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Legal Individualisation of Criminal Punishments for Drug Trafficking in the Criminal Legislation of the Republic of Moldova

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Abstract: *This study addresses the issue of the legal individualisation of criminal punishments for drug trafficking offences provided for in the criminal legislation of the Republic of Moldova. The rationale of the scientific approach lies in the need for a perpetual harmonisation of criminal legislation to the new trends of manifestation of drug trafficking, in order to make the applicable deterrent arsenal more efficient in relation to the various practical situations of committing these crimes. The aim is to re-evaluate the legal criteria for the individualisation of criminal punishments for drug trafficking offences and to assess the degree to which these criteria correspond to the deterrent purpose of the criminal punishments applicable to drug traffickers.*
Some solutions for a reference law on the harmonization of the punitive regime established for drug trafficking offences in strict accordance with their seriousness were substantiated. Based on the national specificity existing in the Criminal Code of the Republic of Moldova (Republic of Moldova Criminal Code, 2002), it was proposed to create a separate incriminatory framework for trafficking in narcotic substances with narcotic effect, which are new generation drugs not provided for by the 1961 UN Single Convention on Narcotic Drugs (United Nations, 1961) and the 1971 UN Convention on Psychotropic Substances. The ineffectiveness of the quantitative criterion for individualising penalties for trafficking in ethnobotanicals, represented by their quantitative proportions, has also been demonstrated. In this context, the idea of individualisation of criminal punishments for trafficking in ethnobotanicals based on qualitative criteria, which are represented by the risks that these substances pose to the health of consumers, was promoted.

Keywords: *drugs; ethnobotanicals; offence; criminal punishment; legal individualisation; deterrent effect, etc.*

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Introduction

The idea of a legal individualisation of criminal punishments in relation to the seriousness of the crime was strongly promoted as early as the adoption of the French Criminal Code in 1791 by the distinguished jurist and politician of the time Michel Lepeletier de Saint Fargeau. Among the conceptual cornerstones that guided the drafting of this criminal legislation was the principle of individualisation of punishments, according to which „the legal nature of the offence must correspond to the legal nature of the punishment". Therefore, the need for individualisation of criminal punishments stems from „the adaptation of the punishment to the gravity of the offence and to the character and nature of the offenders" (Tanoviceanu, 1912, 397).

In the current state of development of the human community, the individualisation of criminal punishment is a fundamental principle underlying the conception of the state's criminal policy, guiding criminal regulations in the direction of preventing and combating crime.

The legal individualisation of criminal punishments is the work of the legislator, which is based on the principle of the legality of punishment and consists in creating a system of sanctions that corresponds to the needs of preventing and combating crime. Within the framework of legal individualisation, the legislator has, on the one hand, created a general system of punishments, regulating the types of punishment and the general (minimum and maximum) limits, and, on the other hand, the legislator has established in special rules a punishment determined in nature and duration for each individual offence, taking into account the abstract gravity of the crime.

In order to deter drug traffickers, the legal individualisation of penalties must be related with the utmost skill to all the requirements of the legal content of an offence and to the personality traits of the offender. Otherwise, there will be no effective deterrence of individuals from committing an offence, which is a natural objective of penal prevention, but only a partial deterrence accompanied by the risk „...of encouraging people to commit offences in insidious ways" (Gibbs, 1975, 33).

Judicial individualisation, in its turn, is the individualisation of the criminal punishment by the court, which involves adapting the abstract gravity to the concrete gravity of the offence, by taking into account the surrounding events and circumstances of the offence and the data characterising the personality of the offender. Judicial individualisation is closely linked to legal individualisation. First, the punishment must be

individualised in such a way that it achieves the functions and aims intended by the legislature. Secondly, judicial individualisation takes place within the framework of „the coordinates established by the legislator at the stage of legal individualisation" (Zolyneak, 1993, 895). When the court, upon individualising the criminal punishment, does not take these coordinates into account, we witness a serious violation of the principle of legality of the criminal sanction (nulla poena sine praevia lege poenali).

The direct objective of this study is the critical approach to the criteria on the basis of which the Moldovan legislator has characterised in the criminal law the abstract prejudicial degree of drug trafficking offences, establishing on this basis the categories and limits of punishments applicable to drug trafficking offences.

The more distant indirect objective of the study is to make the legal individualisation of punishments for drug trafficking more effective by offering forward-looking legislative solutions, especially with regard to the trafficking of „new psychotropic substances".

Drug offenders are constantly demonstrating their adaptive capacity to cope and innovate new ways of committing offences. Consequently, criminal justice practitioners and scholars must thoroughly understand restrictive deterrence to better respond to newly developed patterns in drug offender behaviour (Guan & Lo, 2021). Therefore, transformations in drug trafficking deterrence policies must be based on scientific findings grounded in the metamorphoses of the phenomenon.

In the *hypothesis* of the implementation of the substantiated results, the punitive policy of the Republic of Moldova in the field of prevention of drug trafficking will be updated to the need for more effective protection of public health against the use of high-risk drugs.

Methodology

This study was based on a combination of research methods specific to the legal sciences: *the method of logical analysis,* centred on the idea of using logical reasoning, a method which allowed the legal argumentation of opinions, theses and findings, including the doctrinal interpretation of the legal-criminal norms*; the method of critical analysis,* which allowed to synthesize and examine, including critically, the opinions in the existing specialised doctrine on the legal individualisation of punishments for drug trafficking; *the classification method:* by highlighting criteria on the basis of which different legal entities related to the subject matter have been identified; *the case study method,* through the analysis of practical cases materialised in irrevocable and final decisions of the Supreme Court of Justice of the Republic of Moldova (2024a,b) on the transposition of

legal criteria for individualisation of criminal punishment for drug trafficking offences in the process of judicial individualisation, etc.

Literature Analysis/Review

From the theoretical perspective, the paper is based on research and analysis of existing scientific works on drug trafficking, especially in dealing with new types of drugs, including ethnobotanical products with narcotic effects. In a first reference work it was noted that among the trends characteristic of modern drug trafficking are: „the increase in the degree of public danger of offences related to illicit drug trafficking; the emergence and rapid development of new drugs and, as a result, their increase in number and diversity; the creation and increase in the number of clandestine drug production laboratories; the increase in the level and latency of offences related to illicit drug trafficking, etc.". (Larii & Nucu, 2015, 22). The emergence of new drugs, of the new generation, also implies an effort for the researchers to assess the degree of satisfaction of deterrent measures. The latency of drug criminality often is the effect of the implementation of deficient policies, including in the segment of punitive measures.

Another approach recognises that „the consumption of substances with new properties is a challenge not only for the national structures empowered to suppress drug trafficking, but also for the experts and specialists of forensic laboratories of phaco-chemical analysis, who are expected to provide a rapid and adequate response to identify new combinations of drugs that appear on the market against the background of the ingenuity of traffickers" (Buzatu, 2015, 134). The impossibility of determining new drugs by experts makes it difficult to apply deterrent means that are grounded and deeply dimensioned to the requirements of the principle of criminal legality.

The emergence of new drugs raises the question of reviewing preventive policies. Governments should review their laws, sentencing guidelines and practices for drug offences to assess their compliance with existing proportionality standards. Criminal penalties should be proportionate to the type of drug and the extent of the illicit activity, as well as the role and motivation of the offender: serious or organised traffickers; micro-traffickers (low-level dealers or smugglers); drug-dependent persons; and persons who use drugs occasionally (or „recreationally") (Lai, 2012, 10). Furthermore, according to Lai (2012), disproportionate punishment aggravates negative socio-economic conditions and increases the vulnerability of marginalized groups. In order to avoid disproportionality, it is desirable to cap punishments according to the risk level of the drugs being trafficked, as well as other factors.

In EU Member States, there are variations in the punishments for drug trafficking set out in criminal laws, with in most cases the prison punishment being used. Studies conducted on the dimension of criminal individualisation „suggest the development of closer cooperation in sentencing practice" (European Monitoring Centre for Drugs and Drug Addiction, 2017, 27), invoking the feasibility of such cooperation.

Referring to the perspective of decriminalisation of drug trafficking committed by consumers (Dumneanu & Stefanoia, 2020, 249-250), he mentions that „...criminalisation of illegal circulation of drugs, ethnobotanicals or their analogues, without the purpose of alienation does not correspond to the degree of danger of the committed act. The repressive measure against the acts incriminated in art. 217 of the Criminal Code of the Republic of Moldova (Republic of Moldova Criminal Code, 2002) and art. 4 of the Romanian Law No. 143/2000 does not correspond to the degree of damage that is caused or may be caused to social interests. Holding a drug user, who is often a drug addict, criminally liable may stimulate further criminal activity, without solving the psychological problem of drug addiction".

In the Republic of Moldova there are no studies aimed exclusively at evaluating the criteria for the legal individualisation of criminal punishments for drug trafficking with strict reference to the new trends in the manifestation of the phenomenon. The area of scientific interest for such an approach is particularly relevant in the context of the metamorphosis of the phenomenon and the ingenuity shown by traffickers in developing and circulating new drugs. The wealth of scientific literature, based on innovative scientific theories and findings, should provide the legislator with new prospects for improving punitive policies aimed at the criminal prevention of drug trafficking.

The normative basis of incrimination of drug trafficking offences in the criminal legislation of the Republic of Moldova

In the criminal legislation of the Republic of Moldova, the normative basis dedicated to the incrimination and criminal punishment of drug trafficking is dislocated in Chapter VIII of the Special Part of the Criminal Code with the marginal title of „Offences against public health and social coexistence". The criminal protection of "public health" takes place through the incrimination of several acts that jeopardize it or effectively harm it, including *drug trafficking acts*.

Under the current social developments, the criminal protection of public health against drug-trafficking behaviours can be explained by the particularly serious danger that drug use poses to human health. Drug use is

one of the main causes of ill health and death, particularly among young people. According to statistics compiled by the European Commission, one person dies every hour in European countries from an overdose.

The evolution of national criminal legislation in this area has been strongly marked by international and regional legislative acts to which the Republic of Moldova is a party: Single Convention on Narcotic Drugs (United Nations, 1961), adopted in New York on March 30, 1961 and amended by the Protocol amending the Convention, adopted in Geneva on March 25, 1972; Convention on Psychotropic Substances, adopted in Vienna on February 21, 1971; Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in Vienna on December 20, 1988, etc. As a result, the criminalisation of drug trafficking offences in the criminal legislation of the Republic of Moldova, with minor exceptions, is largely the result of the implementation of international standards in this area.

Depending on their legal nature and incriminatory scope, offences related to drug trafficking in the criminal legislation of the Republic of Moldova can be classified into two categories: offences of trafficking in drugs, ethnobotanicals or their analogues and offences that facilitate or create conditions for trafficking in drugs, ethnobotanicals or their analogues.

To the category of offences of trafficking in drugs, ethnobotanicals or analogues, provided for in the Criminal Code of the Republic of Moldova (Republic of Moldova Criminal Code, 2002) can be attributed:

- illegal circulation of drugs, ethnobotanicals or their analogues without the purpose of alienation - art.217);
- illegal circulation of drugs, ethnobotanicals or their analogues for the purpose of alienation - art.2171 (Criminal Code of the Republic of Moldova (Republic of Moldova Criminal Code, 2002), April 18, 2002).

The category of offences that facilitate or create conditions for trafficking in drugs, ethnobotanicals or their analogues includes: illegal circulation of precursors for the purpose of production or processing of drugs, ethnobotanicals or their analogues - art.2172; illegal circulation of materials and equipment intended for the production or processing of drugs, ethnobotanicals or their analogues - art.2173; theft or extortion of drugs or ethnobotanicals - art.2174; illegal public consumption or organisation of illegal consumption of drugs, ethnobotanicals or their analogues - art.2175; intentional unlawful introduction into the body of another person, against their will, of drugs, ethnobotanicals or their analogues - art.2176; illegal prescription or violation of the rules of drug circulation - art.218; organisation or maintenance of establishments for the consumption of drugs or ethnobotanicals - art.218 (Republic of Moldova Criminal Code, 2002).

It should be noted that the latter offences do not necessarily involve drug trafficking as such, being committed in connection with drug trafficking. By committing them, they create the conditions for or facilitate criminal activities aimed at drug trafficking. This category includes, for example, the offence of *unlawful circulation of precursors for the purpose of production or processing of drugs, ethnobotanicals or their analogues*, which consists of producing, preparing, processing, experimenting, procuring, procuring, keeping, keeping, dispatching, transporting, alienating or otherwise dealing with precursors for the purpose of production or processing of drugs, ethnobotanicals or their analogues. The basis for the establishment of criminal liability for such an act is the need to implement international standards, which oblige Contracting States to implement, in addition to measures to prevent drug trafficking activities, measures to prevent activities that create conditions for trafficking, including the movement of the substances from which they are obtained.

Thus, in accordance with the Single Convention on Narcotic Drugs (United Nations, 1961) art.2, paragraph 8: „Parties shall do their utmost to take measures of supervision, as far as possible, with regard to substances not specified in this Convention but which may be used for the illicit manufacture of narcotic drugs" (United Nations, 1961). At the same time, the obligation to punish the act in question, especially when committed for the purpose of manufacturing drugs, also derives from the provisions of Article 3 para. (1) of the UN Convention of December 20th, 1988 against illicit traffic in narcotic drugs and psychotropic substances: „Each Party shall adopt such measures as may be necessary to establish as criminal offences, in accordance with its domestic law, when the manufacture, transportation or distribution of substances listed in Schedules I and II, known to the person engaged in these activities to be used in and/or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances, is committed" (United Nations, 1988).

Criteria for the legal individualisation of punishments for drug trafficking offences in the criminal legislation of the Republic of Moldova

The gravity of an offence derives from the sanction of the rule laid down in the Special Part of the Criminal Code, more specifically from the type and the special minimum and maximum limits of the punishments established by the legislator for that particular offence.

The process of criminalisation of offences by the legislator is preceded by a generic assessment of the inherent social danger. To this end, the legislator uses abstract criteria, such as: the extent, dynamics and regularity of the

commission of acts which concern a certain category; the extent of the damage to social values caused by the commission of the acts and the nature of the harmful consequences; the degree of damage to social values; the circumstances of place, time in which the acts are committed, including *modus operandi*, etc.

After assessing the degree of harmfulness of the criminal acts, the legislator resorts to the choice of the type of punishment „...appropriate to combat them and in setting the legal limits for the determination of this punishment" (Dobrinoiu & Nistoreanu, 1992, 73). In the criminal law, these punishments are strictly scaled to the degree of harm or endangerment of social values, which, as mentioned above, may be determined by different surrounding facts and circumstances. This follows implicitly from the provisions of Article 16 of the Criminal Code of the Republic of Moldova (Republic of Moldova Criminal Code, 2002), according to which „The degree of the offence shall be determined according to the signs that characterise the elements of the offence: the object, the objective, the subject and the subjective side". It follows from this defining rule that underlying the assessment of the degree of criminal offence, implicitly the type and limits of criminal punishments, are the signs that characterise the elements of the legal content of the offences.

The above observation is also valid for the legal individualisation of criminal punishments for drug trafficking offences. There are certain objective or subjective factors underlying the imposition of criminal punishments for these offences, which particularise the seriousness of each type of drug-trafficking criminal conduct. Therefore, in order to understand the penalty regime applicable to drug trafficking offences and to differentiate the judicial individualisation in relation to a concrete offence committed in objective reality, it is particularly important to know the criteria on which the legal individualisation of punishments for drug trafficking offences is based.

The first constitutive sub-element underlying the differentiation of criminal liability for drug trafficking in the Criminal Code of the Republic of Moldova (Republic of Moldova Criminal Code, 2002) is the nature of the material object of the offence. In fact, the material entities, which may be represented by drugs, ethnobotanical products, analogues, plants containing drugs, precursors, etc., constitute the main criteria for the legal individualisation of the applicable sanctions.

The differentiation of criminal liability depending on the material object of the drug trafficking offences can be made within one and the same article or within separate articles of the Special Part of the Criminal Code. For example, Article 2171 of the Criminal Code of the Republic of Moldova (Republic of Moldova Criminal Code, 2002), under the marginal heading of „illegal circulation of drugs, ethnobotanicals or their analogs for the purpose

of alienation", establishes criminal liability for two offences. The first consists in the illegal circulation of plants containing drugs or ethnobotanicals [art.217 paragraph (1)], and the second in the actual illegal circulation of drugs, ethnobotanicals or their analogues [art.217 paragraph (2)]. The offence described in art.217 paragraph (1) is punishable by a fine from 950 to 1250 conventional units or imprisonment for up to 2 years, and for a legal entity by a fine from 4000 to 6000 conventional units, deprivation of the right to exercise certain activities or liquidation of the legal entity. In the case of Article 217 paragraph (2) of the Criminal Code, the offence is punishable by imprisonment of 2 to 5 years and the legal entity by a fine of 5000 to 7000 convention units, deprivation of the right to exercise a certain activity or liquidation of the legal entity.

It should be noted that in both cases the punitive regime is strongly inspired by the dangerousness of the material object of the offence. On the basis of such a permissibility, the Moldovan legislator sanctions more severely the trafficking of drugs, ethnobotanicals or analogues than the trafficking of plants containing them. It is presumed that trafficking in plants containing drugs causes less damage to social relations relating to public health than trafficking in drugs themselves, since the former, unlike the latter, are not ready for consumption, being a natural raw material from which any drugs may be obtained.

Another distinctive criterion for the legal individualisation of the criminal punishment for drug trafficking established in the criminal legislation of the Republic of Moldova is the **quantity of the material object of the offence** (drugs, ethnobotanicals, analogues and plants containing them). According to this, the criminal sanctions for the following acts are differentiated:

- → drug trafficking in small quantities without the purpose of alienation - art. 85 of the Contravention Code;
- → large-scale drug trafficking without intent to alienation - art. 217 para. (1), (2) and (3) of the Criminal Code;
- → drug trafficking in particularly large proportions - art. 217 para. (4) Criminal Code;
- → drug trafficking in small quantities for the purpose of alienation - art. 217^1 para. (1) and (2) of the Criminal Code;
- → drug trafficking for the purpose of large-scale alienation - art. 217^1 para. (3) letter f) Criminal Code;
- → drug trafficking for the purpose of alienation in particularly large proportions - art. 217^1 para. (3) letter f) Criminal Code.

The limits of small, large and particularly large proportions of the types of drugs are stipulated in the Government Decision of the Republic of Moldova No. 79 of January 23rd, 2006 on the *List of narcotic and psychotropic substances and plants containing such substances detected in illicit trafficking, as well as their quantities*. On the basis of this criterion, the legislator differentiates the system of criminal liability for drug trafficking on the basis of the quantity of drugs, which, as is only natural, varies according to the type of drug[1]. In the case of plants containing narcotic drugs or psychotropic substances, the proportions shall be determined according to the number of such plants [2]. It should also be noted that the quantitative criterion does not in itself have any effect on the imposition of penalties. The quantitative criterion is strictly correlated with the qualitative criterion, i.e. the proportion or mass is determined according to the type of drug or plant containing it and its narcotic effect.

Another criterion for the legal individualisation of the criminal punishment for drug trafficking, which this time refers to the danger of the material object, is drugs or analogues whose circulation for medicinal purposes is prohibited. Given the increased danger to the life and health of the person, drug trafficking, in this case, presents an increased degree of harmfulness, being enshrined as an aggravating form of the offences provided for in art. 217 para. (3) letter c) and Art. 2171 para. (3) letter c) of the Criminal Code of the Republic of Moldova (Republic of Moldova Criminal Code, 2002). These categories of drugs are defined in a separate Law (Republic of Moldova Law No. 382, 1999) and correspond to the substances not usable for medical purposes included in List No.1 of the 1961 Single Convention on Narcotic Drugs (United Nations, 1961) and psychotropic substances included in List No.1 of the 1971 Convention on Psychotropic Substances.

Another significant criterion for the individualisation of criminal punishment enshrined in the criminal legislation of the Republic of Moldova is subjective and is the purpose of committing the offence. On the basis of this criterion, a distinction is made between criminal liability for drug trafficking committed without the purpose of alienation and drug trafficking

[1] For example, the small amounts for the narcotic substance coca leaves are up to 5.0 g, the large amounts from 5.0 g to 50.0 g and the particularly large amounts exceeding 50 g, while for the narcotic substance dimethyleptanol the small amount is 0.001 g, the large amounts - from 0.001 to 0.01 g, and the particularly large amounts exceeding 0.01 g.

[2] For example, small quantities for the poppy plant (irrespective of the vegetative stage) is up to 150 plants, large quantities from 151 to 500 plants and particularly large quantities exceeding 150 plants.

committed with the purpose of alienation. The first offence is provided for in Article 217 and the second in Article 217 of the Criminal Code of the Republic of Moldova (Republic of Moldova Criminal Code, 2002).

Such a legislative solution finds its rationale in the idea that drug trafficking committed for the purpose of alienation is to be sanctioned more severely than drug trafficking committed without the purpose of alienation (e.g. by consumers or by persons who use drugs for purposes other than consumption and distribution). The purpose pursued by the offender reflects the legal nature of the offence, which is determined by the purpose pursued by the offender as the essential sign on the basis of which the legislator attributes a certain degree of dangerousness to drug trafficking offences. Although the rationale of the legislator is explicable and even plausible, given the subjective substrate of this criterion of individualisation of criminal punishment, in practice it is quite difficult to establish the existence or non-existence of the purpose of selling drugs. In judicial practice the existence of the purpose of alienation of drugs may result from the following circumstances: the fact of alienation of drugs, including to an undercover witness (SCJ, May 29th, 2024; SCJ, April 10th, 2024); preparation by the trafficker of special packaging, proportionate to the dose of drug consumption (SCJ, July 06th, 2010); distribution, packaging in smaller doses and distributing of drugs (SCJ, March 21st, 2024); placing the drugs inside an unfinished building in a package in order to distribute them by picking them up by the consumer (SCJ, March 13th, 2024); weighing, distributing and packaging it in smaller doses, and subsequently alienating it to different persons (SCJ, January 17th, 2024); detection on the electronic scale of single particles of marijuana plant mass, the scale being intended for weighing drugs (SCJ, January 25th, 2024), etc.

The Criminal Code of the Republic of Moldova (Republic of Moldova Criminal Code, 2002) may also use other criteria for the individualisation of criminal punishment, such as the method of committing the offence. This criterion is used in the case of the offence of theft of drugs or ethnobotanicals criminalised in Article 2175. The provision of the incriminating norm does not expressly provide for the methods by which narcotic or psychotropic substances may be stolen, but this can be deduced by a logical interpretation of the text of the law. Article 2174 para. (1), the generic term „theft" is enshrined as verbum regens. From such a perspective, it can be concluded that such forms of embezzlement such as theft, robbery, fraud, embezzlement of foreign property and pickpocketing fall under the scope of Art. 2174 para. (1) of the Criminal Code. However, a harsher punishment will be applied when the theft is committed by violence

or threat of violence. These forms of committing drug theft are enshrined in Art. 2174 para. (2) letter e) with the application of violence not dangerous to the life or health of the person or with the threat of the application of such violence, and respectively in para. (3) letter b) with the application of violence dangerous to life or health of the person or with the threat thereof.

Critical examinations

In connection with the presentations made above, we consider that the criteria for the legal individualisation of criminal punishments for drug trafficking provided for in the criminal legislation of the Republic of Moldova are not always able to contribute to a fair individualisation of the sanctions applicable for these offences and to ensure effective protection of public health. The finding concerns, first and foremost, trafficking in ethnobotanical products provided for in Articles 217 and 2171 of the Criminal Code of the Republic of Moldova (Republic of Moldova Criminal Code, 2002). We consider the solution of the legal individualisation of the criminal sanction on the basis of the criterion of proportion in the case of ethnobotanical products to be confusing and totally inappropriate.

This is determined by the specificity of psychoactive ethnobotanicals in relation to other categories of drugs. Ethnobotanicals are a new category of drugs, created as a result of experiments and research into the composition and effects of existing drugs. Specialised literature shows that, even if they are not light drugs, ethnobotanicals have disastrous and unpredictable effects and can affect the human body in various ways. Consumption of ethnobotanicals, in some cases can be more dangerous than drug use, because the long-term effects of these products are not known exactly and medical science has not developed treatment procedures to be administered (Buzatu, 2015)

In this understanding, ethnobotanicals are "new psychotropic substances" or in other words „new narcotic drugs" or „new psychotropic drugs" in pure form or in the form of a concoction. These substances are not included in existing international drug prevention acts, such as: the 1961 United Nations Single Convention on Narcotic Drugs (United Nations, 1961) and the 1971 United Nations Convention on Psychotropic Substances (European Union, 2005).

The concept of ethnobotanical products is expressly enshrined in the criminal legislation of the Republic of Moldova in Article 1341 para. (5) of the Criminal Code: „Ethnobotanical products (ethnobotanicals) are defined as mixtures of powders and/or plants or mixtures of herbs and various parts of plants sprinkled with chemical substances, which produce changes

inducing physiological and/or mental effects, hallucinogenic and/or psychoactive actions" (Republic of Moldova Criminal Code, 2002). From the notion of the legal text, it follows that ethnobotanicals are described by the legislator in terms of two fundamental features:

→ by composition are mixtures of powders and/or herbs or mixtures of herbs and various plant parts sprinkled with chemicals;
→ by effect produce changes that induce physiological and/or mental effects, hallucinogenic and/or psychoactive actions.

Based on the provisions of Art. 217 and Art. 2171 of the Criminal Code of the Republic of Moldova (Republic of Moldova Criminal Code, 2002), the application of which is conditioned by the determination of the quantity of the material object of the offence, we can see that it is difficult, even impossible to apply the rule to trafficking in ethnobotanicals. While in the case of plants containing drugs, including analogues, it is possible to apply the quantitative criterion for individualising the criminal punishment, in the case of ethnobotanical products this is impossible to do, as there is no legislative act that would enshrine the categories and proportions of psychoactive ethnobotanicals.

In fact, due to the nature of ethnobotanical products, it is difficult to draw up an exhaustive list of these products, and therefore of their proportions, since this drug is part of the new generation and is constantly changing, and the ingenuity of traffickers means that new categories of psychoactive substances are appearing every day. Consequently, neither the „mixtures of powders and/or herbs" nor the „mixtures of herbs and various parts of plants sprinkled with chemical substances" from which ethnobotanicals are currently produced can be the subject of a complete list with the quantities and proportions.

Under such conditions, the criminal legislation of the Republic of Moldova shows a legislative gap, which generates problems that are difficult to solve both for the correct legal framing of the offences provided for in Art. 217, 217^1, 217^4 of the Criminal Code, and for their delimitation from the contravention offences related to drug trafficking (Art. 85 Contravention Code - illegal procurement or storage of drugs, precursors, ethnobotanicals and their analogues in small quantities or consumption of drugs without a doctor's prescription; Art. 87 Contravention Code - illegal cultivation of plants containing drugs, precursors and their analogues and manufacture of ethnobotanicals). It can be concluded that it is impossible to determine the proportions of ethnobotanicals, which makes it difficult to effectively apply criminal law rules on drug trafficking, especially of ethnobotanicals with psychoactive effect.

Conclusions

As a result of the investigations carried out in this study we draw the following conclusions:

- the progress of criminal rules aimed at deterring traffickers is based on the evolutionary principle, according to which the legislator must keep pace with the multiple metamorphoses that drug trafficking activities involve. The phenomenon of drug trafficking is a societal challenge which is constantly changing and adapting, including preventive policies, which in turn calls for the perpetual and sustainable evolution of legislative measures through research and innovation;
- the purpose of alienation of drugs, set out as a criterion for individualising the criminal punishment in the criminal law, we consider to be appropriate and corresponding to the nuancing of the harmful nature of drug trafficking by differentiating the applicable punishment for persons who do or do not pursue such a purpose;
- de lege lata individualisation of the criminal punishment for trafficking in ethnobotanicals in the content of Articles 217 and 2171 of the Criminal Code of the Republic of Moldova (Republic of Moldova Criminal Code, 2002) based on the quantitative criterion of proportions may be ineffective. The criminal law cannot ensure that the deterrent effect is fully achieved, as there is no list of ethnobotanical substances and their proportions in the national normative acts. Moreover, given the legal nature of ethnobotanical substances, characterised by diversity and frequent metamorphosis of their chemical composition, it is rather unlikely that such a list will be adopted in the near future;
- in order to streamline the criteria for the legal individualisation of criminal punishments for trafficking in ethnobotanicals, we propose the introduction in the Criminal Code of the Republic of Moldova (Republic of Moldova Criminal Code, 2002) of a separate incriminating norm, whereby such an offence would be criminalised separately from drug trafficking (narcotics, psychotropic drugs, mixtures and analogues) provided for in Articles 217 and 2171. Such an approach must, however, be perfectly in line with the EU's democratic values, which include the primacy of the rule of law. In primacy of the rule of law generates, in criminal matters, the principle of the legality of offences and punishments, which imposes two obligations on the legislator: 1) to set out in a text of the law the

acts considered as offences and the corresponding penalties (lex scripta); 2) to draft the text of the law clearly (lex certa). Starting from these premises, the criminal law intended to punish trafficking in ethnobotanicals should be configured with specific descriptive criteria for outlining the seriousness of the act and the criminal punishment, among which we mention: the nature of the actions committed (production, marketing, distribution, delivery, transportation, smuggling); minor or major risk to the life or health of consumers, the existence or non-existence of the purpose of putting into circulation, etc.

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