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NEWS ON CRIMINAL LIABILITY FOR OFFENSES RELATED TO DRUGS AND PRODUCTS SUSCEPTIBLE TO HAVING PSYCHOACTIVE EFFECTS, OTHER THAN THOSE PROVIDED FOR BY THE REGULATIONS IN FORCE

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Abstract

Recent reforms in criminal liability for drug and psychoactive substance offenses show a clear trend toward tougher criminal policy, combining repressive measures with rehabilitation and prevention tools. Increased penalties for traffickers, the introduction of aggravating circumstances, and the criminalization of related acts reflect a strategy of reduced tolerance for the phenomenon, while mandatory treatment and psychological counseling programs mark a step toward addressing public health in the context of addiction.

However, the intensity and frequency of legislative changes may affect legal certainty and consistency in law enforcement. Repeatedly tightening sanctions and restricting access to alternative measures risks exacerbating prison overcrowding and creating an imbalance between the repressive and rehabilitative aims of the law. A sustainable criminal policy must ensure the proportionality of penalties, the effective implementation of reintegration programs, and the predictability of the regulatory framework in order to maintain confidence in justice and reduce the incidence of crime in the long term.

Key words: *drugs, psychoactive substances, criminal policy, criminal liability, rehabilitation, proportionality of penalties, legal certainty.*

INTRODUCTION

The phenomenon of illicit drug trafficking and consumption is one of the most dynamic and complex forms of crime in Romania, with profound implications at both the social and criminal policy levels. Recent statistics indicate an increase in the number of users, especially among young people, as well as a diversification of the types of substances on the market, including high-risk drugs, very high-risk drugs, and new psychoactive substances. This dynamic has led to the adaptation of investigation strategies and intensified cooperation between law enforcement agencies, both domestically and internationally, given the transnational nature of trafficking networks.

At the same time, the phenomenon raises a public health issue, prompting authorities to strike a balance between criminal repression and the implementation of policies to prevent and reduce the risks associated with consumption.

Law No. 143/2000 on the prevention and combating of illicit drug trafficking and consumption is the basic legislative act on the prevention and combating of illicit drug trafficking and consumption. It was adopted in a context where the phenomenon was relatively limited in Romania, and criminal policies were focused almost exclusively on severely punishing traffickers and users.

Law No. 194/2011 on combating operations with products likely to have psychoactive effects, other than those provided for by the legislation in force, establishes the legal framework applicable to products likely to have psychoactive effects, similar to those caused by narcotic or psychotropic substances or preparations, plants or substances under national control, other than those subject to the legal regime established by the legislation in force, and establishes measures to prevent, control, and combat consumption in order to protect the health of the population from their negative effects.

Over the years, the legislation has undergone multiple changes aimed at responding to new challenges, such as the emergence of psychoactive substances, the expansion of organized crime, and the need to align with European Union standards.

In recent years, through legislative acts such as Law No. 45/2023, Law No. 58/2024, Law No. 234/2024, and Law No. 172/2024, important clarifications and adjustments have been made to both Law No. 143/2000 and Law No. 194/2011, changes that reflect a trend towards refining the legislative framework in order to ensure a proportionate and effective criminal response, in line with social realities and national and European case law.

I. LAW No. 143/2000 – BASIC REGULATIONS ON DRUGS

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Law No. 143/2000 on the prevention and combating of illicit drug trafficking and consumption constitutes the legislative foundation in this area. The normative act regulates:

- Classification of narcotic or psychotropic plants and substances or mixtures containing such plants and substances as high-risk drugs (listed in Tables I and II of Law No. 143/2000), high-risk drugs (listed in Tables I and II of Law No. 143/2000) and new psychoactive substances (substances in pure form or in a preparation, which are not covered by the 1961 United Nations Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, or the 1971 United Nations Convention on Psychotropic Substances, but which may present risks to health or society similar to those presented by the substances covered by the aforementioned conventions)

- The main offenses are set out in Articles 2–10 of Law No. 143/2000, where we could give as an example Article 2: cultivation, production, manufacture, experimentation, extraction, preparation, processing, offering, sale, distribution, offering for sale, delivery under any title, sending, transporting, procuring, purchasing, possessing, or other operations involving the circulation of high-risk drugs without authorization, where the penalty is 3 to 10 years and the deprivation of certain rights, and for high-risk drugs the penalty is imprisonment from 5 to 15 years, and in some situations provided for in art. 3 para. (2) from 10 to 20 years. If the acts committed under the law provided for in Articles 2, 6-8, and 10 resulted in the death of the victim, the penalty is imprisonment from 15 to 25 years and the deprivation of certain rights.

- Prevention measures: educational campaigns, information programs, treatment for users.

- In terms of institutional cooperation, the law provides that the central units specializing in the prevention and combating of illicit drug trafficking and consumption within the General Inspectorate of the Romanian Police, the General Inspectorate of the Romanian Border Police, the Public Ministry and the General Directorate of Customs shall transmit to the National Anti-Drug Agency data on the prevention and combating of illicit drug trafficking and consumption, essential chemicals, precursors, and toxic chemical inhalants, necessary for the preparation of reports to the Romanian Government and international bodies on the evolution and level of drug trafficking and consumption in Romania, as well as those necessary for the preparation of studies, syntheses, and analyses to support policies and strategies in the fight against drugs.

I.1. AMENDMENTS MADE BY LAW NO. 45/2023 TO LAW NO. 143/2000

Law No. 45/2023 marks a milestone in the evolution of national drug legislation, seeking to better balance criminal liability according to the seriousness

of the offense and the actual social danger. The amendments introduced by this law are intended both to make the crackdown on trafficking networks more effective and to ensure effective reintegration mechanisms for addicts.

This amendment through Law No. 45/2023 brings a fundamental revision of Law No. 143/2000, aiming both to clarify key concepts (definitions) and strengthening the penalty regime for drug trafficking offences and closer alignment with international substance control mechanisms.

Thus, Article 1(a) on substances under national control, drugs, and precursors listed in Annexes I-IV has been included, with the possibility of amending them within a maximum of six months from receipt of the amendment proposal. In this way, the legislator establishes the obligation to update the tables within a maximum of six months, which ensures rapid alignment with UN standards (the 1961 and 1971 Conventions), and the Ministry of Health and the Ministry of Internal Affairs are obliged to submit the amendment proposal as soon as they receive the communication from the international bodies. This reduces the risk of new drugs or precursors circulating in a "legislative vacuum" until they are included in these tables.

New concepts relating to drugs have also been defined, namely "new psychoactive substances" (Article 1(d)(1)- a substance in pure form or a preparation that is not regulated by UN conventions but presents similar risks) and "preparation" (Article 1(d)2- a mixture containing one or more new psychoactive substances), thus aligning the provisions of Directive (EU) 2017/2103, which requires Member States to take rapid measures to control new psychoactive substances (NPS).

This law also tightened the penalties for trafficking in high-risk and very high-risk drugs (Article 2) and for bringing drugs into or out of the country (Art. 3), as well as an aggravated version based on the outcome, if the trafficking resulted in the death of the victim, with a penalty of 15 to 25 years and the deprivation of certain rights.

Through these amendments, Romania has adopted a "zero tolerance" policy towards drug trafficking, considerably limiting the possibility of applying probation (Art. 91 of the Criminal Code applicable only if the sentence imposed is no more than 3 years), maintaining the distinction between high-risk and low-risk drugs, with more severe penalties for high-risk drugs.

Furthermore, the provisions of Article 17(4) stipulate that goods and means used in the illicit manufacture of drugs may be used for educational purposes or in prevention campaigns.

This law also amended Article 19(1) concerning the assessment of the consumer, whereby the prosecutor orders, within 5 days of the continuation of the criminal investigation, the assessment of the consumer, with their consent. Thus, a period of 5 days from the continuation of the criminal investigation was introduced → ensuring the speed of the procedure and rapid intervention for

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treatment, and as a new element, the assessment of the consumer. This introduced a 5-day deadline from the continuation of the criminal investigation → ensuring the speed of the procedure and rapid intervention for treatment, and as a new element, the assessment is only carried out with the written consent of the consumer.

I.2. AMENDMENTS MADE BY LAW NO. 58/2024 TO LAW NO. 143/2000

The amendments to Law No. 143/2000 by Law No. 58/2024 had a significant impact on the penalty regime for drug trafficking offences, as it restricted defendants' access to a very important measure of clemency – the suspension of the execution of the sentence under supervision.

Thus, the provisions of Article 15¹ stated that "the suspension of the execution of the sentence under supervision cannot be ordered in the case of the offenses provided for in Article 2(2) and Article 3(2)."

In such situations, the judge no longer has the possibility to assess the appropriateness of suspension under supervision for high-risk drug trafficking offenses, so that any sentence imposed for these offenses (even below the special minimum, if the mitigating circumstance is retained) must be effectively enforced in detention.

In this way, the legislator sought to combat the phenomenon of high-risk drug trafficking through a firm criminal response, considering that the measure of suspension under supervision does not have a sufficient deterrent effect.

Article 15¹ is a restrictive *lex specialis*, which limits the court's discretion and eliminates the possibility of suspending the execution of the sentence under supervision for high-risk drug trafficking offenses.

I.3. AMENDMENTS MADE BY LAW NO. 172/2024 TO LAW NO. 143/2000

Although Article 19 had already been amended by Law No. 45/2023, Law 172/2024 amends and supplements Law 143/2000 with regard to this article, which concerns the legal treatment of drug users, particularly in relation to the offense provided for in Article 4 (unlawful possession of drugs for personal use).

Prior to the amendment, the assessment of the user was possible, but the legal framework was less clear and did not expressly regulate the mandatory nature of the assessment for minors, the time limit within which the prosecutor must order measures, and there was no correlation between the assessment and inclusion in the assistance program.

Thus, according to Article 19(1) "In the case of the offense referred to in Article 4, the prosecutor may order, when he or she deems it necessary for the resolution of the case, the assessment of the user (...)".

The prosecutor thus has a discretionary right and not a general obligation, except in the case of minors (provided for in Article 19(2)), and the assessment serves to determine the degree of consumption (occasional, experimental, dependent) and treatment needs. This assessment may influence the measures ordered (discontinuation of criminal proceedings, postponement of the application of the penalty, or referral to treatment). The measure is ordered only if the person is not already voluntarily enrolled in a program.

According to Article 19(2), for minors, the assessment is no longer at the discretion of the prosecutor but is mandatory, in line with the UN Convention on the Rights of the Child and the principle of the best interests of the child. Thus, minors who use drugs will be automatically included in an assessment and support process, which can prevent escalation to addiction or trafficking activities.

Thus, minor users will be automatically integrated into an assessment and support process, which can prevent the escalation of use to addiction or trafficking activities.

The assessment of the consumer is carried out with their consent by the drug prevention, assessment, and counseling center. (Article 19(3))

Depending on the conclusions of the assessment report, within 5 days of its receipt, with the written consent of the consumer, they will be included in the integrated assistance program for drug users. The procedural deadline of 5 days from receipt of the report is a short period, which guarantees the speed of the measures, with the aim of treatment, counseling, support for reducing consumption, and preventing relapse.

I.4. AMENDMENTS MADE BY LAW NO. 234/2024 TO LAW NO. 143/2000

This law supplemented the measures that can be taken against illicit drug use, relating to integrated assistance programs for drug users.

With this amendment, the legislator moves from general principles and obligations to a concrete institutional structure, through the establishment of detoxification centers, as stated in the provisions of paragraph (4¹) of Article 20: "Detoxification and recovery centers for drug addicts shall be established and organized as specialized institutions for social recovery (...) in each of the eight development regions (...) under the authority of the Ministry of Health."

The legal wording ("shall be established") imposes a mandatory obligation on the Government with national coverage, as the centers will be established in each of the eight development regions provided for by Law No. 315/2004 on regional development in Romania, ensuring equitable access in all areas of the country.

The centers will be independent entities with their own budget and assets, which gives them functional autonomy, being subordinate to the Ministry of Health and not to the Ministry of Internal Affairs or the Ministry of Justice, with a medical approach.

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The new paragraphs (4¹) and (4²) of Article 22 of Law No. 143/2000 are strategic in nature, creating the national infrastructure for the treatment and recovery of addicts, and through this, Romania is moving closer to an integrated health and justice system that not only punishes but also treats, in the spirit of restorative justice and public health protection.

I.5. AMENDMENTS MADE BY LAW No. 234/2024 TO LAW No. 143/2000

The amendment made by Law No. 58/2024 to Law No. 143/2000 is of particular importance in the criminal justice system because it broadens the cases in which the suspension of the execution of the sentence under supervision cannot be ordered, introducing a direct correlation between the Criminal Code and special laws.

Thus, according to Article 91 of the Criminal Code, the suspension of the execution of the sentence under supervision is regulated as a measure of judicial individualization that allows the convicted person not to actually serve the sentence in prison, but to be supervised in the community, subject to certain obligations.

Thus, according to Article 93(3) of the Criminal Code, the suspension of the execution of the sentence under supervision cannot be ordered if the sentence imposed is only a fine, the application of the sentence was initially postponed, but the postponement was subsequently revoked, or if the offender evaded criminal prosecution or trial or attempted to obstruct the discovery of the truth or the identification and criminal prosecution of the perpetrator or participants.

In addition to these three conditions, Law No. 58/2024 amended Article 91 of the Criminal Code by introducing a new provision, namely: "if the special law expressly provides for it."

This provision creates a bridge between the Criminal Code and special legislation, allowing the legislator to exclude probation for certain crimes through separate normative acts [such as Article 15¹ of Law No. 143/2000, which excludes probation for drug trafficking -Article 2(2) and Article 3(2)]. Other future special laws could add similar provisions for acts posing a high social danger (terrorism, serious corruption, human trafficking, etc.).

Also, Law No. 172/2024 amended the provisions of Art. 83 para. (2¹) of the Criminal Code (amended by Law 172/2024) already excludes the postponement of punishment for Art. 335 and 336 of the Criminal Code (driving without a license and under the influence of alcohol/drugs).

II. LAW No. 194/2011 – BASIC REGULATIONS ON COMBATING OPERATIONS WITH PRODUCTS SUSCEPTIBLE TO HAVING PSYCHOACTIVE

EFFECTS, OTHER THAN THOSE PROVIDED FOR BY THE REGULATIONS IN FORCE

Law No. 194/2011 on combating operations with products likely to have psychoactive effects (other than those provided for by the normative acts in force) supplements the normative framework of Law No. 143/2000, with the aim of regulating the market for-called "ethnobotanicals" and other new substances with psychoactive effects, which are not yet included in international control tables.

The law regulates substances which, although not listed in the tables annexed to Law No. 143/2000 and not covered by the UN conventions (1961, 1971), may pose a similar risk to public health. Thus, the law quickly covers new substances appearing on the market until they are formally included in the drug tables. Articles 6-15 regulate the authorization procedure for any operation involving such products, through a scientific evaluation committee, with the lack of authorization attracting criminal or administrative liability, depending on the seriousness of the offense.

From the perspective of criminal liability, Law No. 194/2011 provides in the provisions of Articles 16-19 for offenses related to products that have psychoactive effects, criminalizing the production, distribution, sale, transport, possession, etc., without authorization, the concealment of the psychoactive nature of the products, as well as the advertising of the products, credibly claiming that they have psychoactive effects.

Through these articles, the law creates a penalty regime almost identical to that for trafficking in high-risk drugs, but adapted to the particularities of the phenomenon of new psychoactive products.

II.1. AMENDMENTS MADE BY LAW NO. 45/2023 TO LAW NO. 194/2011

The amendments made by Law No. 45/2023 to Law No. 194/2011 represent an important legislative intervention, aimed in particular at tightening criminal liability for operations involving products likely to have psychoactive effects (commonly known as "ethnobotanicals"), but also to clarify the forms of guilt and prohibited conduct.

Thus, this law increased the penalties for the offenses provided for in Articles 16, 17, and 19, which previously included fines.

This first reform represented a first step towards an integrated approach to the phenomenon of "ethnobotanicals," correlated with the tightening of penalties for drug trafficking (Law No. 143/2000, also amended by Law No. 45/2023).

II.2. AMENDMENTS MADE BY LAW No. 58/2024 TO LAW No. 194/2011

The adoption of Law No. 58/2024 brought about a further increase in the penalties for the offences referred to in Article 16(1) and Article 17(1), with penalties ranging from 3 to 10 years and the deprivation of certain rights, as in the

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case of the offense of trafficking in high-risk drugs provided for in Article 2(1) of Law No. 143/2000.

The changes, which come just one year after the last increase in sentencing limits under Law No. 45/2023, mark a shift from a relatively lenient approach to one of zero tolerance for transactions involving psychoactive substances, with penalties now aligned with those for drug trafficking, ensuring uniform treatment for acts of similar social danger and limiting the possibility of applying suspended sentences.

II.3. AMENDMENTS MADE BY LAW No. 172/2024 TO LAW No. 194/2011

This amendment introduces a complex legislative package with a direct impact on criminal liability for operations involving products likely to have psychoactive effects and on how they are managed after seizure/confiscation. The analysis should highlight three directions: tougher penalties, the introduction of new offenses, and clear regulation of safety measures and destruction procedures.

Thus, in the case of the offense provided for in Article 16(2), which may be committed in the form of negligence with foresight, the complementary penalty of prohibition from exercising certain rights has been expressly stipulated.

Also, two new paragraphs have been introduced for this offense, regulating the aggravating circumstance if the acts resulted in the death of the victim (the penalty being 15-25 years, similar in severity to aggravated murder provided for in Article 189 of the Criminal Code) and the attempt was criminalized, extending criminal liability to the early stages of the offense, which increases the preventive capacity of the norm.

The amendments made to Law No. 194/2011 by Law No. 172/2024 also consisted in the introduction of Articles 191 to 19(5), representing an important step in expanding the scope of criminalization and strengthening control mechanisms over the phenomenon of ethnobotanicals.

Through Article 191, the legislator sought to go beyond merely punishing trafficking itself and also punish forms of facilitating and encouraging consumption. Thus, making properties available, including those that are disused or under construction, for the consumption of psychoactive products, as well as tolerating consumption in such spaces, is punishable. Likewise, the administration or delivery of products without a medical prescription is criminalized, as is the incitement to consumption, even if no actual result has been achieved. An important element is the punishment of the financing of these acts, with an increase in the penalty by one third, which shows that the legislator wanted to strike at the economic side of the phenomenon, not just at the perpetrators. Attempts are punishable, and the law assimilates preparatory acts to attempts, reinforcing the preventive nature of the norm.

The provisions of Article 192 introduce specific aggravating circumstances (complementary to those provided for in the Criminal Code), similar to those in Law No. 143/2000, with an emphasis on the protection of minors, the mentally ill, and persons in therapeutic programs. The severity is increased when the acts are committed in educational, medical, military, or detention facilities, as well as when the products are mixed with substances that increase their danger to life. These provisions allow the court to apply higher penalties in situations where public health is exposed to particular risk.

Article 193 regulates the special confiscation of products, goods used, and profits obtained from their sale, with the possibility of pursuing the equivalent in cash if the objects can no longer be found. This measure is intended to deprive offenders of the economic benefits of their illegal activity, in line with Article 112¹ of the Criminal Code and European policies to combat organized crime.

Article 194 establishes clear rules for the destruction of products confiscated under Article 574(d) of the Code of Criminal Procedure, with some exceptions for medicines and substances that can be used for pharmaceutical or educational purposes, thus ensuring a balance between public safety and the exploitation of available resources.

Finally, Article 195 refers to Article 21 of Law No. 143/2000 (central units specializing in the prevention and combating of illicit drug trafficking and consumption), extending the mechanisms for international cooperation and reporting to the competent bodies to psychoactive products.

Overall, these amendments transform Law No. 194/2011 into a complex instrument for preventing and combating the phenomenon, which not only punishes traffickers but also discourages the creation of environments tolerant of consumption, attacks sources of funding, and ensures the traceability and destruction of dangerous substances in a transparent manner.

Law No. 194/2011 is a legal mechanism for rapid response to the phenomenon of ethnobotanicals, falling within the competence of the Directorate for the Investigation of Organized Crime and Terrorism, where criminal prosecution is mandatory for prosecutors. The main objective of the normative act is to protect public health, criminalizing both intentional and negligent acts. At the same time, it sanctions related conduct—such as advertising, financing, or providing premises for consumption—and supplements the provisions of Law No. 143/2000, ensuring that no dangerous psychoactive product escapes criminal control.

CONCLUSION

Legislative developments in 2023–2024 mark a phase of intensification of criminal policy on drugs and products likely to have psychoactive effects, with Romania opting for a combination of severe c e sanctions and rehabilitation measures. On a positive note, the regulatory framework has become more

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professional: criminal offenses are more precisely defined, aggravating circumstances are clearly defined, and the system for prevention and reintegration of users is much better defined. Mandatory assessment, treatment, and psychological counseling programs, along with the establishment of regional detoxification centers, represent a step toward a modern public health policy that treats addiction as a complex problem, not just a violation of the law.

However, successive amendments, adopted at short intervals, erode the stability and predictability of criminal law, affecting the principle of legal certainty. The repeated tightening of penalties – from 6 months to 3 years or a fine, to 2–7 years, and then to 3–10 years for Article 16 of Law No. 194/2011 or up to 10–20 years for bringing high-risk drugs into the country (Article 3(2) of Law No. 143/2000) – pushes the penalty regime towards limits comparable to those for intentional crimes against life, raising serious questions about the proportionality and fairness of the penalties.

Furthermore, restricting access to alternative measures (suspension under supervision or postponement of the application of the sentence) and the excessive emphasis on detention risk leading to prison overcrowding. In the absence of adequate infrastructure for electronic monitoring and a sufficient number of functional treatment centers, the goal of rehabilitation and social reintegration may remain more declarative than effective.

In conclusion, Romanian criminal policy is in a phase of expansion and consolidation, but its success depends on the state's ability to strike a balance between the repressive and preventive dimensions. Effective criminal justice cannot be reduced to harsher penalties, but must be accompanied by real measures of education, treatment, and reintegration, so as to reduce recidivism and protect public health without sacrificing fundamental rights and the principle of proportionality. If these conditions are not met, there is a risk that the legislation will become more of a retributive instrument than one of social balance, generating instability and mistrust in the justice system in the long term.

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