



## The Phenomenon of Drugs from the Legislative Perspective

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**Abstract:** The complex social and health scourge of illegal drugs affects millions of people globally, with enormous negative consequences for both users and their families and communities. Drug use generates huge costs and harms public health and safety, the environment and labor productivity, it brings with it threats to security, related to violence, crime and corruption. The illicit drug market is one of the main sources of income for organized crime groups, and drug trafficking affects stability and governance. Romanian legislation in the field underwent a significant change through the promulgation of Law 58/2024, which supplements Law 43/2000 and amends Law 194/2011, eliminating the possibility of serving the sentence under supervision in the case of cultivation, offering, sale, transport, purchase and possession of drugs. of high risk and international high-risk drug trafficking, as well as increasing the number of punishments, in the sense that carrying out operations with products likely to have psychoactive effects constitutes a crime and this is punishable by imprisonment from three to 10 years. In order to combat drug-related crime, Romania seeks to strengthen security means by preventing, deterring and disrupting drug-related crime, through judicial cooperation and in the field of ensuring compliance with the law, operative data, interdiction, confiscation of assets derived from the commission of crimes, investigation and of crimes. border management. This punitive strategy is in dissonance with the new policy of the European Union, promoting public health and controlled legalization of drugs, practically proving that the strategy based on the fight against drugs has failed, exponentially increasing their consumption. The adoption of this philosophy of public health is an international constant, but also an urgent necessity for Romania, which acts as a responsible state, where the health - and not the punishment - of the consumer comes first.

**Keywords:** legislative news; crime; prohibition; legalization; decriminalization.

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## **1. Introduction**

On the dreadful day of August 19, 2023, on DN 39, near the town of 2 Mai, a tragic accident occurred after Vlad Pascu (19 years old) drove into a group of eight young people who were walking on the side of the road. Two of them died on the spot and three others were injured.

The young man has been in preventive detention since August 20, 2023, being accused of culpable homicide, culpable bodily injury, driving under the influence of prohibited substances and leaving the scene of the accident without the consent of the police. He is also being investigated in a case instituted by DIICOT, together with his parents, for possession of dangerous drugs for personal use, high-risk drug trafficking and making the home available for illicit drug use.

Illicit drugs are a complex social and health scourge affecting millions of people worldwide, with enormous negative consequences for users, their families and communities. The drug market is one of the main sources of income for organized criminal groups, and drug trafficking affects the stability and governance of countries.

The category most affected by drug use is represented by young people, school institutions are faced with it, school results being negatively influenced and generating school absenteeism. The lowest stated age of onset for the use of these substances was 12 years.

## **2. Legislative News - The "May 2" Law**

Romanian legislation experienced a significant turn with the signing on March 20, 2024 by the President of Romania of the decree on the promulgation of Law 58/2024, known as the "May 2" Law. This legal norm represents the reaction to the increase in the number of criminal cases having as their object crimes in the sphere of illicit drug trafficking. Under this law, people found guilty of high-risk drug trafficking can no longer receive suspended prison terms (see Table 1).

Table 1. Comparative situation of the penalties provided by the old legislation and the new legislation

THE ACT	PUNISHMENT	
	THE OLD LEGISLATION	THE NEW LEGISLATION
Cultivating, offering, selling, transporting, buying and possessing for the purpose of trafficking dangerous drugs (ex: cannabis)	2-7 years imprisonment	3-10 years imprisonment
Cultivating, offering, selling, transporting, buying, possessing high-risk drugs (eg: cocaine, heroin, ecstasy) for trafficking. Implications: the high-risk drug dealer will always receive a life sentence, with suspension only possible for a sentence of maximum 3 years in prison.	5-12 years imprisonment	5-15 years imprisonment
INTERNATIONAL DRUG TRAFFICKING		
Import and export of dangerous drugs	3-10 years imprisonment	5-15 years imprisonment
Import and export of high-risk drugs	7-15 years imprisonment	10-20 years imprisonment
Death of the user for the trafficker of any drug, the one who encourages the consumption of high-risk drugs or the doctor who prescribes drugs outside the legal framework	10-20 years imprisonment	15-25 years imprisonment (more serious as a crime of murder)
Cultivation, purchase or possession of dangerous drugs for personal use	3 months - 2 years imprisonment or 1.200-125.000 lei the fine	
Cultivation, purchase or possession of high-risk drugs for personal use	6 months - 3 years imprisonment	
ETHNOBOTANICS		
Any operations (cultivation, mixing, offering, buying, selling, transporting) knowing that it is ethnobotanical	6 months - 3 years imprisonment or the fine	2-7 years imprisonment
Any operations with substances that you should have known to be ethnobotanical	3 months - 2 years imprisonment or the fine	1-5 years imprisonment
Any illegal operations with such substances if you claim that they are permitted by law or authorized	1-5 years imprisonment	2-7 years imprisonment
Advertising for ethnobotanics	1 month - 1 year imprisonment or the fine	1-5 years imprisonment

Prohibitionist efforts are led in Romania at an institutional level by the National Anti-Drug Agency (ANA), which is subordinate to the Ministry of Internal Affairs and is responsible for coordinating, elaborating, developing, promoting, monitoring and studying, among other duties, anti-drug policies.

The comparative national situation from the years 2022 - 2023 of the cases with the subject of drugs is presented in Table 2 (Department of Investigation of Organized Crime and Terrorism, 2024, p. 29).

**Table 2. Comparative national situation in the years 2022 - 2023 regarding drug trafficking crimes**

THE NATIONAL SITUATION			
	2022	2023	TREND
<b>The number of drug-related cases to be resolved</b>	21.167	26.293	Increase with 24,22%
<b>Of which number of new files</b>	11.411	14.931	Increase with 30,85%
<b>Number of cases resolved</b>	8.337	8.843	Increase with 6,07%
<b>Cases resolved by indictment and plea agreements</b>	1.507	1.756	Increase with 16,52%
<b>Defendants arraigned</b>	2.554	2.898	Increase with 13,47%
<b>Of which the defendants are remanded in custody</b>	1.033	1.148	Increase with 11,13%

New psychoactive substances (NSPs). The Anti-Drug Agency of the European Union monitors 930 NSPs, which are made in clandestine laboratories, have much more serious effects on health than traditional drugs, act directly on the brain producing psychoactive effects, changes in mental and behavioral processes, give physical and mental dependence, the price is more affordable than that of high-risk drugs, which makes them attractive to experience for young people, given their dynamics of appearance and considering the substances in their composition, they are not subject to the law and are not under national control. Among NSPs, "El Padrino", "Spice" or "Euphoria" were consumed by 10.3% of 15-34-year-olds at least once in their lifetime and by 3.2% of 16-year-olds years (National Antidrug Agency, 2023, p. 54).

Looking at cannabis use, 9.5% of 15- to 34-year-olds have tried smoking the substance in their lifetime, with 8.7% of teenagers over 16 years of age, 1% of them starting at age for 13 years.

The data are similar to those at the European level: according to the European study on drugs, cited by ANA, 246 of the 262 drug-using respondents had consumed cannabis. The average in the European Union (2023) of young people who tried cannabis in the last year was 8%, while in Romania it was 6% (European Monitoring Center for Drugs and Drug Addiction, 2024, p. 23), placing us below European Union average.

Globally, public drug policies focus on either the criminal justice model, which is punitive, or the public health model, which emphasizes protection and treatment. Romania still uses the first model, and given the new legislation, it is increasingly moving away from the public health-centered approach of other European states. Currently, the latest legal norm - Law no. 58/2024 - constitutes the main instrument in this “war against drugs” that the Romanian authorities continue to wage, despite the change of attitude in the other states (Zaha, Dumitru and Militaru, 2023, pp. 2-4).

In essence, Romania's main anti-drug approach revolves around reducing the supply of drugs by disrupting trafficking networks and reducing the demand for drugs by preventing/stopping consumption, particularly through the tool of criminal penalties.

### **3. The Paradigm Change at the International Level**

The war on drugs, waged by the authorities according to the classic rules of tougher punishments against users and traffickers, has failed in the West.

In 2023, United Nations experts requested that states change their offensive strategy to one centered on health and respect for human rights (United Nations Human Rights Office of the High Commissioner, 2023).

The European Union drug strategy 2021-2025 calls for an approach that promotes public health and provides effective alternatives to coercive sanctions (Council of the European Union, pp. 2, 20).

From a legislative point of view, Romania is corseted in the paradigm of the 80s. While more and more scientific studies show that only a strict legalization could reduce the health risks on the population and more and more countries choose to legalize soft drugs, Romania stands against the current on this subject, adopting increasingly tough legislation.

In more and more countries, from the US to Western Europe, the use of cannabis is regulated, more strictly or more easily, but there are legal distinctions between criminalizing casual users and traffickers. Most of the time, the threshold is given by the quantity. Jail time for a joint is seen by more and more legal systems as not only totally meaningless from a social point of view, but also totally unproductive in the fight against drug trafficking, which remains a huge problem all over the world.

Urban myths, according to which cannabis is a transition drug to harder drugs, have been debunked. Marijuana is mostly a terminal drug, and users do not switch to other drugs. There will be drug use even if they are not decriminalized, but studies show that when they are decriminalized, use goes down.

It is believed that the abolition of criminal penalties for simple users would not create a huge wave of users, but would allow better management of those who do have problems with cannabis and who, because of the associated stigma or taboo, do not seek help. It would also decrease the consumption of ethnobotanicals.

From decriminalization to the legalization of a drug, even a recreational one, such as cannabis, is a rather big step, for which Romania does not seem ready. At the same time, legalization would require a total case management infrastructure, starting with the medical one.

The largest independent academic study that has ever been done on cannabis consumption in Romania (Copăceanu, 2020, p. 209) shows that no less than 45% of young people between the ages of 16 and 25 have consumed this at least once drug, and 51% of them would like to legalize marijuana, much more than the official estimates of the ANA.

The trend towards legalization and decriminalization has also gained momentum in the US, Mexico or Colombia, states that were once on the front lines of the war on drugs. At the same time, the Global Commission on Public Drug Policy (GCDP), made up of international experts, former heads of state and UN officials, concluded that global legal regulation for all drugs would be the most effective method to combat trafficking of drugs, trafficking that finances the trafficking of weapons, people and terrorism.

Romania's particularly punitive legislation, compared to most European states, has failed to be an effective tool to combat and prevent consumption and trafficking. In the last 10 years, despite tens of thousands of people sent to court and thousands of convictions for drug trafficking, there continued to be a high availability of drugs (Zaha, Dumitru and Militaru, 2023, p. 7).

Globally, it is estimated that less than half of all traffic is intercepted (UNODC, 2017), while many researchers believe that even current results are actually overestimated. Also, although the state's policy against the user (possessor) is particularly punitive, from 2013 to 2020, the volume of drug trafficking has increased fivefold, and drug consumption has increased by 70%, i.e. a doubling in the case of cannabis, quadrupling in the case of cocaine, and an eightfold increase in the consumption of ethnobotanicals (Ministry of Internal Affairs, 2022).

Thus, it is proven that the punitive approach in the Romanian legislation, "has also failed to combat the demand and supply and to reduce the negative effects caused by drug consumption" (Royal Society for Public Health, 2016, p. 3).

On the one hand, each "impressive catch" represents only a tiny, insignificant amount of the total drug trade, which alters, not stops, the market, and for every arrest/busting there is always someone else to fill the vacant place within the illicit

drug market. The consensus is that the drug supply cannot be combated by law enforcement intervention regardless of the level of funding, especially if it does not focus strictly on trafficking, and that “drug prohibition has strengthened and enriched organized crime” (Global Commission on Drug Policy, 2018, p. 29). Recent studies tend to find a cultural normalization of petty drug dealing/supply among young people (Coomber, Moyle & South, 2016, pp. 255-263), within narrow circles.

On the other hand, the demand for drugs is considered to be inelastic, meaning that drugs will be consumed regardless of the level of restrictions, punitive measures, stigma, taboo, fear, or “say NO” type campaigns (Godlee, 2018). Numerous European studies demonstrate the cultural normalization of drug use among young people (Pennay and Measham, 2016, pp. 187-189) and show that drug demand cannot be significantly changed through traditional means. The European Monitoring Center for Drugs and Drug Addiction (EMCDDA, 2017) finds that there is no correlation between increasing penalties and decreasing levels of cannabis use, and United Nations experts, along with the International Drug Policy Consortium (IDPC) and the GCDP, call for the abandonment immediate implementation of punitive measures directed against consumers as a minimum act of state responsibility - decriminalization of possession for personal consumption.

In the context of tens of thousands of people prosecuted in Romania, a percentage of 80% of DIICOT files have indictments on psychoactive substances for amounts of less than five grams of substance (ESPAD analysis) (Olaru, 2022). The costs are huge, amounting to tens of millions of euros annually, a conservative estimate of 11 million euros considering only prisoners incarcerated for drug offenses (Eurasian Harm Reduction Agency, 2020), and are felt in all areas: social, economic and public health in Romania. Prohibition imposes huge costs and consequences at the level of the entire society, because even the simple foray into the justice system has a significant negative impact on the individual's health and future prospects: reduced chances of employment, social exclusion, stigma, depression, the development of deviant behavior, aspects that significantly more often cause adverse medical consequences.

Any substance with psychoactive potential that can be used as a drug is legally criminalized, the general term being “blanket ban” or total preventive prohibition. Although the legislation previously included criminal penalties for the possession of substances for personal consumption, the High Court of Cassation and Justice ruled that this is not considered a crime. The lack of criminal sanctions for the possession and consumption of these substances is in line with the recommendations of international experts (Nutt, 2023).

The basic omission is the legislator's failure to assume the consumption of ethnobotanicals as a direct result of criminal sanctions and prohibitionist policies. Especially in states with harsh punitive approaches against drugs, the emergence

and proliferation of NSP has been considered by experts as a direct consequence of the harsh prohibition of classic drugs and the inaccessibility of heroin to addicted users (Alonso, 2015).

In an international context, criminologists consider the current period as a "global revolution of drug decriminalization and legalization" (Eastwood, Fox, & Rosmarin, 2016). More than 50 jurisdictions around the world have decriminalized and/or legalized the most popular classic drugs, abandoned the bankrupt war against them and adopted responsible control through liberalization (decriminalization/legalization), facilitating access to medical treatment, information and effective management of problematic consumers, by reducing the stigma and canceling the risks of falling under the criminal law (Benfer et al., 2018, pp. 162-175).

International studies show that there will be a significant increase in the number of people seeking treatment for pre-existing problems – reducing stigma, taboo and criminal risks encourages people with existing complications or addictions to get information and seek medical help.

#### **4. Conclusions**

Drug use generates huge costs and damages public health and safety, the environment and labor productivity, bringing threats to security, violence, crime and corruption. Our country's security capabilities are strengthened through prevention, deterrence and disruption of drug trafficking and related crimes, judicial and law enforcement cooperation, operational data, interdiction, seizure of criminal assets, investigations and border management. Harsh drug prohibition, through predominantly anti-consumer actions, has failed with devastating consequences for societies and individuals around the world. Abandoning the model centered on criminal justice and replacing it with the philosophy of public health is both an international constant and an urgent necessity for Romania. Failing public drug policies can cause more suffering, marginalization and stigma than even substance use itself. It is time for Romania to act as a responsible state, where the health - and not the punishment - of the consumer comes first.



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