, with the authorization of the prosecutor special activities in order of gathering data considering the existence of the contravention and the identification of the author and the following act under another identity but the real one, given for a determined period of time, their activity not being limited anymore to the cause they were working at. Considering the fact that, under the drug possession aspect of

high risk for personal use , the old regulators didn't distinguish the punishment, the man of law understood the different social danger levels, by modifying in this way the content of the first article from law 143/2000 which , at this time, the punishment are separated between drug possession for personal use(jail from 6months-2 years or fine) high risk drug possession for personal use(jail from 2-5years).Novelty items brought by law no 522/2004 regarding the modification of law no 143/2000 find themselves in the new formulas in article 18-19 where they talk about special confiscation measures and about the destruction of the confiscated drugs. According to alin.3 art 17 the sums resulted from the recovering of the confiscated items and confiscated money according to align 1-2 represent incomes of the state budget and are put in separate accounts in the state budget. Regarding the confiscated drug destruction, align 3-4 art 18, say that the drug destruction takes place periodically through incineration and other right methods by a authorized commercial society in front of a committee formed from a representative of the prosecutor near the High Court of Cassation and Justice of the Ministry of Environment and Water Management, the National Antidrug Agency, a specialist from the central specialized formation in preventing and rebuttal of illicit consumption and traffic of drugs from the General Inspectorate of the Romanian Police and the manager of Body Crimes Room of the same unit. Costs of destruction of drugs are paid by the owner or the person from whom they were raised.

The first to harmonize domestic legislation to the EU has made available a penal mechanism and a penal process by which consumers addicted to drugs which committed criminal offences may be applied along with the penalty deprivation of freedom, and medical measures under the law conditions, but also the possibility of applying only the medical measures without applying deprivation of freedom penalties.

Legislator's intervention in this regard appears in art 19, 19(1), 19(2).

In this way according to art 19, if a consumer is sent to jail for committing another crime besides the one settled in art 4 the court may include this in a therapeutically system developed in the jail system.

Art 19(1) shows that in case of committing the crimes settled in art 4, the prosecutor says that in 24 hours from the beginning of the penal tracking the evaluation of the consumer by the preventing evaluation and antidrug conciliation center in order to include it in the integrated circuit assistance. After receiving the evaluation report made by the prevention, evaluation and antidrug conciliation center after a medical expertise in five days time, the prosecutor stays with the suspect's agreement his including in the assistance program for the drug consumers.

If the suspect was preventively arrested, this sentence can be revoked or replaced with another measure. In all cases the penal tracking is continued due to the Penal Procedure Code.

Art 19(2) states that if until a moment of the pronounciation of the verdict, the defendant respects the protocol of the program for assisting drug consumers the

instance can apply no punishment or postpone the punishment. In case the applying of the punishment is postponed the court settles in its decision the date when it will decide upon the sentence, but the interval of time cannot be more than two years added to the program for assisting drug consumers. The time period between the decision's pronouncement and the date settled by the court according to align 2 is considered period of probation for the defendant. If the defendant refuses being included in such a program, he is under the power of the Penal Code or Penal Procedure Code. If in the period of probation, the defendant respected the program, the court cannot apply any punishment. If the defendant doesn't respect the assistance program, the court can postpone one more time applying the punishment for the same date and reinsuring it in the integrated circuit for assisting drug consumers or applying the punishment sated by the law.

The new articles introduced (19-1 and 19-2) settle the consumer's situation which commits the contravention of owning high risk or medium risk drugs for personal use and is a special case of applying art 108 and 109 from the new Penal Code in the domain of renouncing at the punishment and postponing the appliance of the punishment, therefore, as we can see, it is not necessary for all the conditions shown in the Code to be fulfilled.

The last modification brought to law 143/2000 through law 552/2004 refers to art 26-29 which mention the institutions and their role in prevention and rebuttal of traffic and consumption of illicit drugs and also the measures against illicit drug consume. Art 26 states that central specialized institutions in preventing and rebuttal of traffic and consumption of illicit drugs from the General Romanian Police Inspectorate, General Romanian Border Police Inspectorate, the Public Ministry and national Customs Authority send to the National Antidrug Authority data regarding prevention and rebuttal of traffic and consumption of illicit drugs, chemical essential substances, toxic chemical inhalers necessary to elaborate studies, synthesis and analysis form fundamenting their strategies of politics fighting drugs.

For the same purpose the Health Ministry, the Work Ministry, Social Solidarity and Family and the Ministry of Education, and also public and private certified institutions to held programs and activities for preventing the illicit drugs consumption send the data asked by the National Antidrug Agency under the law's conditions.

The mentioned institutions can receive, on request, centralized data by the National Antidrug Agency regarding drugs, chemical essential substances, toxic chemical inhalators, including yearly reports, synthesis and analysis.

As for the measures against the illicit drug consumption, art 27 states: drug consumption, found under national control, without medical prescription is forbidden on the Romania territory.

The person that consumes illicit drugs found under national control can be included with his agreement in a program for assisting drug consumers. The agreement is stated by signing a document according to the regulation of applying the present law.

Establishing the psychological program and socially individualized is made by the center of prevention, evaluation, and antidrug counseling based on psychological and social evaluation and according to the medical exam's results solicited to a medical unit according to the criteria stated in the regulator of applying the present law.

Establishing the therapeutically individualized program is according to the practice protocols, elaborated by the Health Ministry through its special structures and the medical college from Romania.

The medical units, where therapeutically programs for addicted consumers take place, send the prevention, evaluation and antidrug counseling necessary data in order to maintain the program's continuity based on a medical report. The therapeutically and psychological program take place integrated, therefore the consumer and the addicted consumer could benefit from medical, social and psychological assistance concurrently and continuous, with respecting the human and patient rights according to the law.

Art. 28 states that psychological and social programs are elaborated by the National Antidrug Agency in cooperation with the Ministry of Health, Ministry of Work, Social Solidarity and Family, the Ministry of Justice and can take place in authorized centers with open or closed regime, public, private or mixed.

The expenses caused by the consumer's evaluation and by the progress of the psychological and social programs are supported by the state's budget through the National Antidrug Agency budget and , if afforded by the incriminated person, by his family, or by a private organism respecting the conditions established by the common order of the Ministry of Internal Affairs, the Health Ministry and the Public Finances Ministry. The expenses caused by application of the therapeutically program individualized for insured people through the social health insurance system are supported by the Health Insurance Houses from the Unique Fund of Social Health Insurance for the affections that come from drug consumption and through the health programs of the Ministry of Health and the prophylaxes programs of the National Antidrug Agency. Depending on its material possibilities, the drug consumer, his family, and private organisms can partially or integrally handle the costs of the evaluation services and the expenses caused by the participation in psychological and social programs, at the prices and obeying the conditions established through the president's of the National Antidrug Agency decision with the approval of the involved ministries.

The amounts cashed in by the prevention, evaluation and counseling antidrug center represent extra-budget incomes of the National Antidrug Agency with permanent title and are used for financing programs of traffic and illicit drugs consumption prevention. The unused amounts are reported at the end of the year with the same destination.

The minister of justice and the minister of health will establish through common order the medical and educational measures or the programs which will be applied upon the drug consumers in jail.

In order to protect the drug addict, in law 29 the man of law brought some

special mentions. Personal data of the drug addicts included in the assistance program for the consumers and drug addicts benefit from confidentiality according to the present laws. Central data base of the consumers included in the therapeutically circuit, is held by the Romanian Drug Observatory and the toxic-maniacs from the National Antidrug Agency, in the codified unique register regarding drug consumers based on data communicated by the Ministry of Health, and other institutions which coordinate therapeutically, psychological and social programs and also by the authorized public and private centers.

The Ministry of Health has access to data from the stated evidence through the give institutions.

The person upon have been applied the measures of art 27 and 28 will have a nominal certificate issued or an electronic codified card which will have mentioned the eminent institution , that person's id ,period of time, object ad result of treatment, the reason for ending it, the health state at the beginning and ending of the program .All data referring to the people under the assistance for consumers and if the drug addicts will be destroyed after 10 years after finishing the medical surveillance program. For people that took part several times in the program for drug consumers and addicts the data will be destroyed 10 years after finishing the last period of medical surveillance.

With all the adding and notifications shown above, the Romanian man of law has re-updated the number of substances which will be nationally controlled.

The modifications of law 143/2000 brought through law 522/2004 have entered into force three months after being published except art 19(1) and 19(2), these starting to produce effects at the same time with entering into force of the Penal Code.

With the already existing stipulations in this domain, as shown, in the future our country's legislation and not only, regarding the globalization process will have to take in consideration some elements which have already appeared as social phenomena or exist and are left unregulated properly.

From this point of view, we consider that in the future our country's legislation should take into consideration the following:

- a) Circulation and national supervised consumption of drugs already in Holland is well-known the aspect of "freely " consumption of some light drugs which are given under some conditions and in some special places,
- b) Improvement of the juridical situation of the consumer , him being sentenced in the Romanian society , while, at international level he is regarded as a victim, being supported for resocialising (where the situation asks is)and for abandoning of the drug consumption
- c) Regulation of legal needs: traffic, cigarettes, alcohol, food being known that some manufactures use different substances in the finished product or increase the concentration of those substances that create the consumer's addiction to that product.