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**Prescription of the High Risk Narcotics and Trading or Illicit
Purchasing of High Risk Narcotics**

Nicoleta-Elena Buzatu¹

Abstract: The present essay will analyze the offence of prescribing high risk narcotics and trading or illicit purchasing of high risk narcotics, as it was regulated - together with other offences - by Law no 143 of July 26, 2000 on preventing and fighting against the traffic and illicit consumption of narcotics. The same law defines the meaning of such a phrase “*substances which are under national control*” by mentioning the fact that they are the narcotics and their precursors listed in Annexes I-IV of the law. The analysis of the offence of prescribing the high risk narcotics and trading or illicit purchasing of high risk narcotics is following the already known structure mentioned in the doctrine and which consists of: object and subjects of the offence, its constituent content: the objective side with its material element, the immediate consequence and causality connections; the subjective side of the offence, as well as forms and modalities of these offences, and the applicable sanctions, of course.

Keywords: offence; doctor; pharmacist; patient; consumer

1. Introduction

All through history the narcotics phenomenon witnessed an ascending evolution. In Antiquity they were used by the healers as medicine or in therapeutic aims. So, for example, in 2nd century BC, the Greek Physician Heraclid of Trent - known to be the best empirical physician, author of treatises on dietetics, surgery, therapeutics, toxicology, pharmacology, military medicine, etc. - used naturist remedies as: pepper, cinnamon and especially opium for sedation and hypnosis.

While being correctly and rationally administered, they played a benefic role in medicine. Yet, unfortunately, they started to be used abusively and, in the long run, they turned to be a really serious problem for the whole humanity, a real social plague. (Rășcanu, 2008) (Rășcanu & Zivari, 2002)

In the current speech the term “*narcotics*” means products and stupeficient or toxic substances, defined as such and, consequently, prohibited by the national and international legislations.

The specialized Health Agency of the United Nations - the World Health Organization - defines the “*drug*” as being that substance that once absorbed by a living body modifies one or more functions of the respective body. In conformity with the latest recommendations of this international body, the substances or classes of psychoactive substances (narcotics) that provoke such modifications and generate dependency are: alcohol, opiates, cannabis derivatives, sedatives and hypnotics, cocaine, hallucinogens, tobacco, volatile solvents, as well as other psychoactive substances or substances belonging to other different classes, used by association.

Pharmaceutically speaking, the “*drug*” is a substance used in medicine, but whose abusive usage may lead to physical or psychical dependency or to serious mental disturbances, as perception or behaviour (Dascălu et al., 2009). In this context “*drugs*” are only those substances known also under the general name of “*stupeficients*”.

¹ Senior Lecturer, PhD. Candidate, “Dimitrie Cantemir” Christian University, Romania, 176 Splaiul Unirii, sector 4, Bucharest, Tel.: +4(021)330.79.00, Corresponding author: nicoleta_buzatu@yahoo.com.

In conformity with art 1 of Law no 143 of July 26, 2000 on fighting against traffic and illicit drugs consumption, *narcotics* are those plants and stupeficient and psychotropic substances or mixtures that contain such plants and substances listed in tables I-III of the Law. This law divides narcotics into two large categories:

The first category refers to *high risk drugs*: heroine, mescaline, morphine, amphetamine, cocaine, codeine, opium, phencyclidine, etc; the second category refers to the *drugs of risk*: cannabis, cannabis resin, diazepam, meprobamate, etc.

The traffic and illicit drugs consumption is sanctioned in both of the above mentioned situations and, the offence of prescription, trading and purchasing without any necessity or on the ground of a false receipt refers only to the high risk drugs.

In agreement with art 3 of the Code of Medial Deontology issued by the Romanian College of Physicians and published in the Official Gazette no 418 of May 18, 2005, man's health is the supreme target of the medical act. The obligation of any physician lays in defending man's physical and mental health, in alleviating his sufferings, in respecting human life and personality, with no discriminations, irrespective of age, sex, race, ethnicity, nationality, social, ideological and political orientation, in both peace or war circumstances. The respect owed to the individual continues even after the decease of the respective person.

Art 3 of the Code of College of Pharmacists, published in the Official Gazette no 490 of July 15, 2009, stipulates that, when exercising his profession, the pharmacist offers specialized health services to any patient or to the large public in general, with no discrimination at all. The relationships between the pharmacists and those who benefit by his services shall be based on trust for the professional experience of the pharmacist; this liability obliges the pharmacist to devote his whole experience to assuring and maintaining his professional and personal qualification to the highest level and to permanently update his professional knowledge.

2 Content

2.1. Legal Content

Art 6 of Law no 143/2000 defines the offence of prescribing high risk narcotics and trading or illicit purchasing of high risk narcotics as follows: "*The prescription of the high risk narcotics - recommended by the physician intentionally, without being absolutely necessary from the medical point of view - is sanctioned with 1-5 years of prison. The same punishment is applied to intentional trading or purchasing high risk narcotics in the basis of a medical receipt prescribed under the conditions of paragraph 1 or of a falsified medical receipt*".

2.2. Object of the Offence

The offence of prescribing high risk narcotics and trading or illicit purchasing high risk narcotics has *a main juridical object* and *a secondary juridical object*.

The main juridical object of the offence is given by the social relations referring to the public health, that are seriously endangered because of the non-observance of the juridical norms regulating the prescription by a physician of high risk narcotics without being absolutely necessary from the medical point of view, as well as by the trading or illicit purchasing of high risk narcotics in the basis of a prescribed or falsified medical receipt.

The secondary juridical object lies in the social relations referring to the physical health of the individual who might become a consumer or an addict if the legal regulations are not respected with a view to the prescribing, trading and purchasing illicit high risk narcotics.

As for the *material object* of such an offence, the juridical literature revealed two opinions.

The first opinion (set forth by Ștefan, 2006) considers that the material object of such an offence is the very receipt signed by the physician, and not the prescribed stupefacient substances.

The other opinion, generally accepted (set forth by Stoica, 1976; Dima, 2002; Boroi & Neagu, 2001; Gârbuleț, 2008) refers to the material object of the offence which is the very high risk narcotics submitted to the national control.

In the opinion stipulated in paragraph 1, the offence has no material object at all, as the action defining the material element of the objective side is not directed and exercised against the high risk narcotics as a material, corporeal existence (Diaconescu, 2004).

2.3. Subjects of the Offence

The term “*subjects of the offence*” are - in the criminal doctrine (Mitrache & Mitrache, 2010) - those individuals who are involved in committing an offence by either its very being put into operation or by the bearing of its consequences.

Depending on the way the deed was committed, *the active subject* of the offence is different. Thus, considering the modality of prescribing and trading, the active subject shall be a qualified person and he/she shall either be a physician - when prescribing a receipt - or a pharmacist - when selling the narcotics prescribed by the receipt. As for the way of obtaining, the active subject can be any person who achieves all the legal conditions as to assume a criminal responsibility. The offence can be committed in any of the ways of participations: co-authorship, instigation and complicity.

The offence regulated by art 6 of Law 143/2000 refers to a *main* and to a *secondary passive subject*. The main subject of the offence is the person to whom there have been prescribed by the physician - without being necessary - high risk narcotics and, consequently, whose health can be seriously be endangered by such a deed.

In the regulation of art 9 paragraph 2 of the Law, a main passive subject is the person who is to benefit by the high risk drugs traded or obtained in an illicit way and whose health is endangered if taken them.

The secondary subject of the offence, as regulated by art 6 paragraph 1 of Law no 143/2000, is the state in its quality of a general representative of society and which is mainly interested in taking care of the health of the population.

2.4. The Objective Aspect

The *material element* of the objective aspect refers to the behavioural act forbidden by the incriminating norm. The lawmaker means to criminally sanction the one who prescribes trades or makes use of high risk drugs.

By prescribing some medicine containing drugs submitted to the national control without being necessary, the law considers the respective physician developing a fraudulent and unconditioned activity as he enables any individual to receive a receipt allowing him to illicitly obtain the stupefacient product (Diaconescu, 1996).

Trading high risk narcotics is considered to be an offence, then when the active subject - that is the pharmacist - when receiving a receipt prescribing high risk narcotics realizes that they were not necessary if comparing then to the diagnosis and yet, he sells them instead of trying to clarify the situation.

To obtain high risk narcotics in the basis of a medical receipt abusively prescribed or falsified contains all the steps made by the active subject as to make the receipt work and to have the narcotics taken.

Once the high risk narcotics obtained in the basis of a falsified receipt there appears a special form of the use of forgery, which is more severely punished (Olteanu; Iacob, & Gorunescu, 2008). The *immediate consequence* is the state of risk endangering the public health because certain activities transgressed the legal dispositions regarding the high risk narcotics submitted to the national control.

The *causality connection* is not to be proved, as it results *ex re*, from the very committed deed; so that, in the case this type offence is committed the danger is evident.

2.5. The Subjective Aspect

From the subjective point of view, the deeds incriminated by art 6 of Law no 143/2000 are done intentionally. The intention is recognized by the legislation (art 19, point 1 of the Penal Code) but also by the doctrine in two aspects: direct intention and indirect intention. The first aspect is foreseen because of the result of the deed and the pursuit of the result by the committed deed. The second aspect, that is the indirect intention, is foreseen by the doer in its result which is no longer pursued but accepted in its being possible when taking place.

For an offence mentioned in art 6 paragraph 2 thesis II to exist, the subjective element shall appear in the form of a direct intention.

2.6. Forms. Modalities. Punishable regime

Forms. The preparatory acts are possible and are punishable. They are assimilated to a punishable regime applied to a tentative, which is punishable.

An offence is fulfilled then when any of the incriminating activities is carried to an end and when an immediate consequence appears, that is the damaging state of the public health.

There are stipulated three *possible norms* by which an offence can be committed: prescribing, trading and purchasing/obtaining high risk narcotics. Practically, each of these possibilities is susceptible to be achieved by a large scale of actions.

As for the *punishable regime*, the offence provided by art 6 of Law no 143/2000 is punished with 1-5 years of prison. In case of an aggravating modality, as provided in art 12 of Law no 143/2000, then when the victim dies, the offence is punished with 10-20 years of prison and the interdiction of certain rights.

In conformity with art 17 of Law no 143/2000 the narcotics as well as other goods that were the object of the respective offence are confiscated; in case they are not to be found, the convict is obliged to pay their equivalent value. At the same time, money, any kind of values or any other goods obtained through narcotics are confiscated, and the resulted sums are considered to belong to the state budget and placed in a special account.

3. Conclusion

In accordance with the national and European reports on narcotics, their consumption shows an ascending tendency underlined by the increased level of drugs confiscations. Firm steps are necessary to be taken, at the level of the whole society, for making the population aware about the risks brought about by the traffic and drugs consumption.

The necessity of incriminating and sanctioning the prescribing of high risk narcotics, the illicit trading and purchasing high risk narcotics took shape in the already analyzed legal text, more especially as this phenomenon endangers the public health.

The physician shall treat the disease of the patient under legal conditions. Moreover, he shall advise the patient to attend a specialized program of disintoxication then when it is necessary.

The lawmaker established a very severe procedure referring to the prescribing and the obtaining of the high risk narcotics, being aware of the dangerous consequences resulting from their being introduced into the legal circuit.

The medical prescription shall be issued in four copies: destined to the patient, to the pharmacy, to the health office; the last copy remains with the physician. The files of the medical prescriptions are yellow or green depending on the category the narcotics belong to. The medical prescription is not longer available in 10 or 30 days' time; in this situation the medicine can be taken from the pharmacy only in the basis of a new prescription. This procedure assures the control over the medical activity and over the activity of the pharmacists, as well. This procedure makes it more difficult for the addicts to abusively obtain high risk narcotics.

4. References

- Boroi, A.; Neagu, N. & Sultănescu, V. R. (2001). *Offences Stipulated by Law no 143/2000 on Fighting Against the Traffic and Illicit Consumption of Narcotics*. Bucharest: Rosetti.
- Dascălu, I., Ștefan, C.E., Țone, C. & Surduleac, M. (2009). *Drugs and the Organized Crime* Craiova: Sitech.
- Diaconescu, G. (1996). *Offences in the Special Laws and Extra-Criminal Laws*. Bucharest: All.
- Diaconescu, H. (2004). *Corruption Trespasses and Those Assimilated or Connected to Them*. Bucharest: All Beck.
- Dima, T. (2002). *Offences against Public Health Stipulated in Extra Criminal Laws (with reference to narcotics)*. Bucharest: Lumina Lex.
- Gârbuleț, I. (2008). *Traffic and Illicit Drugs Consumption. Essay on Legislation, Doctrine and Jurisprudence*. Bucharest: Hamangiu.
- Mitrache, C. & Mitrache, C. (2010). *Romanian Criminal Law General Part*. VIIIth Edition. Bucharest: Universul Juridic.
- Olteanu, G.I.; Iacob, A. & Gorunescu, M. coord. (2008). *Forensic Methodology. Offense Structures and Illicit Activities They Carried*. Bucharest: AIT Laboratories S.R.L. Retrieved from www.itCode.ro, date: 18.01.2012.
- Rășcanu, R. & Zivari, M. (2002). *Psychology and Psychopathology in Drugs Addiction*. Bucharest: Ars Docendi.
- Rășcanu, R. (2008). *Dependency and Narcotics. Meliorating Theoretical and Clinic Aspects*. Bucharest: Bucharest University Printing House.
- Ștefan, C. E. (2006). *Drugs Flagellum*. Bucharest: CERMAPRINT.
- Stoica, O.A. (1976). *Criminal Law. Special Part*. Bucharest: Didactică Pedagogică.