

Legalization of marijuana use in comparative criminal legislation

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In light of the rapidly shifting legislation regarding the legalization of marijuana use, the popular notion seems to be that marijuana is a harmless pleasure, access to which should not be regulated or considered illegal. World Health Organization recommended to delete cannabis and cannabis resin from Schedule IV of the UN Single Convention on Narcotic Drugs (1961), but to maintain it in Schedule I of the 1961 Convention. The UN Commission on Narcotic Drugs decided by 27 votes to 25 and with one abstention to follow this recommendation. There is the issue of how much this decision will affect the legalization of marijuana in the world. In the paper are analyzed two legislation of the Anglo-Saxon legal system, which supported this initiative (Canada and USA) and legislation of Euro-Continental legal area (Russia) that did not accept the reclassifying of cannabis from the 1961 Convention. Author has compared the Canadian code with Uruguayan, and the U.S. bill with the Mexican legislation, because Mexican bill does not provide the full legalization of marijuana use. In the Russian Federation, all deeds related to narcotic drugs, which were committed on a significant, large, and an especially large scale, and also all acts coherent to traffic of narcotic drugs, regardless of its scale, are regulated by Criminal Code of the Russian Federation. Otherwise, there will be applied an administrative law.

Keywords: criminal law, legalization, drug-related criminality, marijuana, general authorization.

You should not be angry with those who stumble in the dark. The sinner ought to be corrected both by advice and by force, both by gentle and harsh means, and may be made a better man both towards himself and others by chastisement, but not by anger.

(Seneca 1963, 40)

1. Introduction

Drug addiction changes the attitude of a person towards life, himself and society, as well as the attitude of society towards a person. Since man is a part of life and the environment, drugs deeply encompass the social, legal and economic sphere, affect political relations, and leave the most serious consequences on health. The most dangerous occurrence of drug trafficking is drug-related criminality, which constitutes the entirety of

crimes coherent to drugs. The increased international public attention to drug problems during the 20th century was reflected in the implementation of numerous international forums dedicated to these problems and a series of accepted conventions of the United Nations, including the Single Convention on Narcotic Drugs of 1961¹ as amended by the 1972 Protocol², the Convention on Psychotropic Substances of 1971³ and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988⁴, containing diverse norms aimed at combating drug addiction (Slavković 2015, 99).

Addiction to the use of narcotic drugs is a condition of periodic or chronic poisoning (intoxication), harmful to personality and society, caused by the repeated intake of a particular drug, with the following characteristics: the irresistible need to continue taking the drug and to obtain it at all costs, the tendency to increase dosage and drug addiction. The most common causes are as follows: the rapprochement of the people, the rise of standard, the change of certain values among the youth and in society as a whole, changes in family and family relations, the desire for eccentric experience, tension, insecurity, certain easiness with which drugs are obtained, etc. (Kostić 1990, 334).

In January 2019, the World Health Organization (WHO) made a series of recommendations⁵ to change the scope of control of cannabis and cannabis-related substances. On December 2, 2020, the UN Commission on Narcotic Drugs (CND) deleted cannabis and cannabis resin from Schedule IV of the UN Single Convention on Narcotic Drugs (1961), but maintained it in Schedule I of the 1961 Convention. CND excluded cannabis from the list of particularly dangerous drugs, which includes, for example, heroin. However, it is still on the list of drugs banned for non-medical use⁶. Nevertheless, UN International Narcotics Control Board (INCB) opposes the legalization of recreational use of marijuana. As far as medical use of cannabis is concerned, there is always a reference to the UN international drug control conventions, where there is no provision allowing the use of marijuana without a medical evidence⁷.

Marijuana use can lead to the development of a substance use disorder, a medical illness in which the person is unable to stop using even though it's causing health and social problems in their life⁸. Cannabis-use disorders refer to a spectrum of clinically relevant conditions and are defined via psychological, social and physiological criteria to document adverse consequences, loss of control over use, and withdrawal symptoms. Long-term cannabis use is a contributory cause of the health outcomes so as dependence, cogni-

¹ Single Convention on Narcotic Drugs 1961. Accessed April 11, 2022. <https://www.unodc.org/unodc/en/commissions/CND/conventions.html>.

² The 1972 Protocol amending the Single Convention on Narcotic Drugs. Accessed April 11, 2022. <https://www.unodc.org/unodc/en/commissions/CND/conventions.html>.

³ Convention on Psychotropic Substances of 1971. Accessed April 12, 2022. https://www.unodc.org/pdf/convention_1971_en.pdf.

⁴ Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. Accessed April 13, 2022. https://treaties.un.org/doc/Treaties/1990/11/19901111%2008-29%20AM/Ch_VI_19p.pdf.

⁵ Recommendations of the forty-first meeting of the ECDD. 2019. Accessed April 14, 2022. <https://www.who.int/publications/m/item/ecdd-41-cannabis-recommendations>.

⁶ UN Commission on Narcotic Drugs. 2020. Accessed July 10, 2021. https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_63Reconvened/Press_statement_CND_2_December.pdf.

⁷ UN News — Global perspective, Human stories. 2021. Accessed July 15, 2021. <https://news.un.org/ru/interview/2021/04/1400142>.

⁸ Marijuana Drug Facts. Accessed July 25, 2021. <https://www.drugabuse.gov/publications/drugfacts/marijuana>.

tive impairment and mental disorders (psychoses, depression, anxiety) (Hall, Renström, Poznyak 2016, 2, 6).

Prevails the opinion that the problem of drug addiction should be resolving in entirety by the means of medical and social character, since drug addiction is a hardly curable disease; if a society do not get a drug addict out of that vice, it is impossible to achieve re-education of that person and prevent the commission of new crimes. However, it should not be forgotten, that drug trafficking is objectively subdued by the laws of the economy, because the trade of narcotic drugs is a commercial agreement. Regardless the law considers that compromise criminal, those who are directly involved are concrete living people, with their interests, who want results. Both parties participating in the deal achieve the goal they aspire for: a drug addict gets the desired dose, and drug trafficker receives the money. These individuals are against anyone bothering them. Therefore, in the combat against drug business, a primary importance has an impact on drug users, if their presence is a necessary condition of trade (Kriukov 2007, 433).

2. Basic research: Criminal regulation of cannabis use in comparative law

In 2013 Uruguay became the first country to pass legislation regulating every level of the market for cannabis⁹. Canada in 2018 fully legalized marijuana use, since the Criminal Code was amended¹⁰. After the reclassifying of cannabis from the 1961 UN Convention by CND, Mexico and USA has enacted similar bills¹¹ and Mexico's Supreme Court has declared the legal ban on the use of cannabis unconstitutional¹². In USA, drug related criminal has been regulated by many statutes, containing diverse norms about manufacture, distribute or dispense of marijuana, which can be abolished if the MORE Act 2021¹³ enters into force. The new regulations put at an advantage civil liberties and redirection of law enforcement, leaving aside other priorities, such as violent crimes caused by taking drugs. In subsequent presentations are analyzed the above legal norms, so as the Russian criminal code¹⁴, and their impact on the legislative practices of other countries.

2.1. USA

The federal judiciary of the United States is made up of courts of general jurisdiction and special courts with limited jurisdiction (which form an autonomous system). It is a hierarchical structure, which includes federal magistrate judges, district courts, courts of

⁹ Law No. 19,172. 2013. Accessed July 23, 2021. https://drugpolicy.org/sites/default/files/Uruguay_Marijuana_Legalization_Law_English_Translation.pdf.

¹⁰ The Federal Cannabis Act. 2018. Accessed July 7, 2021. <https://www.parl.ca/DocumentViewer/en/42-1/bill/c-45/royal-assent>.

¹¹ An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts (Bill C-45). 2018. Accessed July 7, 2021. <https://www.parl.ca/DocumentViewer/en/42-1/bill/c-45/royal-assent>; El proyecto de decreto por el que se expide la Ley Federal para la Regulación del Cannabis. 2021. Accessed April 11, 2022. https://infosen.senado.gob.mx/sgsp/gaceta/64/3/2021-03-11-1/assets/documentos/MINUTA_CANABIS.pdf.

¹² The decision No. 187/2021. Accessed April 14, 2022. <https://www.internet2.scjn.gob.mx/red2/comunicados/noticia.asp?id=6495>.

¹³ MORE Act. 2021. Accessed July 12, 2021. <https://www.govtrack.us/congress/bills/117/hr3617/text>.

¹⁴ Criminal Code of the Russian Federation of June 13, 1996 No. 63-ФЗ. Hereinafter all Russian laws, statutory instruments, and court rulings are given in connection with the inquiry system "ConsultantPlus". Accessed October 27, 2021. <http://www.consultant.ru>.

appeals and the Supreme Court of the United States. Each American state has its own court system that includes courts of limited jurisdiction, courts of general jurisdiction, courts of appeals and state supreme court (Stoyko 2006, 197–199). Drug courts are specialized courts that aim at stopping drug abuse and related criminal activity of offenders through court-directed treatment and rehabilitation programmes¹⁵. They operate on the local level to divert non-violent offenders with substance use problems from incarceration into supervised programs with treatment and rigorous standards of accountability¹⁶.

In the United States, a special approach has been taken by judicial authorities to the problems of combating drug use addiction. The procedure, which applies after arrest for drug possession, has been introduced into judicial practice and significantly differs from the traditional one. Among other things, according to this procedure, the presence of the person who made the police arrest is not necessary. In the courts, the precise selection of defendants is made, who signed consent, before they become participants in the new procedures. These procedures are called “trials”, if they are conducted by a judge, but in these “courts” jurors are absent. In reality, the approach of drug courts differs from the traditional, because drug addicts begin treatment immediately after entering the court system, without delaying the necessary treatment for a later period. This trial is not conducted on the basis of the adversarial nature of the parties, since the public prosecutor and lawyer work under one administration, and such cooperation is both radical and new. During the session, the judge addresses the defendant directly, leaving the prosecutor aside. The drug court operates under a single administration and receives data from all sides of the criminal procedural system. Therefore, a drug court judge knows much more about a law breaker than a judge in a regular trial. Successful completion of drug court programs can result in reduced charges or sentences, or dismissal of charges altogether (Kurshev 2000, 115).

In the United States, the use and possession of cannabis is illegal under federal law for any purpose, by way of the Comprehensive Drug Abuse Prevention and Control Act of 1970¹⁷, which title II is also called Controlled Substances Act (CSA). Cannabis is classified as a Schedule I substance, determined to have a high potential for abuse. However, at the state level policies regarding the medical and recreational use of cannabis vary greatly, and in many states conflict significantly with federal law.

According to Art. 102, Clause 15, Title II (Control and enforcement — Part A), the term “marihuana” means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

Art. 201 (a), Title II (Authority to control — Part B) states: “The Attorney General shall apply the provisions of this title to the controlled substances listed in the schedules

¹⁵ System of drug courts. 2021. Accessed July 16, 2021. <https://www.who.int/data/gho/indicator-metadata-registry/imr-details/2514>.

¹⁶ Office of National Drug Control Policy. 2011. Accessed October 25, 2021. <https://obamawhitehouse.archives.gov/ondcp/ondcp-fact-sheets/drug-courts-smart-approach-to-criminal-justice>.

¹⁷ Comprehensive Drug Abuse Prevention and Control Act of 1970. Accessed July 15, 2021. <https://www.govinfo.gov/content/pkg/STATUTE-84/pdf/STATUTE-84-Pg1236.pdf>.

established by Article 202 of this title and to any other drug or other substance added to such schedules under this title”.

According to Art. 202 (a), there are established five schedules of controlled substances. Marijuana is classified as a Schedule I substance. The findings required for this schedule are as follows: the drug or other substance has a high potential for abuse; the drug or other substance has no currently accepted medical use in treatment in the United States; there is a lack of accepted safety for use of the drug or other substance under medical supervision.

The 1970 Act imposes identical punishment for illegally manufacturing, distributing, dispensing, possessing with intent to manufacture, distribute or dispense, or attempting or conspiring to do any of these acts. The severity of the penalties, however, depends on the type of controlled substance involved. In the case of a controlled substance in schedules I or II which is also a narcotic drug, the person is subject to a jail sentence of up to fifteen years, a fine of not more than twenty-five thousand dollars, or both. Any prison term imposed must be accompanied by a special parole term of at least three years in addition to a prison term. If, for any reason, parole is revoked, the original term of imprisonment is increased by the period of the special parole term. The prison sentence, fine, and special parole term are doubled for a second offender. Penalties are also doubled for anyone eighteen years or older who distributes a controlled substance to someone under twenty-one (Quinn, McLaughlin 1973, 621–622).

From time to time, amendments to the Controlled Substances Act have been necessary. The mandatory minimum sentencing began with the Sentencing Reform Act (SRA) of 1984¹⁸, through which Congress abolished federal parole and compelled judges to observe sentencing guidelines. Two years after enacting the SRA, Congress passed the Anti-Drug Abuse Act of 1986¹⁹, which set mandatory minimum sentences based on the weight of the drugs involved in a crime. In 1988 Congress passed the Omnibus Anti-Drug Abuse Act²⁰, which created an even more comprehensive set of quantity-based mandatory minimum sentences (Wilson 2021).

According to Art. 841 (a) of the 21 United States Code²¹ (“Domestic Manufacture or Distribution”) “Except as authorized by subchapter I (Control and enforcement), it shall be unlawful for any person knowingly or intentionally (1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled

¹⁸ H. R. 5773 — Sentencing Reform Act of 1984. Accessed April 13, 2022. <https://www.congress.gov/bill/98th-congress/house-bill/5773>.

¹⁹ Anti-Drug Abuse Act of 1986. Accessed April 12, 2022. <https://www.ojp.gov/ncjrs/virtual-library/abstracts/anti-drug-abuse-act-1986>.

²⁰ Omnibus Anti-Substance Abuse Act of 1988. Accessed April 12, 2022. <https://www.congress.gov/bill/100th-congress/senate-bill/2852>.

²¹ Sentencing for violations of Section 841 (a) is governed by the nature and volume of the substance involved, the defendant’s criminal record, and injuries attributable to the offense. The most severe penalties are reserved for high-volume trafficking of eight substances assigned to Controlled Substance Schedules I and II. The eight substances are heroin, powder cocaine, cocaine base (crack), PCP, LSD, fentanyl, methamphetamine and marijuana. Criminal penalties related to each substance provide one set of mandatory minimums for trafficking in a very substantial amount listed in Art. 841 (b) (1) (A), and a second, lower set of mandatory minimums for trafficking in a lower but still substantial amount listed in Art. 841 (a) (1) (B) (Mandatory Minimum Sentencing of Federal Drug Offenses. 2018. Accessed July 18, 2021. <https://www.everycrsreport.com/reports/R45074.html>).

substance; or (2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance²².

Art. 841 (a) outlaws knowingly or intentionally manufacturing, distributing, dispensing, or possessing with the intent to distribute or dispense controlled substances except as otherwise authorized by the Controlled Substances Act. The government may establish the knowledge element of Art. 841 (a) in either of two ways. First, the “knowledge requirement may be met by showing that the defendant knew he possessed a substance listed on the controlled substance schedules”. Second, “the knowledge requirement may also be met by showing that the defendant knew the identity of the substance he possessed. Take, for example, a defendant who knows that he is distributing heroin but does not know that heroin is listed on the schedules”. As long as the government proves the defendant knows he was dealing in heroin, it need not prove that the defendant knew the particular type or quantity of the controlled substance he intended to distribute.

When a defendant claims no guilty knowledge, the circumstances may warrant a willful blindness instruction to the jury. The willful blindness instruction, sometimes called the “ostrich head in the sand”, is warranted if “(1) the defendant claims lack of knowledge; (2) the evidence would support an inference that the defendant consciously engaged in a course of deliberate ignorance; and (3) the proposed instruction, as a whole, could not lead the jury to conclude that an inference of knowledge is mandatory”²³.

According to Art. 2.02 (7) of the Model Penal Code “When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence, unless he actually believes that it does not exist”²⁴. Paragraph (7) deals with the situation called “wilful blindness”, the case of the actor who is aware of the probable existence of a material fact but does not satisfy himself that it does not in fact exist”. Holding that this term introduces a requirement of positive knowledge would make deliberate ignorance a defense. It cannot be doubted that those who traffic in drugs would make the most of it. This is evident from the number of appellate decisions reflecting conscious avoidance of positive knowledge of the presence of contraband in the car driven by the defendant or in which he is a passenger, in the suitcase or package he carries, in the parcel concealed in his clothing.

It is no answer to say that in such cases the fact finder may infer positive knowledge. It is probable that many who performed the transportation function, essential to the drug traffic, can truthfully testify that they have no positive knowledge of the load they carry. Under appellant’s interpretation of the statute, such persons will be convicted only if the fact finder errs in evaluating the credibility of the witness or deliberately disregards the law (Ohlin 2016, 169–170).

The Marijuana Opportunity Reinvestment and Expungement Act, also known as the MORE Act, is a proposed piece of U.S. federal legislation that would remove cannabis from the Comprehensive Drug Abuse Prevention and Control Act of 1970 and enact various reforms related to cannabis, including the expungement of prior convictions. Intro-

²² 21 U. S. Code § 841 — Prohibited acts. 2021. Accessed August 4, 2021. <https://www.law.cornell.edu/uscode/text/21/841>.

²³ Mandatory Minimum Sentencing of Federal Drug Offenses. 2018. Accessed July 18, 2021. <https://www.everycrsreport.com/reports/R45074.html>.

²⁴ *Model penal code, Official draft and explanatory notes*. 1985. Philadelphia: The American law institute. P. 22.

duced in 2019, the U.S. House of Representatives passed the bill on December 4, 2020, marking the first time a chamber of Congress approved legislation to end federal marijuana prohibition.

According to the bill entitled H. R. 3617 (Art. 3 “Decriminalization of cannabis”), Subsection (c) of schedule I of Art. 202 (c) of the Controlled Substances Act (21 U.S. C. 812) is amended (A) by striking “(10) Marihuana”; and (B) by striking “(17) Tetrahydrocannabinols, except for tetrahydrocannabinols in hemp (as defined in Art. 297A of the Agricultural Marketing Act of 1946²⁵)”. For the purposes of the Controlled Substances Act 1970, marihuana and tetrahydrocannabinols shall each be deemed to be a drug or other substance that does not meet the requirements for inclusion in any schedule (MORE Act. 2021).

The MORE Act was passed in the House of Representatives in December 2020, but was not taken up for a vote in the Senate. Since that previous Congress was replaced, the bill was formally reintroduced by his sponsor, chairman of the House Judiciary Committee, on May 28, 2021²⁶. On September 28, 2021, The Marijuana Opportunity, Reinvestment and Expungement Act cleared the House Judiciary Committee on a 26–15 vote²⁷.

At this point, 36 states and the District of Columbia have legalized the use of marihuana for medical use. The recreational use of cannabis is legalized in 20 states and the District of Columbia (Colorado, Washington, Alaska, Oregon, California, Maine, Massachusetts, Nevada, Michigan, Vermont, Guam, Illinois, Arizona, Montana, New Jersey, South Dakota, New York, Virginia, New Mexico and Connecticut)²⁸. The laws in each state are different, but they allow their residents to ingest marihuana in some fashion without facing criminal charges. Most state laws require a medical diagnosis of specific conditions and a recommendation by a physician before patients are able to use the drug. These states also require that patients be issued a medical marihuana card that identifies them as legal users. In some states, users are permitted to grow their own marihuana. If patients are allowed to grow their own plants, the exact number of plants is determined by the state and varies from place to place. The amount of the product a person can carry is also different (Marion, Hill 2019, 37).

2.2. Mexico

Like the USA, Mexico is organized as a federal republic and among the legislative powers of the states, each federal state has the faculty to legislate on criminal matters, but there are subjects reserved to the federation (Ixchel Atilano 2021, 15). The crime entitled “De la producción, tenencia, tráfico, proselitismo y otros actos en materia de narcóticos” is punished by Art. 193 of the Federal Criminal Code (CPF): “Narcotics, psychotropic and other substances or plants that determine the General Health Act²⁹, ratified international conventions and treaties, and those that are indicated by other applicable legal provisions

²⁵ Agricultural Marketing Act of 1946. Accessed April 14, 2022. <https://www.agriculture.senate.gov/imo/media/doc/Agricultural%20Marketing%20Act%20Of%201946.pdf>.

²⁶ CONGRESS.GOV. 2021. Accessed August 1, 2021. <https://www.congress.gov/bill/117th-congress/house-bill/3617>.

²⁷ Bill To Federally Legalize Marijuana. 2021. Accessed October 25, 2021. <https://www.marijuanamoment.net/watch-live-key-house-committee-to-vote-on-federal-marijuana-legalization-bill>.

²⁸ A Guide to Marijuana Legalization. 2021. Accessed October 25, 2021. <https://www.usnews.com/news/best-states/articles/where-is-marijuana-legal-a-guide-to-marijuana-legalization>.

²⁹ Ley General de Salud. 1984. Accessed July 20, 2021. http://www.diputados.gob.mx/LeyesBiblio/pdf_mov/Ley_General_de_Salud.pdf.

in the field, are considered to be narcotic drugs. For the purposes of this chapter is punishable conduct relating to narcotic drugs, psychotropic substances and other substances as provided for in Art. 237, 245 (fractions I, II, and III) and 248 of the General Health Act, which constitute a serious problem for public health³⁰.

Mexico has ratified the UN international drug control conventions, but different reforms were introduced to the Federal Criminal Code in 1994 regarding drug use: “No action shall be taken against one who, not being a drug addict, is found in possession of one of the narcotics indicated in Art. 193, just once and in an amount that one may presume is for personal use”, and that “no penalty whatsoever shall be applied to a drug addict who possesses any of the narcotics indicated in Art. 193 strictly for his personal use” (Hernández 2011, 60–61).

Unlike the American official draft, Mexican bill does not recommend legalization, which implies the total elimination of any crime related to the activities coherent to cannabis. On March 10, 2021, the Chamber of Deputies passed “El proyecto de decreto por el que se expide la Ley Federal para la Regulación del Cannabis”³¹ legalizing recreational use of marijuana. On June 28, 2021, Mexico’s Supreme Court has declared the legal ban on the use of cannabis unconstitutional. The last sections of Art. 235 and 247 of the General Health Act (“De la Ley General de Salud”) that had prohibited recreational and leisure cannabis use are affected. The jurisdiction of the Supreme Court was partly due to the previous activity of the Chamber of Deputies. However, the court does not have the authority to regulate drug policy. Only the declaring of the norm as unconstitutional was within its competence.

Art. 25 and 15 of the “Proyecto de decreto por el que se expide la Ley Federal para la Regulación del Cannabis”, let users with a permit carry up to 28g and grow eight plants at home for personal use, due to the increase from 5 to 28 grams of the amount of cannabis allowed for personal use in the table containing Art. 479 of the General Health Act. If Mexico’s Senate approve the bill, a new law will make recreational use of marijuana possible, but it will establish the system of licenses needed for the production, distribution and sale. In accordance with legislation, citizens will be allowed to grow six plants at home for personal use, and families — eight.

At the same time, the bill still provides series of prohibitions. Thus, the sale of marijuana to minors or the use in unappropriated places is punishable by severe fines, and the cultivation or harvesting of cannabis without the permission of the authorities will be punished by prison³².

2.3. Canada

Until 1979, the criminal law power was generally thought to be the principal, if not the only, source of federal authority to regulate the use of drugs. Afterwards, the constitutional law bearing on the ability of Parliament and the legislatures of the prov-

³⁰ Código Penal Federal. 1931. Accessed July 24, 2021. http://www.diputados.gob.mx/LeyesBiblio/pdf_mov/Codigo_Penal_Federal.pdf.

³¹ El proyecto de decreto por el que se expide la Ley Federal para la Regulación del Cannabis. 2021. Accessed April 11, 2022. https://infosen.senado.gob.mx/sgsp/gaceta/64/3/2021-03-11-1/assets/documentos/minuta_canabis.pdf.

³² 10 mar anexo II.qxd — Gaceta Parlamentaria. 2021. Accessed July 22, 2021. <http://gaceta.diputados.gob.mx/PDF/64/2021/mar/20210310-II.pdf>.

inces to regulate the non-medical use of drugs became arguable. In *Regina v. Hauser*³³, a four judge majority of the Supreme Court of Canada held that the Narcotic Control Act³⁴ was to be regarded as enacted not under section 91 (27) of the British North America Act³⁵, but under the federal Parliament's residual power "to make laws for the peace, order and good government of Canada (p. o. g. g.)". Since the criminal law power and the p. o. g. g. power are powers of a very different nature, the decision in *Hauser* could altered not only the source but also the scope of federal competence, and by implication could affected as well the room which remains for provincial legislative initiatives (Laskin 1980, 555).

According to Art. 91 of the British North America Act, entitled Legislative authority of Parliament of Canada, "It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order, and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces". The exclusive legislative authority of the Parliament of Canada extends to the criminal law, except the constitution of courts of criminal jurisdiction, but including the procedure in criminal matters (Clause 27).

The Canada Act 1982³⁶ formally ended the "request and consent" provisions of the Statute of Westminster 1931³⁷ in relation to Canada, whereby the British parliament had a general power to pass laws extending to Canada at its own request. On the other hand, due to the Constitution Act 1982³⁸, which is a constitutional law passed by the Canadian Parliament, Canada achieved full political independence from the United Kingdom. Afterwards, the use and possession of cannabis was still illegal under federal law for any purpose, but then the regulation of non-medical use of drugs continued under neo-liberalism in lockstep with United States³⁹.

The Narcotic Control Act, passed in 1961, was one of Canada's national drug control statutes prior to its repeal by the 1996 Controlled Drugs and Substances Act⁴⁰. On October 17, 2018, the federal Cannabis Act⁴¹ came into effect, legalizing the possession, sale and production of cannabis. Everyone with a criminal record for cannabis possession became eligible to apply for a pardon on this date. The Cannabis Act (also known as Bill C-45) is a law which legalized recreational cannabis use nationwide in Canada in combination with its companion legislation Bill C-46⁴² (An Act to Amend the Criminal Code).

³³ *R. v. Hauser et al.* [1979] 1 S. C. R. 984, 98 D. L. R. (3rd) 193, 46 C. C. C. (2nd) 481. Accessed April 11, 2022. <https://www.canlii.org/en/ca/scc/doc/1979/1979canlii13/1979canlii13.html>.

³⁴ Narcotic Control Act 1961. Accessed April 12, 2022. <https://digitallibrary.un.org/record/86332/files/e-nl-1980-45-48-e.pdf>.

³⁵ British North America Act 1867. Accessed August 2, 2021. <https://www.legislation.gov.uk/ukpga/Vict/30-31/3/data.pdf>.

³⁶ Canada Act 1982. Accessed April 12, 2022. <https://www.legislation.gov.uk/ukpga/1982/11>.

³⁷ Statute of Westminster 1931. Accessed April 14, 2022. https://www.legislation.gov.uk/ukpga/1931/4/pdfs/ukpga_19310004_en.pdf.

³⁸ Constitution Act 1982. Accessed April 11, 2022. https://laws-lois.justice.gc.ca/PDF/CONST_TRD.pdf.

³⁹ History of Drug Policy in Canada. 2021. Accessed July 24, 2021. <https://drugpolicy.ca/about/history>.

⁴⁰ Controlled Drugs and Substances Act. 1996. Accessed April 12, 2022. <https://laws-lois.justice.gc.ca/eng/acts/c-38.8>.

⁴¹ Cannabis Act. 2018. Accessed April 14, 2022. https://laws-lois.justice.gc.ca/eng/annualstatutes/2018_16/FullText.html.

⁴² Bill C-45. 2018. Accessed July 7, 2021. <https://www.parl.ca/DocumentViewer/en/42-1/bill/c-45/royal-assent>.

Art. 69, Section 1 (“Provincially authorized selling”), regulates that a person may possess, sell or distribute cannabis if the person is authorized to sell cannabis under a provincial Act that contains the legislative measures referred to in Section 3 which states: “For the purposes of Section 1, the legislative measures in a provincial Act that authorizes the selling of cannabis are the following in respect of persons authorized to sell cannabis: (a) they may sell only cannabis that has been produced by a person that is authorized under this Act to produce cannabis for commercial purposes; (b) they may not sell cannabis to young persons; (c) they are required to keep appropriate records respecting their activities in relation to cannabis that they possess for commercial purposes; (d) they are required to take adequate measures to reduce the risk of cannabis that they possess for commercial purposes being diverted to an illicit market or activity”.

Full legalization of cannabis involves decriminalization of cultivation, sale, possession and use, in accordance with legal provisions. Since the Criminal Code has been amended, sentenced persons from the time when recreational use of marijuana was prohibited can be exempt from liability, but only on the basis of a court decision and after considering of the specific circumstances of each case. Provinces and territories are responsible for developing, implementation and improvement of the mechanisms for controlling the distribution, sale and use of cannabis in accordance with federal legislation and regional regulatory systems (Nemova 2018).

Federal-provincial territorial consensus divided jurisdiction over cannabis into three main categories. First, the federal government was seen as having sole authority to determine policy in areas including criminality, production (commercial cultivation, processing, package labelling), and the medical cannabis system. Second, provincial governments held jurisdiction over distribution, consumer retail, and workplace or public consumption. Third, federal and provincial governments shared jurisdictional responsibilities over elements like personal production, taxation, public safety, and public health. Viewed exclusively through the lens of Sections 91 and 92 of the Constitution Act 1867⁴³, jurisdictional authority over all aspects of the legalized cannabis regime falls exclusively to the federal or provincial governments, respectively.

In rolling out Canada’s new legalized cannabis regime, federal and provincial governments largely replicated their own existing approaches to alcohol and tobacco regulation. This was particularly true of consumption — with regulations largely mirroring tobacco regulations — and possession, distribution, and retail largely mirroring alcohol rules. Overwhelmingly, provincial governments chose to incorporate cannabis into to their existing regulatory frameworks for tobacco and alcohol, which were already separate and distinct from jurisdiction to jurisdiction (Potter, Weinstock 2019, 37, 44).

2.4. Uruguay

In December 2013 Uruguay became the first country to pass legislation regulating every level of the market for cannabis. Bill was passed in the Chamber of Representatives and the Senate, and became Law No. 19,172⁴⁴. As in Canadian code, for possessing, selling

⁴³ The Constitution Act 1867. Accessed April 12, 2022. <https://laws-lois.justice.gc.ca/eng/const/page-1.html>.

⁴⁴ Law No. 19,172. 2013. Accessed July 23, 2021. https://drugpolicy.org/sites/default/files/Uruguay_Marijuana_Legalization_Law_English_Translation.pdf.

or distributing of cannabis is necessary general authorization (license). According to Art. 2 of the Law, it is permitted to carry out the following activities, provided that a license has been obtained, documented by the respective registry kept by the IRCCA (Instituto de Regulación y Control del Cannabis) and paid for in the applicable cases: i) the planting, cultivation, harvest, distribution and dispensation of psychoactive cannabis; ii) the domestic planting, cultivation and harvest of psychoactive cannabis plants destined for personal or shared use in the home; iii) the planting, cultivation and harvest of psychoactive cannabis carried out by Membership Clubs for the use of their members; iv) the dispensation of psychoactive cannabis destined for the personal use of registered individuals, carried out by pharmacies; v) the purchase of up to 10 grams of psychoactive cannabis per week from pharmacies with a maximum of 40 grams per month for personal use; vi) the production and distribution of seeds or cuttings of psychoactive cannabis.

2.5. Russian Federation

Russia's delegation to the UN Commission on Narcotic Drugs opposed the World Health Organisation's proposal to mitigate control of cannabis and voted against the recommendation to remove it from Schedule IV, stating that categorically refuses to legalize use of marijuana for recreational purposes⁴⁵.

The Russian Federation regulates various illegal behaviours of individuals or groups related to abuse of narcotics, psychotropic substances, their precursors or analogues thereof. All deeds related to narcotic drugs which were committed on a significant, large and an especially large scale, and also all acts coherent to traffic of narcotic drugs, regardless of its scale, are regulated by Criminal Code of the Russian Federation of June 13, 1996 No. 63-ФЗ. Otherwise, there will be applied an administrative law.

According to Art. 228, Section 1 of the Criminal Code of the Russian Federation "Illegal acquisition, storage, transportation, making or processing without the purpose of sale of narcotic drugs, psychotropic substances or analogues thereof on a significant scale, as well as illegal acquisition, storage and transportation without the purpose of sale plants containing narcotics or psychotropic substances, or parts thereof containing narcotics or psychotropic substances on a significant scale, — shall be punishable with a fine in an amount of up to 40 thousand roubles, or in the amount of the wage or salary, or any other income of the convicted person for a period of up to three months, or by compulsory works for a term of up to 480 hours, or by corrective labour for a term of up to two years, or by restriction of liberty for a term of up to three years, or by deprivation of liberty for the same term".

More severe punishments are provided for the same deeds committed on a large or an especially large scale (Sections 2 and 3).

Art. 228¹, Section 1 states that "Illegal making, sale or dispatch of narcotic drugs, psychotropic substances or analogues thereof, as well as illegal sale or dispatch of plants containing narcotics or psychotropic substances or parts thereof containing narcotics or psychotropic substances — shall be punishable by deprivation of liberty for a term of four to eight years with restriction of liberty for a term of up to one year or without such.

According to Section 4, the same deeds which are committed: (a) by an organised group (an organised group must have the landmarks provided in Art. 35 of the Russian criminal code); (b) by a person through his official position; (c) by a person who has

⁴⁵ United Nations. 2020. Accessed July 17, 2021. <https://news.un.org/ru/story/2020/12/1391702>.

reached the age of eighteen years with respect to a minor; (d) on an large scale — shall be punishable by a deprivation of liberty for a term of ten to 20 years with or without deprivation of the right to hold certain posts or to be engaged in a certain activity for a period of up to twenty years and with or without a fine in an amount of up to one million roubles or in the amount of the wage or salary, or any other income of the convicted person for a period of up to five years. The same deeds which are committed on an especially large scale are more severe punishable (Section 5). Regarding marijuana, the term of a significant (6g), large (100g) and an especially large scale (100 000g) was determined in the Decree of the Government of the Russian Federation on October 1, 2012, No. 1002. The similar norm is present in Mexican current law, but contrary to Russian legislation, 5g of the amount of cannabis is allowed for personal use in the table containing Art. 479 of the General Health Act. When someone possesses up to 5 grams of marijuana, Russian law prescribes administrative liability.

Art. 228², Section 1 states that “Violating the rules of production, making, processing, storage, registration, delivery, realization, sale, distribution, transportation, sending, acquisition, use, importation, exportation or elimination of narcotics, or psychotropic substances, or precursors thereof, tools or equipment used for making narcotics or psychotropic substances which are under special control, entailing their loss, violation of the rules for cultivation of plants containing narcotics, or psychotropic substances, or precursors thereof, for their use for scientific and educational purposes and also in expert activities, for production used for medical purposes or in veterinary medicine of narcotics or psychotropic substances, as well as violating the rules for storage, registration, realization, sale, transportation, acquisition, use, importation, exportation or elimination of plants containing narcotics, or psychotropic substances, or precursors thereof and of their parts containing narcotics, or psychotropic substances, or precursors thereof, entailing the loss of such plants or parts thereof, if this deed has been committed by a person in charge of observing said rules — shall be punishable with a fine in an amount of up to 120 thousand roubles or in the amount of the wage or salary, or any other income of the convicted person for a period of up to one year, or by compulsory works for a term of up to 360 hours, with or without deprivation of the right to hold specified offices or to engage in specified activities for a term of up three years” (Esakov 2019, 516–517).

After the adoption of the Federal law on amending the Criminal Code of the Russian Federation of December 8, 2003, the content of many chapters of this Code has been substantially changed, including chapter 25, which was partially supplemented by Art. 228² due to the extrication of Section 5 of the Art. 228 in an independent article. In the previous version of the Russian criminal code, the formulation of Art. 228 provided five sections, with three basic, one particularly qualified, and one qualified form of criminal offence. The subject of a criminal offence provided in sections 1–4 of Art. 228 were narcotics and psychotropic substances, but according to Section 5, the subject can also be “substances used in the production of narcotics and psychotropic substances”, which could be interpreted as precursors⁴⁶, according to the Federal Drug and Psychotropic Substances Act

⁴⁶ Precursor (lat. *praecursor*) — substance which is the base in the production of drugs, fundamental raw material. It is any chemical reagent that participates in some stage of the production of a toxic chemical; it has a very important role in determining the toxic capacities of the final product and reacts quickly with other chemicals in the binary or polycomponent system. In chemistry, precursor is a compound that participates in the chemical reaction produced by another compound. In biochemistry, the term “precursor” is used

of January 8, 1998⁴⁷. The determination of criminal responsibility for illegal actions with precursors is undoubtedly one of the important factors in countering the illegal trade of narcotics and psychotropic substances, as well as one of the measures to preserve the health of the population. The subject of a criminal offence under Art. 228² has referred to: 1) narcotics and psychotropic substances, 2) substances, instruments and equipment, used to prepare narcotics or psychotropic substances, which are under special control and 3) plants used for the production of narcotics or psychotropic substances⁴⁸ (Kuharuk 2004, 40).

In this case, it is important to consider the issues of qualification of crimes, committed only in relation to substances used during the preparation of narcotics or psychotropic substances. In scientific literature, they are called “precursors” and it is noticeable that this expression arose and got legal meaning by entering into force of the Federal Narcotics and Psychotropic Substances Act of 1998⁴⁹. Although this Act contains only the definition of the concept of precursor, the list I of narcotic drugs and psychotropic substances and their precursors, the list II of narcotic drugs and psychotropic substances, the list III of psychotropic substances, and the List IV of precursors are determined by the Decision of the Government of the Russian Federation No. 681 of June 30, 1998. The enumeration includes precisely listed items, and in addition — all preparations containing “the drugs and substances mentioned in the existing enumeration, regardless of their quantity and the presence of neutral components (water, starch, sugar, sodium-bicarbonate, talk etc.)”⁵⁰.

After the enactment of the Federal Act of May 19, 2010 No. 87-ФЗ (“Act on making changes to special legislative acts of the Russian Federation, regarding the cultivation of plants containing narcotics or psychotropic substances or their precursors”), the subject of a criminal offence under Art. 228² changes and refers to: 1) narcotics and psychotropic substances or their precursors, 2) instruments or equipment used to prepare narcotics or psychotropic substances, which are under special control and 3) plants containing narcotics, psychotropic substances or their precursors⁵¹.

Adding of other ingredients to narcotic drugs, such as sugar, powdered milk, baby powder or some other substance, reduces the purity of the basic drug but does not affect its chemical composition. There is the question of whether this addition of various substances, which increases the mass in order to enlarge sales revenues, but it does not impact the substance’s essence, can be accepted as processing? Illegal processing of narcotic drugs, psychotropic substances or analogues thereof are unlawful intentional actions of refining (purifying from foreign tinges) of a solid or liquid mixture containing one or more narcotic drugs or psychotropic substances, or an increase in such mixture (prepara-

specifically to refer to a chemical compound that precedes another in a metabolic trajectory (Прекурсор — значение и определение слова, что такое прекурсор [Precursor — the meaning and definition of the word, what is a precursor]. 2021. Accessed July 13, 2021. <http://www.doclist.ru/slovar/prekursor.html>).

⁴⁷ Precursors — substances often used in the production, preparation and processing of narcotics and psychotropic substances (Art. 1 of the Federal Drug and Psychotropic Substances Act of 1998).

⁴⁸ Federal Act No. 162-ФЗ of December 8, 2003 to amend and supplement the Criminal Code of the Russian Federation.

⁴⁹ Federal Narcotics and Psychotropic Substances Act of January 8, 1998 No. 3-ФЗ.

⁵⁰ Decree No. 681 of the Russian Federation Government of June 30, 1998 “On approval of the List of narcotic drugs, psychotropic substances and their precursors subject to control in the Russian Federation”.

⁵¹ Art. 228² of Russian Criminal Code was also changed by the Federal Act of August 2, 2019 No. 304.

tion) concentrations of narcotic drugs or psychotropic substances, as well as interference with other pharmacologically active substances in order to increase their activity or enhance the effect on the organism⁵².

The study of judicial practice confirms that in such situations, the weight of narcotics stems from the amount of a total seized substances. Thus, the District court of the city of Penza convicted person M. guilty of heroin-resale on an especially large scale (7.389 grams). However, in the verdict is noted that, in accordance with the expertise carried out, the seized heroin is a mixture of diacetylmorphine, i. e. “pure” heroin, weighing 0.379 grams and monoacetylmorphine weighing 0.109 grams. The other components of the seized substances are non-narcotic alkaloid-noscapine, as well as lactose and analgine as a supplements⁵³. Therefore, on occasion of determining the amount of narcotics, the court add up not only the weight of the two narcotics, but included in the entire mass of the mixture the weight of neutral components.

This example confirms that during the quantification of narcotics and psychotropic substances, in practice, the issue of calculating the weight of the drug, which is one of the components of the mixture, resolves on various ways. The decision of the Government of the Russian Federation No. 681 contains the instruction that the amount of narcotic drugs and psychotropic substances, calculated in the mixed table, extends to the mixture (preparation) of a given drug or substance. However, this situation can be interpreted in two ways: on occasion of determining the mass of narcotic drug entering the mixture, either the full weight or weight of the pure narcotic can be taken into account. The content of narcotically active components in preparations containing heroin can vary from 5 to 90%. However, the courts were oriented to the entire mass of seized substances during the determining subject of a criminal offence. As a result, persons who have committed illegal acts with the amount of narcotics that does not in fact contains the hallmarks of the criminal offence, were held criminal responsible (Chetvertakova 2007, 441).

According to Opinion of the Plenum of the Supreme Court of the Russian Federation of June 15, 2006 No. 14 (as amended on June 30, 2015) “On judicial practice in cases of crimes related to narcotic drugs, psychotropic, potent and poisonous substances”: “In cases where a narcotic drug or psychotropic substance included in List II and List III is mixed with any neutral substance, the determination of the quantity of a narcotic drug or psychotropic substance is made without taking into account the amount of neutral substances contained in the mixture”.

If the need for narcotics is characterized by constancy, then it has not to do with episodic crimes, but with criminal activity aimed at obtaining narcotics⁵⁴. This includes, not only the commission of crimes determined by Art. 228, 229 and 233 of the Russian Crimi-

⁵² Ruling of the Plenary Session of the Supreme Court of the Russian Federation of June 15, 2006 No. 14 (ed. of June 30, 2015) “On judicial practice in cases of crimes related to narcotic drugs, psychotropic, potent and poisonous substances”.

⁵³ Archive of Pervomaisky District court of the city of Penza, Case No. 1169 (Chetvertakova 2007, 441).

⁵⁴ On occasion of resolving the issue of rehabilitation of persons who use narcotics, Federal Narcotics and Psychotropic Substances Act of 1998 does not differentiate two fundamentally different groups of drug users: a) persons who have already become addicted (drug addicts) and b) persons who, although illegally using narcotics, do not yet suffer from drug addiction (episodic users). According to statistics, this group includes 60% of youth 15–18 years old who are on medical records, as drug addicts. They are not the persons ill of drug addiction, which are discussed in the chapter VII of this Act, but they no less need medical treatment, psychotherapy and medico-social rehabilitation (D'iachenko, Tsymbal 2000, 102–103).

nal Code, but also the commission of other crimes, directed to acquiring of a property in order to obtain narcotics — Art. 105 (Section 2), 158, 161, 162. etc. (Kriukov 2007, 434).

3. Conclusions

By careful analysis, based on clearly set criteria, it has been conducted a review of the important elements of legalizing marijuana use, that could contribute to a better understanding of this topic. Considering the still-present disagreements, the results of this study may be a valuable landmark for legislators and other decision-makers in the increasingly common processes of auditing and regulatory upgrading of national legal systems. The examination of the important characteristics of each legislation which supports this initiative, has shown a high degree of coinciding. On the other hand, UN international drug control conventions in Russia are implemented in a universal and consistent way, without collisions that would make countering the drug related crimes insufficiently efficient or impossible.

In the United States, the use and possession of cannabis is illegal under federal law for any purpose, by way of the Comprehensive Drug Abuse Prevention and Control Act of 1970. Art. 202 (a) states that there are established five schedules of controlled substances. Marihuana is classified as a Schedule I substance, determined to have a high potential for abuse and no accepted medical use in treatment. The severity of the penalties depends on the type of controlled substance involved.

According to Art. 841 (b) of the 21 United States Code, the most severe penalties are reserved for high-volume trafficking of eight substances assigned to Controlled Substance Schedules I and II, among them marijuana. If the Marijuana Opportunity Reinvestment and Expungement Act passes the Senate, marihuana and tetrahydrocannabinols shall each be deemed to be a drug or other substance that does not meet the requirements for inclusion in any schedule. Unlike the American official draft, Mexican bill does not recommend legalization, which implies the total elimination of any crime related to the activities coherent to cannabis. Sentencing for violations of law is governed by the weight of the substance involved. In Canada, the use and possession of cannabis was illegal under the Narcotic Control Act and Controlled Drugs and Substances Act for any purpose, but then the regulation of non-medical use of drugs continued under neo-liberalism in lock-step with United States. The Canadian Cannabis Act, so as Uruguayan law, has established general authorization or the system of licenses needed for the production, distribution and sale. This legislative measures are opposite to decisions of CND and INCB, because marijuana is on the list of drugs banned for non-medical use. According to studies of WHO, marijuana use can lead to the development of a substance use disorder, a medical illness in which the person is unable to stop using even though it's causing health and social problems. In the Russian Federation, all deeds related to narcotic drugs which were committed on a significant, large and an especially large scale, and also all acts coherent to traffic of narcotic drugs, regardless of its scale, are regulated by Criminal Code of Russian Federation. Otherwise, there will be applied an administrative law.

Informative, medical, educational and administrative means are officially insufficient, which is why they must be synthesized by criminal legal measures. Significant results in countering the illegal trade of narcotics can be achieved only on the basis of a complex approach which includes an effective combat against drug trafficking and the detection

and liquidation of illegal drug production. Major representatives of a narco business must be held criminal liable in order to protection of social interest and achieving a flexible and versatile system of providing medical treatment to drug addicts.

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