

## Acknowledgement of the Flagrant Crime as Regards the Traffic of New Substances with Psychoactive Properties

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### Abstract

People have known drugs since immemorial times, using them in various ways. Everywhere in the world, they were part of man's life and culture, but they had either a therapeutic importance, or a religious significance, and as long as no abuse was made, they could be kept under control until the 20<sup>th</sup> century. Part of them is known, but technology advances, generating synthetic substances.

**Keywords:** Traffic, new substances, psychoactive properties, flagrant crime

### Introduction

The new types of drugs are substances obtained from plants that grow in various parts of the globe or, as we said before, artificial substances obtained by synthesis.

The term of *ethno-botanic plants*, by which NUPP have become known by the society, has not been inserted in the normative acts assigned to this field, considering the fact that this represents a general denomination, similar with „light drugs”.

The term also includes a wide range of synthetic substances and products, derived from plants, including „chemical research substances”, „vegetal drugs” etc., usually sold via the internet and in the so-called „smart shops/head shops”, promoted by sophisticated and aggressive marketing strategies and, in certain cases, willingly labeled in an improper manner, the declared ingredients differing from the real composition (Țone, C.; Ștefan, C.E.; Nenov, P., 2012, p. 13).

The name agreed by the member states of the European Union for the products traded through “dream shops” or “spice shops” is that of “*new substances with psychoactive properties*”- NSPP. They are available either pure, or in combinations.

NSPP are known “on the market” as “synthesis drugs”, “legal drugs”, “legal weed”, “bath salt”, “research substances” or “laboratory reactive substances”.

The police are usually carrying out huge actions when targeting ethno-botanic product dealers, that most times it catches in the act.

Art. 293 para. (1) of the Romanian Criminal Procedure Code stipulates that „The crime discovered while it is committed or immediately after it is committed is in flagrante delicto”, and in para. (2) ”It is also considered to be in flagrante delicto the crime whose perpetrator is pursued immediately after committing it by public order and national safety authorities, by the injured person, by eye witnesses or by public shouting, or it shows traces justifying the reasonable suspicion of having committed the crime, or is caught close to the place where he committed the crime with guns, instruments or any other objects suspecting him of participating in the crime.”

Romania’s criminal procedure code regulates only the obligation of the acknowledgment bodies to draft a report and to pick up the means of evidence, and it does not draw a special procedure of settlement of the cause like in the former code.

As stipulated in art. 310 of the Criminal Procedure Code, as regards the crime caught in the act, any person has the right to catch the perpetrator, and the person holding him must promptly hand him over, together with the corpus delicti, as well as with the picked up objects and documents, to the criminal pursuit bodies, who are drafting the report.

The acknowledgement of the crimes caught in the act will be made only when, after analyzing all the circumstances of the cause, the conclusion is drawn that the illicit activity could not be interrupted and documented differently.

As regards the crime caught in the act, the procedure is regulated by art. 298 of the Criminal Procedure Code, thus, as regards the flagrant crime, the criminal investigation body is bound to acknowledge its commitment, even in the absence of the previous complaint, and after acknowledging the flagrant crime, the criminal pursuit body calls the injured party, and, if the latter declares that he will file a previous complaint, the criminal pursuit will be initiated; otherwise, the criminal investigation body will give the prosecutor the concluded deeds and the proposition of classification.

Acknowledging the crime caught in the act, the investigators interfere in carrying out the illicit activity, preventing the amplification of the results.

Thus, the place and time of the crime become known from the initial stage of the investigations. Catching at least one of the perpetrators may help identify all the participants. When preparing to acknowledge the crime caught in the act, such preliminary activities must be executed first:

- establish the opportunity and need to acknowledge the crime caught in the act by NSPP traffic supervision measures (the so-called ”controlled delivery”), phone interceptions and other operative measures;
- acquire complex data on the perpetrator and on the criminal activity: nationality, citizenship, field and/or residence, entourage, accomplices, criminal antecedents, the modus operandi used, the place of procurement of NSPP, the manner of distribution, etc.;
- prepare the technical criminalistics means, in this case, the kit to test drugs, by air sampling devices, photo devices and video cameras;
- establish the moment and manner of action, composition of the team, analysis of the specificity of each case; as regards the moment of action, it must be set in the interval when it occurs, when he is detained, or during other operations concerning drug dealing.

The actual catching in the act supposes the following activities (Stancu, E., 2002, p. 637-638):

- identify eye witnesses, thus assuring the possibility to gather other evidence than the one that is acknowledged without any doubt;

- establish the illicit activity carried out during the acknowledgment, namely the occurrence, owning, growing, experimenting or any other operation concerning the traffic of products or substances with psychoactive effect, if they are executed without any right;
- decline any capacity by the judicial body and take all measures to stop the illicit activity; in other words, the criminal pursuit body must introduce his capacity and the unit that he is part of, showing the proving document.
- give first aid to the intoxicated persons; when there is information about persons consuming NSPP, a specialist doctor must be present when making the catching in the act;
- identify the perpetrator by identity documents or by the data mentioned by him, that is to be checked on the spot in the police records;
- the body search is compulsory in all situations, and it also extends over the perpetrator's luggage and motor vehicle;
- order the procedural measures concerning the perpetrator, objects, values and documents that have been discovered.

As regards the crime caught in the act, the public order and national safety bodies draft a report in which they record all the acknowledged aspects and executed activities, which they transmit to the criminal pursuit body (Radu, M.E., 2014, p. 22).

### **Conclusions**

The perpetrator will be supervised and guarded so that he may not attempt to run, but also not to destroy the material means of evidence. The objects carrying traces will be sent to the specialized laboratories to identify the narcotic substances.

The action range of the flagrant after performing it must be quickly cleared in order to prevent it from being crowded by curious persons, by the intervention of other criminals or other negative events.

### **References**

1. Ţone, C.; Ştefan, C.E.; Nenov, P., (2012), „*Etnobotanicele*” *vise careucid*, Craiova, SITECH Publishing House.
2. Stancu, E., (2002), *Tratat de criminalistică*, Bucharest, Universul Juridic Publishing House.
3. Radu, M.E., (2014), *Drept procesual penal. Partea specială*, Bucharest, Academic Publishing House.