

# Dissociative Identity Disorder (IDD) and Drug Trafficking: Comparison between Brazil and Argentina Legislations - Part I

Jaqueline de Kassia Ribeiro de Paiva

Master in Public Policy Management – Federal University of Tocantins - UFT

Full professor of the University Center UnirG - Gurupi University, Av. Rio de Janeiro, N° 1585 - St. Central, Gurupi, 77403-090, Tocantins, Brazil Email: jakpaiva1@hotmail.com (JAQUELINE DE KASSIA RIBEIRO DE PAIVA)

**Abstract**—This paper analyzes the incorporation of the criminal law theory of the enemy of Gunther Jakobs in the criminal drug policy in Brazil and Argentina, providing a vision of how individual and collective interests in narcotics trafficking are by criminal law. This qualitative research was based on the comparative method, between the drug laws of both countries, with an exploratory descriptive approach. After the elaboration of two categories of analysis, starting from the paradigm of the theory of the criminal law of the enemy, the laws were compared and confronted with the characteristics of the theory, analyzed from the concepts of Durkheim. The common terms, found in the legislations of States, show the criminalization of conducts practically the same way, with very similar expressions and sentences, marked by restrictions of procedural and legal guarantees.

**Keywords**— Third-rate criminal law, drug law, comparative study, human rights.

## I. INTRODUCTION

This paper analyzes comparatively the anti-drug laws of Brazil and Argentina, in the light of the theory of the criminal law of the enemy. To this end, two main characteristics were chosen by the doctrine of Jakobs's theory, as categories: the anticipation of punibility with the typification of preparatory acts; Creation of types of mere conduct.

From these categories of analysis, we sought in both laws, convergent or divergent points, assuming not only the theory of the criminal law of the enemy, but also the concepts of Durkheim, among others, the social coercion, understood as the power, or strength, with which the cultural patterns of a society impose on the individuals who integrate it, forcing these individuals to fulfill them.

the objective action; of the instruments necessary for the practice of the criminal offence, seeks the most appropriate place or the most favorable time for the achievement of the crime (BITENCOURT, 2012, p.523).

To get to the trafficking itself, some steps are needed to obtain the product, for example, the agent, with intent to traffick Psychotropic (cogitation), acquires a property (preparatory acts), sows and cultivates plants Psychotropic (preparatory Acts) harvest, manufacture the product (execution) and finally, commercialize it (consummation). In both legislations, it is seen that conducts are punished as preparatory, that is, it is punished from the mere size of seeds and plantations, for example. The following items were identified in this category, relevant for the analysis.

Table.1: Articles related to the category "Anticipation of punibility"

Themes	Brazil	Argentina
Banning plantations	Art. 2º, art. 28, §2º,	Art. 5, a, b, c, d
Criminalize trafficking	Art. 33 caput e p. 1º, I, II, III	Art. 5, 6
Criminalize criminal association	Art. 35	Art. 29 BIS
Criminalize the financing agent	Art. 36	Art. 7
Criminalize the informant	Art. 37	—

**SOURCE:** The author (2019).

### 1.1. ANTICIPATION OF PUNIBILITY WITH THE TYPIFICATION OF PREPARATORY ACTS: ANTICIPATION OF CRIMINAL GUARDIANSHIP

Were listed in both legislations, the typification of preparatory acts, understood as being the path traveled from the cultivation of psychotropic plants, until reaching the narcotic final product, namely, the paths taken by the Agent for the practice of a fact provided for in law as a criminal offense.

It is the preparation of the delictuous action that constitutes the so-called preparatory acts, which are external to the agent, which passes from the question to

In Brazil, drugs are prohibited throughout the country, as well as their simple planting, harvesting, and exploitation of vegetables, and extracted substrates for the production of drugs, except in the case of legal or regulatory authorization. In law 11,343, art. 28, §1, is criminalized the conduct of "who, for their personal consumption, sows, cultivates or crops plants intended for the preparation of a small amount of substance, or product capable of causing physical dependence, or psychic." See that it is criminalized the conduct of simple sowing, cultivation, harvesting, albeit of small quantity, and is independent of its use, in clear anticipation of state punishment (BRAZIL, 2006).

The same occurs in Argentina, in Law 23,737, in its art. 5°th:

Art. 5.- It will be repressed with imprisonment or imprisonment of four to fifteen years and a fine of six thousand to five hundred thousand australes who without authorization or with illegitimate destiny:

- a) Sow or grow plants or store usable seeds to produce narcotics, or raw materials, or items intended for production or manufacturing;
- b) Produce, manufacture, extract or prepare narcotics;
- c) Trade with narcotic drugs or raw materials for production or manufacturing or have them for marketing purposes, or distribute them, or give in payment, or store or transport (ARGENTINA, 1989).

Therefore, the entire production chain of psychotropic preparation is criminalized in both countries, with penalties equivalent to the offence of the sale, itself. In Brazil, if for personal consumption, the penalty is milder, because it is not imprisonment, but rather a warning about the effects of drugs, provision of services to the community or educational measure of attendance to program or educational course. Therefore, the entire production chain of psychotropic preparation is criminalized in both countries, with penalties equivalent to the offence of the sale, itself. In Brazil, if for personal consumption, the penalty is bland, because it is not imprisonment, but rather a warning about the effects of drugs, provision of services to the community or educational measure of attendance to program, or educational course.

In relation to the criminalization of trafficking itself, however, not the mere sale of the narcotic, but those conducts equated and punished such as, for example, the simple import (bring into the country), export (take to another country), remit (send somewhere), prepare (get something through (composition of elements), produce (give rise to something), manufacture (produce), acquire

(Buy), Expose for sale (present for disposal), offer (make offer), have in deposit (keep in vessel), carry (take from one place to another), bring with you (carry along the body), prescribe (prescribe), save (Protect), drugs. These conducts are complemented by Brazilian law, by the expression even if free, without authorization or in disagreement with legal or regulatory determination [1] (BRAZIL, 2006). The verbs listed express presumed danger of injury to the legal good tutored, regardless of whether there is profit or not in the conduct, and the criminal type is mixed alternative, that is, the agent can practice one or more conducts, answering for a single offence.

The fact is repeated in Argentine legislation, which predicts similar conducts in its art. 5 °, by punishing not only the trade, but also the planting, production, extraction or preparation of narcotics, storing or transporting, delivering, supplying, applying or facilitating other narcotics drugs with, or without profit purpose. Article 6° establishes the punishment for those who introduce in the country, narcotics manufactured or at any stage of production or even raw materials. (ARGENTINA, 1989).

It can be seen, therefore, that the legislators of both countries have been far beyond criminalizing the narcotics trade, but intend to punish any stage of the productive chain of narcotic substances, establishing in various crimes, the so-called crimes of Mere conduct. This equaled the punitive rigor of the trafficker and the mere passer, as well as the negotiator who enriches it unlawfully. In the modalities of acquiring, storing, having in storage, transporting or bringing with them these substances, the agent must prove that the purpose is for personal consumption, or otherwise, will be punished with the same rigor as a usual trafficker.

In relation to the Brazilian doctrine, Nucci (2006, p. 770), suggests the bipartition of the offence of illicit trafficking in narcotics: with or without profit purpose, generating the natural improvement of the description of the drug user conducts. However, even such a suggestion does not denature the anticipation of the punibility of conducts of preparatory acts of the merchant.

In relation to the offence of criminal association, a crime which by its nature receives the classification of abstract hazard crime, not demanding for its consummation, no injury to the legal good tutored, importing into the crime, only the danger of the junction of people For the criminal purpose. It is not ignored here the knowledge of the other doctrinary classifications for these offenses, however, what interests in this analysis, is only the fact of being of abstract danger the junction of

people with intent to practice crimes punished in the drug law, regardless of your consummation or not. [1] Emphasis on the Author.

In Brazilian law, it is typified in art. 35º which requires for configuration, the association (meeting, junction) of at least two people to practice, repeatedly or not (waiving habit), any of the crimes provided for in art. 33º and 34º of the law. Please note that the description of the criminal type, including the practice of any crime of trafficking or equivalent is not necessary. (BRASIL, 2006).

Argentina follows the same guideline when punishing in art. 29º Bis, with the penalty of imprisonment from one to 6 years, "he who shall take part in a confabulation of the bad personas, to commit any of the offenses set forth in articles 5º, 6º, 7º, 8º, 10º and 25º present law, and article 866º of the Customs Code " (ARGENTINA, 1989).

In Argentina, the protected legal good is public health, in a diffuse way, because it does not require danger of real injury, but abstract. Hence the well-founded objections to the criminalization of the conduct of possession of drugs for personal use, which, based on the principle of harm, or the principle of full protection of legal rights, was declared unconstitutional by the Argentine Supreme Court, in several precedents throughout of your story.

In Brazil, the taxable person of the crime is always the collectivity, that is, the society in general, in order to protect the health of it. Both dismiss the guilty form, punishing themselves by direct intent.

The punishment of the funding agent, fourth theme, happens in Brazil, in art. 36º, and in Argentina art. 7º. In both the punishable conduct is to finance or to cover the practice of any of the crimes provided for in the arts. 33º, Caput and §1º, and 34º of this law. The distinguishing factor between the two countries is that Argentina punishes similarly, both those who organize trafficking, and who finances. Art. 7º.- It will be repressed with imprisonment or imprisonment of eight to twenty years and a fine of thirty thousand to nine hundred thousand australes, the one that organizes or finances any of the illegal activities referred to in articles 5º and 6º above. (ARGENTINA, 1989). By financing, it is the conduct of the banker who pays all the expenses of the crime of illicit drug trafficking. This type in Brazil is unprecedented because, in the previous laws, there was no punishment for this conduct.

The criticism is that punishing the financier more severely than the trafficker creates an unnecessary type because such conduct could be predicted with a special

cause of increased punishment in the very crime of drug trafficking. Likewise, anyone who contributes to criminal practice disorder responds, under Brazilian law, to the same penalties as the crimes applicable to him, and could well be punished as a participant or co-author of a crime of illicit drug trafficking.

Again, the offenses described here are of abstract danger and do not depend on any harm to the legal good for their consummation in either country. Because they have such severe penalties, there are virtually no criminal benefits provided for in the legislation, which will benefit the criminal agent of this criminal type.

The fifth and last theme of this category refers to criminalizing the figure of the informant, which, in Brazilian law, is provided for in art. 37, punishing with imprisonment for two to six years, the agent who collaborates as an informant, with a group, organization or association for the practice of drug trafficking (BRAZIL, 2006). Argentine law does not present a similar crime.

Collaboration means cooperation, assistance with the practice of the crime of illicit drug trafficking, by group or organization (NUCCI, 2006). The crime indicates the author's way of acting, that is, acting as an informant, passing data to third parties about something or someone. Obviously, no, it is any information, but only information that is significant, relevant to the realization of crimes. The goal of this crime is to soften the punishment of the informant, otherwise, it would incur the main crime of trafficking, with a more severe penalty (5 to 15 years). Thus, it punishes less severely relevant but less significant participation than drug trafficking itself.

The conclusion is that there is a criminalization of all the intricacies of the narcotics supply chain, as well as any activity related to the trafficking itself, from the simple information given to a trafficker, regarding the gathering of people with the purpose of committing crimes related to the narcotics trade. There is a concern of the legislator not to leave out of the "criminal chain" any conduct eventually practiced, even the simple aid, criminalizing all preparatory acts of the narcotics trade, in a clear adoption of prospective and non-retrospective criminal law, in which It considers as an enemy to be intercepted in the previous stage of its dangerousness, any person who is part of this productive cycle.

This model of criminalization of conduct would function as a social fact, which, according to Durkheim (1963, 2003), being external to the individual, is also of a coercive nature, has the power to "compel" him to act in a certain way, under the threat of punishment such as social isolation, for example in the case of socially unacceptable

behavior in a general manner, affecting everyone without exception.

In the specific context of anti-drug legislation, legislation typifies and formally fits the mandatory conduct for the one that produces, benefits, transports, sells or consumes illicit drugs. In other words, the transgressor of the norm, is obliged to adopt certain behaviors, or abstain from these, due to the prevailing norm, which is independent of his will, and whose coercion, in Durkheimian's meaning, implies the receipt of sanction, provokes him the Social isolation, reaching everyone, indistinctly. In this way, human refugees are being created, labeling citizens of transgressors, enemies to be contained.

## 1.2. CREATION OF TYPES OF MERE CONDUCT, AS WELL AS TYPES OF ABSTRACT HAZARD

According to Gomes (2007, p. 524), crimes of mere conduct is what describes only the conduct and consumes itself with its realization, without describing any naturalistic result. That is, there is no reference to any naturalistic result. Already dangerous crimes are those that jeopardize the well-protected, and the risk may be concrete or abstract. Abstract, are those that do not need to be proven concretely, and concrete, depending on proof.

In Argentine law, there are no numerations in paragraphs so that the item P. 2 Here was created by the author to distinguish the punishment of the dealer's user, provided by the law. In the Brazilian drug law, the crimes foreseen are of abstract danger, there is a legal presumption of threat or offense to the legal good.

*Table.1: Articles related to the category "Creation of types of mere conduct and types of abstract hazard".*

Themes	Brazil	Argentina
Use drugs	27 a 30	Art. 5, p. 2º e p. 3º, art 14
Drug dealing	33	Art. 5
Use place or the good of any kind for trafficking	33, § 1º III	Art. 10
Use machinery, apparatus, instrument or objects intended for preparation	34	Art. 5, c, d
Join for Trafficking	Art. 35	Art. 29 Bis
Finance or Cost Trafficking	Art. 36	Art. 7
Collaborate with Trafficking	Art. 37	Art. 29 ter
Prescribing or Administering Drugs	Art. 38	Art. 204 (willful), 204 bis (guilty), art. 204 ter., 204 quarter, art. 9
Drive after drug use vessel or aircraft	Art. 39	-----

**SOURCE: The Author (2019)**

Both Brazilian and Argentine law criminalizes the conduct of the person who acquires (buys), keeps (hides, protects), holds (keeps somewhere), transports (takes from one place to another), or brings (carries by the body), a narcotic substance intended for self-consumption. User typification in Argentine drug law occurs in the same article of the drug offense, with the same verbs, describing the conduct in a paragraph<sup>2</sup> that says: In the case of subsection a), when for the small amount sown or cultivated and other circumstances, it arises unequivocally that she is destined to obtain narcotics for personal consumption, the penalty will be from one month to two years in prison and articles 17º will be applicable, 18º and 21º (ARGENTINA, 1995).

In Brazil, there is no provision for prison sentences for drug users, while in Argentina the penalty is from one month to two years in prison, without prejudice to detoxification treatment. Brazil provides for a sanction of warning about the effects of drugs, provision of community services or educational program attendance, or educational course for the drug user, provided that the judge, aware of the nature and quantity of the substance seized, place and the conditions under which the action took place, the social and personal circumstances and the conduct and background of the agent so understand. Penalties for community service and attendance at an educational program or course may be applied for a maximum of 5 months, and in case of recurrence, double (BRASIL, 2006).

The conduct of anyone who uses a property or place of any nature, owned by him, or permits others to use it, for the purpose of trafficking, is punished in Brazil as conduct equivalent to trafficking, subject to the same penalties, whereas in Argentina, another article 10 is punished, with milder penalty, imprisonment from three to twelve years.

Both laws punish the conduct of those who manufacture (build), acquire (conquer in any way), use (use), transport (take from place to place), offer (offer, donate), sell (trade), distribute (sharing), delivering in any capacity, owning, storing, or providing apparatus, or any machinery for the manufacture, preparation or processing of drugs, without authorization or in violation of the law. In Brazil, the penalty is imprisonment from 3 to 10 years and in Argentina, the penalty is the same as trafficking, from four to fifteen years.

The association for trafficking, trafficking financing, and collaborator has already been described in the previous item, and here we avoid redundancy. Only the penalties provided for are: Brazil, 3 to 10 years and Argentina, 1 to 6 years.



As for the penultimate item of the theme, prescribe or administer drugs, in Brazilian law is described in art. 38º, namely: prescribing (prescribing), administering (applying), guilty (unintentionally) drugs without the need for the patient, or overdosing on them, or in disagreement with legal or regulatory determination, is punished. with a penalty of six months to two years and fine, without prejudice to the communication of the fact the authority in charge of the profession of a criminal agent.

In Argentina, the conduct of the person who simply sells the product in disagreement with the prescription, punishment of six months to three years, and in cases of negligence, is also punished with a fine. (art. 204º, bis), Also punishes itself with fine the individual who, having been responsible for the management, administration, control or supervision of an establishment for the expenditure of medicines, omits to comply with the s a su cargo posibilitando la comisión de alguno de los hechos previstos en el art. 204º (ARGENTINA, 1989). It also punishes the subject who sells medicinal substances without a prescription, when the law requires it, with imprisonment from six months to three years. See that the conduct of prescri- ing or administering these drugs are criminalized in art. 9º, with imprisonment of two to six years, and fine, besides the professional disqualification, different from what occurs in Brazil. There is also a qualifier when the subject prescribing or minister medication outside the therapeutic dosage, and for illegitimate purposes.

Unlike Argentina, in Brazil is punished the conduct of the subject who drive (guide, drive) vessel, that is, any construction able to sail on water, airspace, after the consumption of narcotics, whose penalty is six months to three years. This criminal type is derived from the Brazilian transit code, which punishes the conduct of those who guide the vehicle in a public way, intoxicated, endangering the collectivity. It's a criminal type of abstract danger. The penal type uses the expression after the consumption of drugs, in the condition of a normative element of the type, abandoning the expression soon after that, although it contains a certain degree of temporal imprecision, has been adopted by the positive right and is already assimilated by the doctrine and Brazilian jurisprudence. In this crime, it is no longer known how long, after the consumption of drugs, can be imputed to the driver of vessel or aircraft, this crime.

Finally, this criminal type creates a factor of asymmetry in the Brazilian penal system, since in art. 306 of the Brazilian Traffic Code, there is already a similar incrimination of the person who drives a motor vehicle on public roads, under the influence of alcohol or substance

of similar effects.

It is clear that both countries have defined in drug law crimes aimed at guaranteeing the structure of the normative system, and the penalty is a necessary measure to guarantee the credibility of the institutions in order to ensure the social stability that a balanced system provides. Therefore, the penalty that should be imposed on a citizen after an externalization of conduct will be given before any injury or attempted injury to a legal asset, with the sole purpose of restoring the violated rule. An individual who is involved in any circumstance with drugs, whether in the production chain, trade or use, does not express a minimal cognitive guarantee and should, therefore, be permanently or permanently removed from the law, as it poses a threat to society. maintenance of the current rule, therefore, the treatment given to it becomes non-person, which is why the definition of Jakobs by individual applies, with very well-defined recipients.

Thus, the enemy should not be punished for his culpability, as in functionalist criminal systems, but for his dangerousness, since certain people carry out such serious or habitual activities as to presuppose objective and significant dangerousness, since they possess greater social harm. The model adopted for drug legislation in both countries was a prospective criminal law, whose actors are subject to coercion, which must be intercepted at a previous stage, due to their dangerousness.

Thus, for Jakobs, the "imposition of penalties must have an eminently preventive character. A typical fact, in view of this, would not constitute an injury to legal assets, but as a lesion to the juridicity itself. " In this sense, the author "reveals-perhaps unconsciously-his true purpose, which is to legitimize a criminal law of war, a criminal right that adopts a warring posture, of combat, of elimination, of the destruction of the neighbor to keep a given order stable. In summary, the destruction of the human in favor of the preservation of the legal order " (MUÑOZ COD E; BUSATO, 2011, p.192).

The typicity not only describes actions but refers to a specific situational context that shapes the reality of this description, which implies a process of subsumption of the real complex in the abstract and general prescription of the legal type. In this respect, the subsidiary protection of Legal assets as a criminal law mission constitutes a basic guarantee of a constitutional state of law, and an effort is essential to justify the creation and enforcement of criminal rules.

There is the creation of types of mere conduct an abstract danger, with high deprivation of liberty, which hinder the receipt of other criminal benefits provided for in the legislation, disproportionate and unjustified to the

conducts practiced for the Certain cases, whose external effect is limited, in addition to mass incarceration, the sensation of the legislator, of having done something in favor of public peace, and to the citizens, the false impression that the problem of crime of drugs and related offences, if Under the control of the authorities, transmitting to the public opinion the soothing impression of an attentive and determined legislator.

Therefore, the maximization of the penal intervention focused on the idea of minimizing the fundamental rights of the infringer, establishes a dichotomy between what is called the Defense of Society (Social Defense) and, on the other hand, the preservation of the interests of the infringing or deviant individual. The rise of such exacerbated punitivism ends up serving as a mask to conceal the absence of serious, realistic and committed public policies with the social environment. And, in this wake, it is verified that instead of preventing criminal conduct and guaranteeing security, criminal law and the state, by disproportionately elevating the sentences, in response to social cry and the mass disclosure of news by the media, does not diminish the Levels of violence.

Barata explains that the policy of criminalizing the use of certain drugs is an autoreferential system that reproduces ideologically and materially. The first is the legislative conception that the consumption of narcotic drugs is a crime, which stimulates a negative posture of society under the influence of the ground. The material reproduction occurs next and "It is the process by which the system reproduces a reality according to the image from which it surrenders and that it legitimizes" (BARATA, 1991, p. 51).

Angriman, judging a case in Argentina, sentences:

*It's like Muñoz Conde says "... Certainly, criminal law has a moral basis and social ethics, but a total correspondence between criminal and moral law cannot be accomplished "because-following Jellinek postulates that:"... The right the criminal law has only a minimum ethical to fulfill "(Muñoz Conde, Francisco" Introduction to Criminal Law ", Editorial B of F, 1975, pp. 129 and segs). In the same sense, Roxin says that "... The mission of the State is to guarantee the external order and not to morally protect its citizens "(cited by Muñoz Conde, p. 130). (ANGRIMAN, 2009, p. 13).*

Important, now, to observe the concepts of Durkheim (1985), on social fact and social coercion,

because according to the author, efficacy is a consequence of the validity of the law, is the force of the Act to produce desired effects, social effects for which it was elaborated. For the positive effects of the laws, there is social, educational, conservative and transformational control. Negative effects would be the ineffectiveness of the law, the omission of the authorities to enforce laws, and lack of adequate structure to law enforcement.

The policy on drugs, Argentine and Brazilian rights predicted the social control of the conducts related to the use of narcotics, and with this control, predicted to transform society into this behavior. However, it is evident from the numbers of the populations arrested and also by the number of users of licit and illicit narcotic substances, which the countries did not foresee the negative effects presented by Durkheim, for which the authorities of the system of Justice apply punishments, in the external plan, lacks the proper structure for law enforcement, this increases its inefficiency, evidencing the contradiction between the principles of criminal law, especially the principle of humanity and the Resocialization of the penalty, which foresee the gradual re-insertion of the detainee in society.

The crime of drug trafficking and peripheral conducts to these should be seen as something natural, a phenomenon that is socially inherent to social coexistence. However, it became an act forbidden by the collective consciousness and the criminal being, a subject condemned by the state through laws and sanctions, these views as punishment, which promotes the reparation of the act, imposed by the state.

## II. FINAL CONSIDERATIONS

Considering that the present study sought to exploit the incorporation of the criminal law of the enemy within the criminal policy of drugs (Argentina and Brazil) incorporated the criminal law of the enemy, subjecting it to criticism of human rights, it is possible to establish, the following considerations:

The pillars of this theory are needed for the anticipation of the punishment of the enemy, punishing themselves including preparatory acts, creation of types of mere conduct, as well as types of abstract hazard, restriction of criminal and procedural guarantees, and finally, prediction of punishment of the enemy with a security measure. Such sustainacles served as categories to compare drug laws in Brazil and Argentina.

The repression of the trade and use of psychoactive substances brings characteristics of another enemy created by the Argentine and Brazilian legislator, a factor of human scrap in Latin America, consistent in the growing

number of people trapped under this Justification. The numbers of prisoners in both countries demonstrate the option of the justice system for the policy of mass incarceration, with the trafficking of drugs and related crimes, one of the most punished offenses in both countries.

Legislative interventions such as those present in the drug laws of both countries (Brazil and Argentina) cause a breakthrough in the state of police or authoritarian, as the consequent weakness of the rule of law, insofar as it demonizes the person of the trafficker, in The detriment of legal, procedural, and mainly guarantees of his human condition.

Ao longo da discussão, resta evidente a adoção integral deste modelo meramente punitivo na sua política interna de drogas, a qual é copiada dos Estados Unidos, sem um estudo mais aprofundado da criminologia, por parte do legislador latino americano, sobre o tema. Os tratados internacionais ratificados pelos dois países demonstram esta opção.

Likewise, the common terms found in the laws of the States, the criminalization of conducts practically in the same way, with very similar expressions and sentences, marked by restrictions of procedural and legal guarantees, establishing Differences between people convicted of crimes of narcotics and other criminals, high feathers, and especially the adoption of safety measures for the chemical dependents leave no doubts as to this.

People related to narcotics trafficking are punished by the future danger they represent, and intercepted in their preparatory stages, criminalizing any and all stages of the production chain of narcotic substances, several crimes are established, the so-called mere conduct. This equaled the punitive rigor of both the trafficker and the mere passer, as well as the negotiator who enriches it unlawfully. It is striking the legis- latter's concern not to leave out the "criminal chain" any conduct eventually practiced, even the mere aid, criminalizing all preparatory acts of the narcotics trade, in a clear adoption of criminal law prospective and non-retrospective, in which it is considered as an enemy to be intercepted in the previous stage of its dangerousness, any person integral to this productive cycle.

It remains evident that both countries have defined in the law of drugs, crimes with a view to guaranteeing the structure of the normative system, and the penalty is necessary to guarantee the credibility of the institutions in order to ensure the social stability that a system in Balance provides. Therefore, the penalty that should be imposed on a citizen after an externalization of conduct, will be before any injury or attempted injury to a legal

good, with the sole scope of restoring the standard violated.

The social institutions, like the legislative power, did not advance scientifically, and the imbalance between the knowledge sciences and the social institutions further aggravated the social problems, because there are no transformations in social life as a result Of the worsening of social problems, due to the loss of its main objective, man, insofar as the legislative power tries to dominate the human being (in this case people related to the trade of narcotics), without considering their individualities (Reasons why it uses a certain substance, type, quantity, local or regional trade, funding agent, among others), its notion of lawfulness or not about the consumption of narcotics, allowing a climate conducive to the struggle of classes, domination, shocks Ideological, increased crime and prison population related to trafficking.

In relation to the human rights issue, both Brazilian and Argentine legislation is totally incompatible with the enemy's criminal law theory. The main characteristic for this assertion is the fact that the enemy's criminal law theory puts two categories to the individual: on one side the citizen and the other the enemy. As they are framed as enemies are fully aligned with fundamental rights and guarantees foreseen for the other citizens, establishing differentiation of one individual with the other. The best effectiveness of criminal law, limited by its requirement, is respect for fundamental rights. Its violation disbelieves the state, puts in check its legitimacy of intervention, with the aggravating of the increasing impunity, through the way of nullity, among others.

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