



The Objective Penal Confrontation of Narcotics and Psychotropic Substances Crimes and the Suppression of Illicit Usage and Trafficking

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Send Article Date: 30-03-2025

Date of acceptance of the article: 22-05-2025

Abstract:

Within the purview of the substantive penal policy espoused by the Algerian legislator in its endeavor to counteract crimes related to narcotics and psychotropic substances, and to suppress their illicit usage and trafficking, the legislature incriminated an extensive array of conduct pursuant to Law No. 04-18, previously addressing the prevention of narcotics and psychotropic substances and the suppression of their illicit usage and trafficking. This incrimination was subsequently reaffirmed and expanded through the promulgation of Law No. 23-05, amending and supplementing the aforementioned Law No. 04-18, whereby offenses have adopted multifarious and intricate typologies. This study shall meticulously delineate such typologies exclusively in relation to natural persons, excluding juridical entities.

key words: Narcotics, psychotropic substances, sanction, substantive penal policy.

Introduction:

The primary function of the substantive criminal norm, in general, resides in elucidating the impediments to penal liability that might be pronounced upon perpetration of a criminal act. It further delineates the constituents of the crime and the discrete

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elements subsumed within each constituent, as well as prescribing the commensurate sanctions and associated jurisprudential stipulations, be they aggravating or mitigating in nature. The substantive norm, accordingly, functions as a "norm of conduct," instructing individuals unequivocally regarding permissible and proscribed actions. Moreover, it embodies a compulsory and evaluative precept, determining through its legal qualification the legitimacy or illegality of behavior, alongside prescribing the penal repercussions contingent upon its breach (Abderrazak, 2020-2021, p.24).

Our analysis shall rigorously interrogate this substantive penal framework concerning narcotics and psychotropic substances—an exceptionally pernicious phenomenon of considerable antiquity, against which states have historically marshaled diverse countermeasures. Contemporary emergence of transnational criminality, particularly narcotics-related offenses, has impelled the international community toward instituting potent transnational mechanisms to combat crimes transcending national frontiers (Mustafa, 2016, p.492).

Consequently, the narcotics quandary has metamorphosed into a pivotal focal point of deliberation and discourse at global, regional, Arab, and local echelons (Ibrahim, 2013, p.165). Nevertheless, despite these concerted endeavors, the existing efforts still fail to fulfill the aspirational threshold requisite for the eradication of this phenomenon, which imperils individuals and societal fabrics alike (Mahmoud, 1997, p.223).

Parallely, Algeria, emulating numerous global jurisdictions, promulgated an array of legislative instruments addressing this predicament, notably Law No. 04-18, addressing prevention and suppression of illicit narcotics and psychotropic substances usage and trafficking (Law 04-18, OJ No.30, 2004). This enactment was subsequently augmented by various regulatory decrees and bolstered by Algeria's accession to pertinent international conventions (Karima, 2020, p.11).



Algeria's augmented concern with narcotics suppression remains a pivotal state priority, especially given the proliferation of narcotics-related crimes and their nexus to other perilous criminal modalities, precipitating the legislator's adoption of a stringent penal policy targeting any unauthorized narcotic or psychotropic substance interactions (Fatiha, 2020, p.620). In alignment with evolving exigencies, Law No. 23-05 was promulgated, amending and complementing Law No. 04-18 of December 25, 2004 (Law 23-05, OJ No.32, 2023).

This study endeavors to expound upon the substantive penal policy articulated by the Algerian legislator to counter narcotics crimes by meticulously examining pivotal provisions codified within Law No. 04-18, as amended by Law No. 23-05, thus highlighting salient distinctions between antecedent legislation and the recent amendment. The central research problematic consequently emerges thus: What precisely constitutes the substantive penal policy employed by the Algerian legislator in curtailing narcotics and psychotropic substances crimes under the amended Law No. 23-05 supplementing Law No. 04-18?

Addressing this inquiry necessitates adopting a descriptive, analytical, comparative approach, structurally bifurcated into the following thematic axes:

First Axis: Narcotics and psychotropic substances crimes in Algerian legislation.

Second Axis: The punitive regime instituted to combat narcotics and psychotropic substances crimes.

SECTION I: Narcotics and psychotropic substances crimes in Algerian legislation

First Axis: Narcotics and Psychotropic Substances Crimes in Algerian Legislation:

The penal framework, whether within Algerian legislation or comparative jurisdictions, distinctly categorizes a spectrum of illicit acts subsumed under the nomenclature of "narcotics and

psychotropic substances crimes," distinguishing meticulously between misdemeanors and felonies. Such offenses are explicated henceforth:

First – Narcotics and Psychotropic Substances Misdemeanors under Algerian Legislation:

Misdemeanors are conventionally perceived as infractions entailing comparatively diminished societal detriment vis-à-vis felonies, thus ordinarily invoking sanctions of lesser retributive gravity. With specific reference to narcotics-related offenses, and due to the variance in resultant social harm, Algerian jurisprudence differentiates explicitly between misdemeanors and felonies, enumerating misdemeanors as follows:

1. Misdemeanor of Possession for Personal Consumption:

This particular delinquency was originally criminalized under Article (12) of Law No. 04-18 pertinent to the prophylaxis against narcotics and psychotropic substances and the suppression of their illicit usage and trafficking.

Such criminalization was subsequently affirmed and reinforced under Law No. 23-05, amending the aforementioned statute. Exhaustively examining this misdemeanor, akin to other penal infractions, necessitates fulfillment of specific constitutive elements elucidated as follows:

a. Perpetrator's Capacity: Article (12), within Law No. 04-18 as amended, delineates the perpetrator's characterization broadly as any natural individual personally engaged in narcotics ingestion or consumption.

Herein, the Algerian legislature employs generalized terminological construction without restricting it to specific profiles, maintaining this universalistic definitional approach in Law No. 23-05 with the insertion of the explicit term "purchasing," thereby preserving this generalized attribution.

b. Actus Reus (Material Element): Generally, the material element of a crime encompasses tangible and empirical constituents mandated by statute to manifest criminal culpability, namely the illicit conduct, its injurious consequence, and the



causal nexus interlinking the illicit conduct with its resultant harm. Notably, the criminalized act may occasionally not yield overtly detrimental outcomes; nevertheless, the perpetrator remains penalized, either for attempted commission or mere endangerment—so-called crimes of hazard within penal jurisprudence.

Furthermore, certain objective circumstances may render otherwise criminal conduct justifiable or legally permissible, as exemplified in self-defense scenarios or explicitly authorized statutory acts predicated on extenuating or legitimizing contexts (Rawabeh, 2019, p.69).

Concerning the specific *actus reus* of narcotics possession for personal use, the illicit activity articulated by Article (12), as amended, expressly encompasses "consumption," "purchase," and "possession intended for consumption," thereby reflecting an explicit augmentation by the legislature between the original 2004 enactment and its 2023 revision through the addition of "purchase."

c. Mens Rea (Mental Element): The mental constituent fundamentally embodies the psychological correlation between the perpetrator and the crime's tangible elements, substantiating that the material act emanated from a culpable volitional intent characterized by "criminal malice."

This doctrine reflects the axiomatic penal principle encapsulated by the maxim "*nullum crimen sine culpa*" ("no crime without fault"). Thus, irrespective of modality, the perpetrator invariably commits an error, either deliberately with lucid consciousness and premeditated criminal intent or negligently through imprudent oversight, given the presence of cognitive discernment and volitional autonomy permitting differentiation between moral rectitude and impropriety (Rawabeh, 2019, p.92).

The mental element, consequently, bifurcates into two forms: the archetypal intentional criminality (*dolus directus*), wherein culpability necessitates a deliberate, conscious, and purposeful

intent toward the criminal act, precisely applicable to narcotics offenses comprehensively designated as intentional crimes necessitating conscious knowledge and volitional intentionality regarding prohibited substances' possession.

Exceptionally, penal statutes recognize unintentional criminality predicated upon inadvertent fault, distinctively lacking intent toward resultant consequences, thereby prompting jurisprudential differentiation exemplified by deliberate homicide mandating retribution (qisas), contrasted against involuntary manslaughter necessitating solely blood money (diya) (Rawabeh, 2019, p.92).

2. Misdemeanor of Dispensation or Exhibition of Narcotics for Personal Utilization:

This offense was explicitly codified within Article (13) of Law No. 04-18 concerning the prophylaxis against narcotics and psychotropic substances, and the suppression of their illicit utilization and trafficking, subsequently amended by Law No. 23-05. Notably, this misdemeanor remained unaltered by the 2023 amendment. The constitutive components of this offense are detailed thus:

a. Perpetrator's Capacity: The Algerian legislator defines the perpetrator categorically as any individual who illicitly dispenses or exhibits narcotics or psychotropic substances to another person with the intent of facilitating their personal consumption.

b. Actus Reus (Material Element): The material element manifests through the perpetrator's illicit activities of dispensing or exhibiting narcotics or psychotropic substances explicitly for individual consumption.

The Algerian legislator imposes intensified punitive measures when the illicit substances are dispensed or exhibited to minors, disabled individuals, persons undergoing addiction treatment, or within educational, pedagogical, vocational, health, social institutions, or any public entities.



c. Mens Rea (Mental Element): This crime constitutes an intentional offense characterized by a rigorous criminal intent (*dolus malus*), encompassing comprehensive cognizance and volitional disposition, as elaborated previously in this study.

3. Misdemeanor of Facilitating Illicit Utilization of Narcotics:

This misdemeanor is codified under Article (15) of Law No. 04-18 concerning narcotics and psychotropic substances and remains unmodified by the subsequent amendment in Law No. 23-05. The integral components of this crime are explicated as follows:

a. Perpetrator's Capacity: The Algerian legislator categorizes perpetrators as individuals who facilitate the illicit usage of narcotics either gratuitously or for remuneration, including proprietors, administrators, managers, or operators of hotels, furnished residences, inns, taverns, restaurants, clubs, venues for performances, or publicly accessible locations who permit the usage of prohibited substances therein or within associated premises.

Furthermore, it encompasses individuals clandestinely incorporating narcotics into foodstuffs or beverages unbeknownst to consumers.

b. Actus Reus (Material Element): The material element bifurcates into two distinct forms. Firstly, the criminal activity arising from facilitating unauthorized narcotics or psychotropic substance usage, whether executed within specific establishments or via alternative modalities.

Secondly, the clandestine inclusion of prohibited substances into consumables, unbeknownst to consumers, as delineated explicitly in Article (15) of the aforementioned statute.

c. Mens Rea (Mental Element): This misdemeanor embodies a rigidly intentional offense, necessitating deliberate knowledge and conscious volition, elements previously expounded in this discourse.

4. Misdemeanor of Unlawful Dispensation of Narcotic Pharmaceuticals for Non-Personal Use:

Addressed by Article (16) of Law No. 04-18, subsequently amended by Law No. 23-05, this offense delineates several specific typologies through detailed constitutive elements:

a. Perpetrator's Capacity: The legislator specifies perpetrators distinctly, encompassing medical practitioners deliberately issuing fictitious prescriptions or prescriptions motivated by favoritism or contravening stipulated medical protocols to obtain psychotropic substances.

Additionally, it includes pharmacists knowingly dispensing narcotics without legitimate prescriptions or cognizant of the prescriptions' fictitious or favoritist nature, as well as individuals procuring these substances unlawfully or via prescriptions contravening regulatory stipulations.

b. Actus Reus (Material Element): The material element emerges unequivocally from illicit activities enacted by identified perpetrators, explicitly regulated by statutory directives clearly enumerating requisite conditions for licensed medical and pharmaceutical practitioners authorized to prescribe or dispense restricted substances.

c. Mens Rea (Mental Element): This misdemeanor is categorically an intentional crime, demanding conscious awareness and intentional volition, elements previously elucidated.

5. Misdemeanor of Acquiring or Attempting to Acquire Narcotics or Psychotropic Substances via Threat, Violence, or Aggression:

This recently instituted misdemeanor, articulated in Law No. 23-05 amending Law No. 04-18, aims to expand legislative oversight concerning egregiously hazardous narcotics-related activities. Constitutive components are as follows:

a. Perpetrator's Capacity: The Algerian legislator defines perpetrators explicitly as any natural person acquiring or



attempting to acquire prohibited substances under Law No. 04-18, amended by Law No. 23-05.

b. Actus Reus (Material Element): The material element consists fundamentally of criminal activities involving acquisition or attempted acquisition of narcotics through the explicit employment of threat, coercion, violence, or aggression.

c. Mens Rea (Mental Element): This misdemeanor constitutes an intentional offense, obligatorily demanding deliberate cognizance and intentional volition, as exhaustively expounded previously.

6. Misdemeanor of Narcotics or Psychotropic Substances Promotion:

Also introduced by Law No. 23-05 amending Law No. 04-18, this newly codified misdemeanor comprises clearly demarcated constitutive components:

a. Perpetrator's Capacity: The Algerian legislator identifies perpetrators distinctly as individuals deliberately engaging in the active promotion of narcotics or psychotropic substances through any available means.

b. Actus Reus (Material Element): The material element primarily involves deliberate promotional activities for substances categorically prohibited by law.

c. Mens Rea (Mental Element): This misdemeanor represents an intentional crime mandating comprehensive awareness and deliberate volition, elements explicitly clarified in preceding analysis.

7. Misdemeanor of Narcotics or Psychotropic Substances Trafficking and Commercial Transactions:

Under Law No. 04-18 as amended by Law No. 23-05, specifically Article (17) and subsequent provisions, Algerian legislators criminalize all activities related to trafficking and illicit commerce in narcotics, elucidated through defined constitutive elements:

a. Perpetrator's Capacity: Perpetrators broadly encompass individuals illicitly producing, manufacturing, selling,

purchasing, storing, extracting, preparing, distributing, delivering, or transporting narcotics or psychotropic substances, or any related brokerage activities.

Furthermore, public officials exploiting official capacities, medical professionals, pharmacists, pharmaceutical manufacturers, addiction treatment specialists, or members of associations combating narcotics trafficking are explicitly included, reflecting the legislator's expansive interpretation of perpetrator categorization.

b. Actus Reus (Material Element): This comprises criminal acts explicitly associated with production, manufacturing, commerce, storage, extraction, preparation, distribution, brokerage, delivery, or transportation of narcotics or psychotropic substances, including acts facilitated by abusing official or professional privileges.

c. Mens Rea (Mental Element): This misdemeanor unequivocally constitutes an intentional crime, necessitating complete cognizance and deliberate volitional intent, as previously articulated.

SECTIONII: Narcotics and Psychotropic Substances Felonies under Algerian Legislation

Felonies, distinguished by their severity, mandate stringent penalties encompassing capital punishment, life imprisonment, rigorous or standard incarceration. Algerian legislation, specifically Law No. 04-18 amended by Law No. 23-05, delineates these felonies succinctly:

1. Felony of Narcotics Trafficking via Official Capacity Exploitation or Organized Criminal Syndicates:

This offense escalates from misdemeanor to felony classification upon perpetration by public officials exploiting authoritative privileges, medical and pharmaceutical professionals, addiction-treatment specialists, or members of associations combating illicit narcotics.



Furthermore, Article (17), paragraph (4), stipulates felony qualification if committed by organized criminal syndicates, linking narcotics trafficking increasingly to illicit arms exchanges via bartering mechanisms (Ibrahim, 1988, p.199). Constituent elements comprise:

a. Perpetrator's Capacity: Encompasses public functionaries occupying legislative, executive, judicial, or administrative roles within local elected councils, permanently or provisionally, remunerated or otherwise, irrespective of seniority.

Additionally included are healthcare professionals, pharmacists, addiction specialists, association members actively combating illicit narcotics, or any affiliate of an organized criminal syndicate facilitating narcotics trafficking.

b. Actus Reus: Consists of criminal activities emerging explicitly from the exploitation of official capacities or active affiliation with organized criminal syndicates, predominantly manifesting as criminal conspiracy.

c. Mens Rea: Embodies explicit intentionality, mandating conscious volition and comprehensive criminal intent concerning the perpetration of previously articulated illicit activities.

2. Felony of Administering, Orchestrating, or Financing Narcotics Operations:

Enumerated explicitly within Article (18) of Law No. 04-18, as amended and supplemented by Law No. 23-05, and retaining its textual integrity through the 2023 amendment, this felony comprises the subsequent juridical elements:

a. Capacity of the Perpetrator: The Algerian legislator explicitly identifies perpetrators as any individual implicated in administratively managing, systematically orchestrating, or financially underwriting the illicit activities itemized under Article (17) of Law No. 04-18, amended and supplemented by Law No. 23-05.

b. Material Element (Actus Reus): Materialization of the actus reus transpires through consummation or active participation in any illicit conduct enumerated within Article (17)

of Law No. 04-18, amended and supplemented by Law No. 23-05, explicitly criminalizing any associative involvement or direct participation aimed at facilitating illicit narcotics trade.

c. Mental Element (Mens Rea): Categorically classified as an intentional offense, this felony mandates the unequivocal manifestation of deliberate cognitive awareness and intentional volitional engagement, previously elucidated in this analytical discourse.

3. Felony of Illicit Cultivation of Narcotic Flora for Commercial Exploitation:

Codified within Article (20) of Law No. 04-18, amended and supplemented by Law No. 23-05, this felony is delineated through meticulously defined juridical elements:

a. Capacity of the Perpetrator: Strictly applicable to individuals illicitly engaged in cultivating narcotic flora, specifically opium poppy, coca shrubbery, or cannabis plants.

b. Material Element (Actus Reus): The material manifestation extends beyond mere sowing of seeds to encompass systematic nurturing, tending, and cultivation practices culminating in maturation, harvest, and extraction of prohibited botanical substances.

c. Mental Element (Mens Rea): Classified as inherently intentional, this felony necessitates a comprehensive criminal intent explicitly characterized by informed awareness and deliberate volitional resolve regarding illicit botanical cultivation for trafficking purposes, as previously explicated in this study.

4. Felony of Handling Apparatus Utilized in Narcotics Offenses:

As articulated under Article (21) of Law No. 04-18, amended and supplemented by Law No. 23-05, and unaltered by subsequent legislative amendments, the constituent elements of this felony are:

a. Capacity of the Perpetrator: Applicable explicitly to individuals manufacturing, transporting, or distributing chemical precursors or specialized equipment either expressly for illicit



narcotics cultivation, production, or synthesis, or demonstrably aware of their destined employment for such illicit purposes.

b. Material Element (Actus Reus): Manifestation through the explicit engagement in acts specified within Article (21) of Law No. 04-18, amended and supplemented by Law No. 23-05, notably encompassing initial employment or preliminary distribution of chemical precursors and specialized equipment inherently designated for narcotics production.

c. Mental Element (Mens Rea): Categorically intentional in nature, this felony requires explicit cognizance coupled with deliberate and volitional engagement, satisfying previously elaborated standards of criminal intentionality.

Conclusion:

Ultimately, our exhaustive inquiry unequivocally demonstrates that the Algerian legislator has diligently pursued harmonization with international substantive penal policies by promulgating Law No. 04-18, subsequently amended and supplemented through Law No. 23-05 enacted in 2023.

This legislative amendment notably introduces unprecedented procedural dimensions within Algerian jurisprudence. Nonetheless, despite the legislative advancements, tangible implementation remains relatively deficient in practical terms. To rectify this jurisprudential incongruity and effectuate optimal realization, we proffer the subsequent scholarly recommendations:

- The Algerian legislator must meticulously equilibrate punitive measures with prophylactic interventions, strategically curtailing demand for prohibited narcotic substances.
- Although the Algerian legislator has earnestly embraced an advanced and stringent penal approach against narcotics offenses, it conspicuously neglected addressing illicit narcotics commerce facilitated through contemporary technological modalities, contrasting notably with comparative foreign legislations.

- Imperatively, the Algerian legal framework should incorporate the principle of abstention from sentencing pronouncement ("Ajournement du prononcé de la peine"), thereby assimilating pertinent experiences from French and Egyptian jurisprudential doctrines.
- Reinforcement of surveillance apparatuses, alongside providing necessary procedural facilitations and authoritative support to law enforcement entities in the execution of their regulatory mandates.
- Advocating further penal stringency and rigorously adopting jurisprudential paradigms akin to Saudi Arabian legislation, wherein sanctions align meticulously with the stringent principles enshrined in Islamic Sharia law.

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