

## CRIMINAL OFFENSES AGAINST PUBLIC HEALTH REGARDING USE OF NARCOTICS

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**Abstract:** *In contemporary criminological literature as one of the major criminogenic factors is considered a drug.*

*Drug addiction is a socio-pathological phenomenon in the today's present time almost all over the world with a tendency to spread, and its presence in recent years, with the same tendencies, was observed in our country. It, in its complexity, opens up a number of issues including medical, sociological, criminological, legal, psychological, economic or other nature. Therefore, it requires complex and multidisciplinary approach to the study.*

*Criminologists, crime and psychiatrists involved in the study of the problem of drug abuse and crime emphasize the close relationship between these two social phenomena, as well as their dependence.*

*In recent years, the expansion of drug abuse and in our country is obvious, especially among young people. Our country is at a crossroad connecting Europe with the traditional producers of natural drugs in the Middle East. As substantial portion of delinquent activity is noted in our country, the issue of connections and relationships of drug abuse and crime is considered a significant and ongoing, even in our country.*

**Keywords:** *crime, crime factors, delinquency, drug abuse.*

### 1. DRUG ADDICTION AS A CRIMINOGENIC FACTOR

From the definition of drug given by the World Health Organization, which states it is “a state of periodic or chronic intoxication detrimental to the individual and to society,” it appears that drug addiction is one of the socio-pathological phenomenon, and expresses a negative effect and achieves adverse consequences to the social values (health, working, social and family relations and property) and on a society as a whole. These harmful effects of drug abuse in the society depending on its extent. Where drug addiction is more widespread, where includes a large number of people, the harmful consequences in the society will be more serious and greater.

Among socio-pathological phenomena, in addition to drug use, are prostitution, gambling, vagrancy, begging and alcoholism.

A number of authors has researched and studied the impact of socio-pathological phenomena of crime, as well as connections and relationships between these phenomena and criminal activity.

The effects of crime on socio-pathological phenomena, such as prostitution, gambling, vagrancy, begging, drug and alcohol addiction were studied, and it was found that these phenomena represent serious social problems from criminological aspects wherever they occur in a larger scope.

Today, in almost all societies some measures against these phenomena are taken to the fight for their eradication or suppression, primarily due to the harmful effects of these socio-pathological phenomena, their links with crime, and because of their criminogenic effects to those who fall under their influence, and a wide circle of people.

It is believed that drug abuse can be a criminogenic factor, that certain persons can commit crimes such as theft, resale of drugs, prostitution, and more.

L. N. Anisimov said, "is considered that correlation between drug use and delinquency could be defined by unlawful actions associated with the production, expansion of drug addiction, etc., and committing these offenses by drug addicts in order to reach the drug or funds to purchase them, and offenses committed under the direct influence of the drug on mental the condition of those who have used drugs."

Meihner said, "Where there is a clear abuse of drugs, it is likely there is a crime."

Z. Nepot said, "Drug addiction is an indirect cause of crime: to come up drugs, drug addicts are stealing thus becoming the prey of dealers or blackmailers."

J. Relic said, "It is believed that law enforcement authorities believe that the use of drugs is in itself a powerful cause of crime."

The opinions and views of mentioned authors consider and determine drug abuse undoubtedly as an important criminogenic factor.

Drug addiction is a disease, a drug addict patient and most addicts have no regular employment and not working. To reach the necessary funds for the purchase of drugs, compelled by the drug addiction, they are forced to illegal ways to come up with the money, to commit offenses, to perform criminal activities. Drug addict with a strong physical dependence on drugs does not ask for the price, as it is not able to tolerate symptoms of abstinence syndrome (crisis).

## **2. RELATIONSHIP BETWEEN DRUG ADDICTION AND CRIME**

M. Milutinovic said, "Relationship between addiction and crime can be seen from two sides as illegal production and supply of drugs and a pleasure that has no medical character. One is the illegal trade in drugs, and other usage and its impact on human behavior."

O. Peric said, "We have to differentiate between two types of crime, and accordingly the two groups of offenders. One aspect is the illegal production and sale of drugs, crime and other are drug addicts." He considers the first form socially dangerous because it is designed and organized; while in the second case, we are talking about persons who need treatment, regardless of the type of delinquency, because due to their disease, the punishment is ineffective.

## **3. CRIMES RELATED TO PRODUCTION AND DRUG TRAFFICKING**

The emergence and spread of drug abuse, the increase in drug trafficking and the spread of drug effects that are reflected in health, working ability, etc., not only in relation to individuals who use drugs but elsewhere, they demanded the limit and legal regulation of

the production, trade and use of drugs, whose purpose is to establish certain prohibitions, control systems and the prediction of sanctions for violations of these regulations.

That establishing of a special legal regime for drugs was carried out at national and international level, with the aim that through guiding allows the medical use of drugs and the use of a scientific nature, and to prevent abuse of the drug use.

Legal restrictions on the production and trade of drugs to medical and scientific purposes and the use is established according to the international and domestic legal instruments, with an important role being played by the UN, did every other production and sale of illegal drugs a crime. Consequently, there is an undoubted connection of illegal production, trade of drugs and crime as part of the connection and influence that exist between drug abuse and crime.

#### **4. UNAUTHORIZED PRODUCTION, POSSESSION AND DISTRIBUTION OF NARCOTICS (ARTICLE 246 OF CC OF THE REPUBLIC OF SERBIA)**

The offense consists in the unauthorized manufacture, processing, sale or offering for sale or purchase for the sale, disposal or transfer, offering to sell or purchase, or putting in traffic unauthorized substances or preparations declared as narcotics.

The crime is multifaceted, so it is alternatively set. It consists of the production, processing and marketing of drugs.

Production is planting, growing and harvesting of plants or taking extracts, i.e. substances that give (for example, opium from milk obtained from poppy shells). Processing is cleaning, grinding or crossing drugs plants i.e. extraction of its chemical constituents or physical processes and making products for use in the form of ampoules, pills, powder for dissolution, snorting or as materials for smoking with the addition of new components or not.

The marketing is done by selling, offering to sell, purchase or otherwise. Sales is giving drugs for money, offering to sell, attempt to sell, i.e. showing merchandise and requesting a specific price. Placing on the market otherwise is giving away for testing, exchange, etc. Enabling the marketing is performing by transferring, holding or keeping drugs to be put into circulation. Mediating in the sale is to look for buyers or dealers, deployment of seller to various locations, delivery of goods to retailers or collecting money from the resale, and more.

The drug has to be produced, processed or distribute unauthorized. Law on production and trade of drugs strictly regulates who and how can produced it and put it into circulation. Those who do not have a special permit under this law, is making a crime.

Consequence of the crime is a threat to human health in the form of an abstract threat. The offense is finished by taking measures that are put forward actions. Attempt to sell is a finished work, not stage in its execution.

Perpetrator is any person who is engaged in unauthorized production, processing and marketing or facilitating the marketing of drugs.

In terms of culpability, the intent is required, i.e. the awareness to produce, to process, or market drugs and to do so without authorization.

In addition to the sentence for this offense, the measures to seizure drugs and the means for their processing may be imposed.

Qualified form of this offense can occur in three cases:

- 1) If the offense is committed by several joined persons;
- 2) If the offender has organized a network of dealers, and
- 3) If the offense is committed with a particularly dangerous drug.

1) Crime done by several joined persons; if two or more persons have previously agreed to jointly produce and put into circulation narcotics. It is possible to divide work based on agreement so that one side is producing, the other is transferring, while the third process and sale. Association must meet all requirements for the existence of the association and then jointly approach to production or distribution of drugs.

2) Organizing a network of dealers, engaging and connecting more people to sell drugs that are sent to different locations or more points in the city. These persons may or may not have known each other. Intermediaries are persons who maintain links between the retailer and the supplier i.e. organizer of the network.

3) Production or trade in particular hazardous drugs exist in the case of active substances that damage the health and may cause death in case of using greater doses. Dangerous drugs are considered opium, morphine and heroin.

For these serious forms of criminal acts, the intent is required in relation to qualified circumstances.

## **5. FACILITATING OF DRUG USAGE (ARTICLE 247 OF THE CC OF THE REPUBLIC OF SERBIA)**

The crime consists in specifying the enjoyment of narcotics, giving the narcotics people to take, or placing drugs at the disposal for taking drugs or, in turn, enabling another person to enjoy narcotics.

Execution is enabling or aiding another person to enjoy drugs.

Lead someone into taking drugs; to begin or to continue. This can be done by persuasion, conjuring feelings during intoxication, misleading by citing the healing effects of drugs, etc. Giving drugs or giving away for free or for a service.

Enabling available space means to assign to one or more persons rooms to use them for drug abuse. The assignment can be one-time or for a long time. It also means allowing people to take drugs in the room in the presence of the owner or user of the premises. Giving or assignment may be with or without a fee. Under the room, we mean flat, part of the apartment, bedroom, basement, attic, cabin, shed, cottage or any other enclosed and confined space that is not accessible without removing the obstacles. Facilitating the use of drugs in other ways, for example, safekeeping while other taking drugs, lending tools for bringing drugs into the body, to correlate with other drug users, and so on.

The offense has finished inducing to drug abuse, i.e. facilitating taking drugs by providing premises or otherwise, regardless whether there was or not taking drugs and regardless of the fact, how many people were.

Perpetrator can be any person and in terms of culpability, the intent is required.

In addition to the penalty for this crime, a measure of seizure narcotics is usually imposed.

The qualified form of this part exists in the following cases:

- 1) If the offense is committed against a minor;
- 2) If it is done by several persons;
- 3) If enables the use of highly dangerous drugs, and
- 4) If there are particularly serious consequences.

- 1) The crime against a minor is committed in case of facilitating the use of drugs was carried out towards a person less than 18 years, including the children.
  - 2) If several persons done the crime, when more than five persons referred to fruition or were given room to use. It is irrelevant whether the guidance and providing facilities was done individually or as a group with respect to all at once.
  - 3) Enabling the usage of particularly dangerous drugs exists when the subject of the crime is opium, morphine or heroin, which can disrupt human health or cause death.
  - 4) Particularly serious consequences as a result of drug use, the serious health damage that cause death of the person who is entitled to use drugs, suicide attempts, mental derangement, the attack on the life of another person, and so on.
- Qualifying conditions in the first three cases must be covered with the intent, while in relation to serious consequences there should be involuntariness.
- In addition to the penalty for qualified work in any form, confiscation of narcotics is obligatory.

## 6. JUDICIAL AND PSYCHIATRIC ASPECTS OF DRUG ADDICTION

Numerous characteristics and properties of drug abuse, especially those that are the main diagnostic criteria often lead drug addicts to court proceedings. These are primarily psychological symptoms and phenomena that changed the system of values and behavior of the patient but the number of changes of physical and neurological status, as well as social and situational circumstances in which drug addict exist.

From the standpoint of statutory regulations, drug addiction is classified as a mental illness, particularly in cases where there are clear manifestos, clinical signs, and the phenomenon of addiction. Certain difficulties cause the need to divide drug addiction in groups of permanent or temporary mental illness, which in the cases of addiction is harder to refine compared to other groups of mental disorders. The permanence or temporariness of drug abuse can affect a number of factors that will cause termination or continuation of the ongoing use of psychoactive substances, and thus give it a more durable and more attached character. This can lead to the position that, at the time of expert analysis, it is not possible to fully ascertain to which group of mental disorders (in relation to the law), the dependence should be classified. The probable reason for this dilemma is some anachronism of applicable legislation (classification of mental disorders in the “permanent or temporary mental illness, temporary mental disorder or mental retardation in development”), and uncertainty about the therapeutic success and opportunities that an expert cannot observe in the case of addiction.

Giving an expert opinion in the court procedure is giving the expertise on the state of mental health of the tested persons and establishing links between psychological status and procedure of such persons and their (in) abilities relevant for the legal process that is subject to the interests of justice. In this way, the expert provides technical assistance to those who pass judgment, entering a psychiatric essence of what has already happened or what will have a legal significance in the future.

Forensic-psychiatric significance of addiction can be observed from the criminal law and civil law point of view.

## 7. CRIMINAL AND LEGAL ASPECTS OF DRUG ADDICTION

The importance of drug abuse, i.e. drug addicts, from the criminal-legal point of view is primarily seen in the legal institutions such as the assessment of drug accountability of perpetrators of crime and security of medical nature.

Accountability, as a legal matter, from the psychiatric and psychological point of view is the ability to understand the significant part of the ability to control the behavior at the time of committing the crime. In other words, it involves the ability to reason and the ability to make decisions, based on the actual ability of a person.

Medical security measures, in terms of drug abuse, are clearly separated from other forms of legal treatment of criminal offenders, where it was noted the existence of a mental disorder. This suggests that, and the point of view of jurisprudence, there is a separation of drug and alcohol abuse of other mental disorders, particularly in relation to the taking of appropriate therapeutic and socio-rehabilitative measures and procedures. These measures (measures of compulsory psychiatric treatment of drug addicts and alcoholics), in relation to the existing legal processes can be realized by treatment and confinement in a medical institution or psychiatric treatment.

The existence of a compelling need to keep using drugs creates a desire or sense of compulsion to drug procurement and re-taking. This significantly changes the system of values and behavior of addicts and their overall activity focuses on finding ways to get the drugs. When their financial reserves are exhausted, addicts often take illegal and legally sanctioned procedures in criminal matters (committing various crimes).

Although the drug addicts can be perpetrators of different types of crime, globally they can be classified into two major groups:

The first group consists of real drug addicts and is guided by the basic phenomenon of drug abuse - a craving to take the drug again. In order to provide the means and ways to purchase the drug, various property crimes, crimes of fraud, forgery, and rarely violent behavior or offenses against life and body, which are not typical of drug offenses, occur.

The second group of offenses relates to the production and sale of narcotics and it is significantly less related to the addicts. If addicts make these crimes, they are often in the function of finding opportunities to provide affordable drugs for themselves and are not motivated to earn money and material benefits of the drug trade.

Among the many factors, from the impact to drug accountability assessment, of the particular importance is determining whether it is a classic addiction (habituation), or used substance, the evolution of the disease and evaluation of personality and its characteristics, where the position of clinical psychologists stands out in the process and a team of experts who participated in the expert report. It is necessary to consider ways and dynamics of criminal behavior, as well as determination of the stage in which a drug addict was, and that is one of the goals of forensic psychiatric expertise.

In order to determine the accountability of drug addicts, the practitioners often meet following circumstances:

1) Committing criminal acts under the influence of drugs. Assessment of mental capacity will depend on the type of drug, dose taken, taking into account the chronological relationship between drug use and execution of the crime, and all other factors relevant to the assessment of mental state and accountability of drug addict. In principle, for crimes perpetrated in this phase, a mental capacity has been reduced, once in full (unaccount-

ability), which requires individual assessment and treatment. This principle can be applied only in situations where there is addiction i.e. where there is the disease of addiction and its symptoms. However, when it is about individual usage of the drugs without classic addiction, for the expression of criminal behavior there is a criminal responsibility of perpetrator in such cases.

2) If the crimes occurred at the stage of abstinence syndrome, it is necessary to determine its characteristics (whether there is a psychological or a physical dependence, or there are all these symptoms at the same time), in order to consider the ability of reasoning and decision-making. Accountability is a period of abstinence syndrome, especially in cases of criminal acts in order to obtain drugs, reduced a bit or in part, in terms of unaccountability. As in other cases, the assessment must be individual, with the necessity of exploring the personality, but also other important elements, especially physical condition of the patient at the time of the crime.

3) For criminal acts made under prolonged abstinence syndrome, or a longer period after the establishment of abstinence, there may be prolonged physical addiction, which to a lesser degree may reduce adequate control of the patient's behavior. In general, for crimes created in this phase, accountability is maintained or reduced in an irrelevant extent.

Security measure of compulsory psychiatric treatment of drug users, as well as forms of criminal sanctions stemmed from the need of the society to protect, in a specific way, against the replication of socially dangerous actions of these patients, but also as an expression of desire to give them the opportunity for adequate psychiatric treatment and rehabilitation, rather than sent drug addicts to prison.

In order to pronounce these measures in the court proceedings, it is necessary to establish the existence of drug offender, as well as to establish the existence of a social threat to the environment, with a mentally incompetent or greatly diminished accountability of perpetrator. Under these conditions, treatment may be proposed in hospital or outside of hospital and mandatory treatment as a favorable form of treatment of the mentally ill and even drug addicts.

In recent years, particularly significant place are taking juvenile offenders who are in contact with various narcotics. Due to their age, they still lack adequate structure and personality, but also the specific criminal legal position, so this area deserves considerable attention and interest from theoretical and practical point of view. Exactly this kind of specificity of juvenile drug addicts - crime offenders, imposes the necessity of teamwork, in which, apart from a forensic psychiatrist, an important place has a clinical psychologist. In these proceedings, the focus is on the level of psychological and physical maturity of the juvenile, which is relevant for the implementation of possible corrective measures that may be proposed.

## **8. CIVIL AND LEGAL ASPECTS OF DRUG ADDICTION**

Drug addiction i.e. drug addicts are much less common in civil proceedings before a court, which is the likely reason for a seemingly minor civil legal significance of drug addicts in relation to criminal law implications. However, there are more civil legal problems related to this group of mental disorders that occur as a result of drug addiction.

In the civil legal area, drug abuse is often seen from the perspective of the business ability of the patients or the perception of their own ability to care for themselves, their rights

and interests. In accordance with the irresistible need to get addicted to drugs, frequently, alienating their family or property, and often for much less value than real, which may become the subject of court proceedings.

In addition to the family, in the protection of the rights and interests of patients and the environment, it is necessary to include specific social institutions (social welfare, educational institution, etc.) in order to create conditions for better prevention and better preconditions and psycho-social rehabilitation of patients.

Drug addicts in civil proceedings may encounter in divorce proceedings and in cases of determination the ability to complete the assessment of parental rights, which requires teamwork in diagnosis.

## 9. RESUME

The health is the most important element of human life, which leads to a numerous investigations of that area. Healthy people have the will to live, are vital and experience a sense of well-being. A healthy person can be called only person with the established physical and mental balance<sup>1</sup>

Tension and negative energy as a consequence of modern life sometimes lead to drug addiction.

Drug addiction is a socio-pathological phenomenon in various forms, in many ways, has a negative effect, and achieves serious consequences in society including the nation's health, ability to work, cultural and moral values, etc., leaving more or less severely negative effects. It is widespread throughout the world especially among the youth, with the present tendency to spread, and our country is not exemption.

Despite the efforts of almost all countries, with a particularly important role of the UN, to limit the use of drugs to medical and scientific purposes, illegal production and sale of drugs currently are characterized by expansion on a global scale, which contributes to the spread of drug addiction.

Drug addiction is a disease of the person who is abusing drugs and socio-pathological phenomena, but an undoubtedly important criminogenic factor. Drug abuse in most cases suggests and leads drug addicts to engage in criminal activities.

Drug abuse/crime ratio can be viewed from two sides, as illicit production and trafficking of drugs, and the drug abuse that leads to criminal behavior.

The production and distribution of drugs in today's world are legally restricted to scientific, medical, and pharmacological needs and any other production and sale is prohibited, incriminating activity, which is closely associated with drug addiction.

Due to the existing legal prohibition, and since the illicit production of and sale of drugs brings big money, this activity takes place conspicuously and in an extremely organized way. Criminal organizations engaged in the production and trafficking of drugs are characterized by a high degree of organization, mobility and large radius of action, which typically involves several countries, and this criminal activity has the character of international crime.

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<sup>1</sup> Kastratović, Edit, Radosavljević, Života, Radosavljević, Milan, Dragić, Milan, Bešić, Cariša "Toward the health through sport". *International journal of economics and law*, Vol. 3, No. 7 (2013): 56.

The characteristic of this criminal activity is that it is very difficult to detect and suppress it, because drug addiction causes cooperation between delinquent and victims - drug addicts. Therefore, this criminal activity is a particularly dangerous form of crime, because the crime is largely conditioned by drug abuse and drug crime.

In the scope of crime perpetrated by drug addicts, we should distinguish criminal activity in order to get to the drug, or for the purchase of drugs and criminal activity performed under the direct influence of the drug, which is not aimed at obtaining the drug, but it is the result of the influence of drugs.

The cited criminal law and civil law aspects of drug addiction emphasize that mental disorder has not only medical, but also the broader social significance through the many negative socio - legal implications that addiction brings. All this leads to a broader and more complex approach to this problem and a need for engagement not only medical, especially psychiatric services, but the society as a whole and its institutions.

### BYBLIOGRAPHY:

- [1] Antononijević, M. *Narkomanije mladih*. Beograd: Savremena administracija, 1971.
- [2] Bakulev A. N., Petrov F. H., *Sovjetska enciklopedija*, Moskva, 1965.
- [3] Bisio, B., *Psiha i droga*, Zagreb, 1977.
- [4] Bukelić, J., *Toksikomanije - alkohol, duvan, droge*, Beograd, 1977.
- [5] Despotović, A., *Čovek i droge*, Beograd: Savremena administracija, 1975.
- [6] Jelačić, O., *Osnovi sudske medicine*, Novi Sad, 1974.
- [7] Kastratović, Edita, Radosavljević, Života, Radosavljević, Milan, Dragić, Milan, Bešić, Cariča. "Toward the health through sport". *International journal of economics and law*, Vol. 3, No. 7 (2013): 56-65.
- [8] Кривични законик „Сл. гласник РС“, бр. 85/2005; 88/2005; 107/2005 и 72/2009.
- [9] Milutinović, M., *Kriminologija*, Beograd: Savremena administracija, 1990.
- [10] Milutinović, M., *Kriminologija*, Beograd: Savremena administracija, 1993.
- [11] Perić, O., *Sprečavanje zloupotrebe droga na međunarodnom planu*, Zbornik instituta za kriminološka i sociološka istraživanja, Beograd, 1975.
- [12] Čirić, Z., *Kliničke i psihosocijalne karakteristike šizofrenih bolesnika izvršilaca krivičnih dela*, PhD diss., Medicinski fakultet, Niš, 1998.
- [13] Ilić, B., *Psihodinamika agresivnosti delikvenata narkomana*, PhD diss., Filozofski fakultet, Niš, 2000.
- [14] Cetinić, M., *Krivična odgovornost narkomana*, Savetovanje - narkomanija i krivična odgovornost, Zbornika radova, Beograd, 2000.