

Algerian legislative efforts in the field of drug offences

The Algerian government has developed a penal policy for the Algerian legislator to confront drug offences through the promulgation of the Law on the Prevention, Suppression of Illicit Use and Trafficking of Narcotic Drugs and Psychotropic Substances, which lists drug offences and the preventive and repressive mechanisms to confront these offences, which range from original or supplementary penalties to measures.

The crime of drug abuse, like any other crime, is related to several acts or behaviours that are part and parcel of it, although the latter can be studied separately from each other. Among these acts, we mention possession and offering for use, which is one of the criminal behaviours that can be committed by any natural person. Among the terms that are related to abuse, we mention consumption, but we must pay attention to the term addiction, which is related to the drug crime, but it is considered a consequence, or the state to which a person ends when using drugs, the latter through various means such as sniffing, injecting, or smoking. Because drug abuse is a crime in its own right, it has material, moral and legal elements, and, of course, penalties are prescribed for this crime, whether in international conventions or in domestic legislation, including Algerian legislation.

- Elements of the offence of drug abuse and sanctions related to the offence of drug abuse:

- Elements of the offence of drug abuse: No crime of any kind exists without the existence of its elements, and this applies naturally to the crime of drug abuse, which is based on the material element, which is every legally criminalised behaviour or group of behaviours, and the presence of the moral element, which is criminal intent, in addition to the legal element, which is based on the legislative text criminalising the behaviour and determining the prescribed penalty. Therefore, we have decided to divide this research into three demands, the first demand: The material element - and the second requirement: The moral element - and the third requirement: The legal element.

A. The material element: The material element of the crime of drug use is based on the availability of other elements in addition to drug use, namely the physical acts that are the subject of the offence, such as possession, delivery, offering, offering to use and facilitating, as we will see in the following:

- The offender must overcome the obstacles that stand in the way of the person wishing to use the drug, or at least adopt a certain attitude that enables the user to achieve his goal.
- If the law permits doctors to prescribe a narcotic substance for treatment, but administering it with the intention of helping addiction is a punishable crime and the doctor must respect the honour of the profession, as well as by pushing others by any means of coercion or deception to consume a narcotic substance by using fraudulent means with the victim by hiding from him the truth of the substance he offers for abuse.
- For example, a cigarette seller misleads his customers that what he sells are ordinary cigarettes, but in fact they contain a narcotic substance such as Indian hemp, which leads these people to always use it, leading to addiction, with the aim of profit.

B- Moral Element:

The moral element, by which we mean the criminal intent, is of two types, general intent and special intent, as the general intent: It has two basic elements on which it is based: Knowledge and will, while special intent: We mean the motivation to cause the criminal outcome. Some crimes require special intent, but drug crimes are like all intentional crimes and the general rule is that the general intent is sufficient for a drug crime, unless the law requires the existence of special intent, as the latter does not exist independently, and the crime does not exist without the availability of the general intent. Therefore, this element will be examined according to the specificities of this offence as follows:

- General intent:

All physical acts committed by persons who are not authorised by the legislator to intentionally contact narcotics require the perpetrator to have the general criminal intent: The common definition is that the perpetrator is aware of the availability of the elements of the offence and his will is directed towards committing it and achieving the punishable result. The general criminal intent in the offence of possession of narcotic substances is the knowledge of the possessor that the substance is a narcotic substance. Once the element of possession is available and the possessor knows that the substance he is possessing is a narcotic substance, the offence has completed its legal elements and is punishable, and the motive for possession is of no consequence whatsoever. What is notable with regard to the requirement of the availability of the moral element in the various

forms of possession of drugs for abuse is that the general intent must be met in other acts such as delivery, offering or providing for abuse and facilitating it.

- Special intent:

In order for the special intent to exist, another element must be added to the two elements of the general intent mentioned above, and this is the intention of the perpetrator that prompted him to commit the act. The special intent does not exist independently and the offence does not exist without the general intent, as all offences require a general intent in the first place, and sometimes the law may require, in addition to the general intent, a special intent, so researching the availability of the special intent assumes the availability of the general intent. However, in some cases, the legislature has stipulated that special intent is required for the existence of special intent, such as the intent to circulate, the intent to use, the intent to provide or facilitate the use of the drug to others, or personal use. The court often infers the intent to use or personal use from the small quantity seized.

C- The legal element:

The occurrence of the criminal act means that the material element of the offence is fulfilled in addition to the criminal intent that motivates the person to commit the offence, but the criminal act remains permissible if it is not stipulated in the penal texts and this is what constitutes the legal element.

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- The act is subject to a criminalisation text:

In accordance with the principle of the legality of crimes and penalties, i.e. there is no "crime or punishment except on the basis of a legislative text established by the competent authority, as no behaviour or act may be considered a crime unless the law provides for its criminalisation, and no penalty is imposed unless the law prescribes a specific penalty for it. In other words, the legal element of the crime means the existence of a legislative text that specifies the penalty prescribed for a certain behaviour of a penalty or security measure, and therefore the legal element is what confers the character of illegality or criminal status on the behaviour.

- Penal texts in Algerian legislation:

The Algerian legislator addressed the criminalisation of the act of drug use in several legal texts, including Article 190 of Health Law No. 85/05, which stipulates that the production, transport, import, export, possession and use of poisonous substances or plants, narcotic and non-narcotic, as well as the cultivation, transfer and purchase of these plants, and Article 245 of Law No. 85/05, which stipulates that: Anyone who illegally uses a substance or plant classified as a narcotic shall be punished with imprisonment from two months to one year and/or a fine of between 500 and 5,000 dirhams. 1

- Article 16 of Law No. 85/05 stipulates that: "Anyone who knowingly provides a fictitious or favourable prescription containing psychotropic substances without a prescription, or is aware of the fictitious or favourable nature of the prescription, shall be punished by imprisonment from 5 years to 15 years and a fine from 500,000 to 100,000 dirhams or by one of these penalties. Article 12 of Law No. 85/05 stipulates: Anyone who illegally consumes or possesses for personal consumption narcotics and psychotropic substances shall be punished with imprisonment from two months to two years and a fine from 5,000 to 50,000 or one of these two penalties.)As mentioned in Articles 16-12, the legislator punished the behaviour of drug consumption whether the person consumes them personally or provides them to others for the purpose of consumption, such as the case of a pharmacist who provides sleeping medication to any person without a prescription while knowing the nature of these substances. Article 36 of Law No. 04/18 states:

Research and investigation of drug offences is the responsibility of the following persons: Judicial police officers, agronomists, pharmacy inspectors... According to the text of the article, procedural actions such as investigations into drug offences are exclusive.

The Algerian legislator, in Law 04-18, stipulates in Article 29 as follows: "In case of committing the offences stipulated in Articles 12 to 177 of this law, the judgement may issue the following: "A sentence of deprivation of civil rights for a period ranging from five to ten years may be imposed. However, the Algerian legislator, considering drug offences as misdemeanours, deviated from the general rules established in the Penal Code and provided for penalties ancillary to drug offences in a special provision, namely Article 29.

It is worth noting here that the Algerian legislature has made ancillary penalties permissive, thus leaving the judge with the discretion to apply them or not, depending on the type of offence and the seriousness of the incident before

him. The forms of ancillary penalties mentioned in the above-mentioned article are as follows:

- The possibility of deprivation of political, civil and family rights for a period ranging from five to ten years. Civil rights are those mentioned in the text of Article 06 of the Penal Code as follows: "Deprivation of national rights is limited to "

- 1- Isolation and expulsion of the convicted person from all jobs and high positions in the party or the state, as well as all services related to the offence.

- 2- Disqualification from elections and candidacy and, in general, from national and political rights and from holding any honour.

- 3- Disqualification to be a sworn assistant, expert or witness to any contract before the judiciary except by way of evidence.

- 4- Ineligibility to be a guardian or a custodian, unless the guardianship is for his children.

- 5 - Deprivation of the right to carry weapons, to teach, to run a school or to be employed in an educational institution as a teacher, teacher or supervisor.

- In case of conviction for violating the provisions stipulated in this law, the competent judicial authority may impose a penalty of deprivation of political, civil and family rights from five (5) to ten (10) years.

In addition, it may also impose the following penalties

- Prohibition from practising the profession in which the offence was committed for a period of not less than 5 years.

- Prohibition of residence in accordance with the provisions stipulated in the Penal Code.

- Revocation of passport and driver's licence for a period of not less than 5 years.

- Prohibition to possess or carry a weapon subject to a licence for a period of not less than 5 years.

- Confiscation of objects used or intended for the commission of the offence.

- Closure for a period not exceeding 10 years for hotels, furnished houses, accommodation centres, bars, restaurants, restaurants, clubs, performance venues or any place open to the public or used by the public, where the operator

committed or participated in the commission of the crimes stipulated in Articles 15 and 16 of this law. Article 12 stipulates that any person who illegally consumes or possesses for personal consumption narcotics or psychotropic substances shall be punished with a term of imprisonment of two years and/or a fine of 5,000 to 50,000 dinars.

It is clear from article 07 that the legislature empowers the investigating authority, represented by the ordinary investigating judge if the accused is an adult or the juvenile judge if the accused is a juvenile, to order that the accused addict be placed in a treatment institution to remove the effects of addiction and intoxication. It should be noted that the order must not be issued until the investigation has been completed and the order remains in force until a contrary order is issued. If the provisions stipulated in the first paragraph of the aforementioned Article 07 are applied, the judicial authority to which the case is referred may not impose the penalties stipulated in Article 12 above.

It is clear from this article that the judicial authority is empowered to order the addicted person to undergo treatment in the case of a flagrante delicto case, where the judicial authority may either confirm the investigation order or extend its effects, noting that the judicial authority's order remains valid even if the judgement is appealed. The judicial authority to which the case is referred may impose the penalty stipulated in Article 12 of Law 04-18, which is permissible and at the discretion of the trial judge. The order to place the addict in a therapeutic institution is carried out in accordance with the provisions of Article 22 of the Penal Code, which stipulates that "judicial placement in a therapeutic institution is the placement of a person with a habitual addiction resulting from the use of alcohol or drugs under observation in an institution prepared for this purpose."

As for the treatment of detoxification, it is carried out in a therapeutic institution, under the supervision of a specialised doctor according to the provisions of Article 10 of Law 04-18, provided that the treating doctor informs the judicial authority about the stages of the treatment process and its results. In the event of non-compliance with the treatment, the provisions of Article 09 of Law 04-18 shall be applied, which states: "The penalties stipulated in Article 12 shall be applied to those who refuse to implement a decision ordering detoxification treatment, without prejudice to the renewal of the order to apply Article 07 above, if necessary.

It is clear from this article that any person who is ordered to undergo detoxification treatment and refuses to comply is subject to a penalty of

imprisonment from two months to two years and a fine of between 5,000 to 50,000 Dirhams or one of the two, and it is also noted that it leaves the door open to renew the order to place the person in a therapeutic institution when necessary.

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