

Substance abuse and crime: considerations for a comprehensive forensic assessment

Abuso de drogas y delincuencia: consideraciones para una valoración forense integral

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Abstract

There is a strong link between drug use and crime, but this relationship is complex. Drug use does not necessarily lead to an increase in crimes, such as theft, rape or assault, even among regular users or addicts. However, in cases of individuals who consume drugs excessively and commit crimes, both factors are linked. Poverty, personality disorders, social and cultural variables, relationships with other users and previous incarceration or drug use are all factors. These issues play an important role in understanding the risk of crime and drug use. Most addicts should be held liable for most criminal behaviour motivated by addiction, but that addiction can, in some cases, affect one's capacity for self-control over one's actions. This paper examines the current response of the Spanish Criminal Justice System to various aspects of drug abuse, focusing on court decisions related with the nature and enforcement of drug laws. It also addresses aspects of criminal responsibility for drug abuse and drug-related crimes and suggests legislation on drugs, sentencing alternatives for drug offenses, and drug treatment options. Expert evidence plays a crucial role in this area in the court.

Key words: Substance abuse, addiction, criminal responsibility, criminal justice system, expert evidence.

Resumen

Hay una estrecha relación entre el uso de alcohol/drogas y la delincuencia, pero esta relación es compleja. El consumo de drogas no conduce inexorablemente a conductas delictivas, como robos, asaltos o violaciones, ni siquiera entre las personas que las consumen regularmente o que han desarrollado una adicción. Sin embargo, hay algunas personas en que el exceso de alcohol/drogas está relacionado directamente con la delincuencia. Son muchos los factores que pueden dar cuenta de este fenómeno: pobreza, trastornos de personalidad, factores culturales y sociales, amigos consumidores o contacto con la prisión. Estos aspectos sirven para comprender el riesgo de delincuencia y de drogodependencia. La mayoría de los adictos son responsables penalmente de las conductas delictivas cometidas relacionadas con la adicción, pero la adicción puede en algunos casos socavar la libertad de la persona para controlar su conducta. Se analiza en este artículo el Código Penal español, reformado por la Ley Orgánica 1/2015, y la jurisprudencia existente sobre este tema, especialmente en relación con las circunstancias eximentes y atenuantes de la responsabilidad penal en los supuestos de adicción. Los informes forenses desempeñan un papel muy importante en los tribunales para ayudar al juez a tomar la decisión adecuada entre las distintas alternativas existentes.

Palabras clave: Abuso de drogas, adicción, responsabilidad penal, sistema judicial, informes forenses.

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There exists a clearly established relationship between abusive consumption of alcohol and other drugs with delinquency in both general (property crime) and violent crime. Furthermore, the consumption of alcohol or other drugs triggers many crimes, mostly committed by individuals with other mental illnesses, especially in the case of personality disorders, chronic psychosis, impulse control disorders, mood disorders and paraphilias (Esbec & Echeburúa, 2010).

Therefore, for example, according to the report on the prevalence of mental illnesses in prisons in Spain (Vicens et al., 2011) with a sample of 783 males, 75% had problems associated with drug consumption. In the study by Swanson et al. (1990) on individuals who committed violent acts in the last year, there had been an abusive consumption of cannabis by 19.3%, of alcohol by 24.6%, and of other drugs by 34.7%. In turn, amongst homicides, substance-related disorders are present in 35.4% of indicted and in 11.8% of unindicted offenders (Fielitz & Cardozo, 2006); among sex offenders, 85% presented substance-related disorders (Dunsieth et al., 2004).

According to the meta-analysis of Bennett, Holloway and Farrington (2008), the possibility of committing crime is three or four times greater for drug users (heroin and cocaine, but less in the case of cannabis) than for non-users. However, stigmatization must be avoided as the majority of drug users and even addicts to some type of drug have never committed crime. No drug in itself is conducive to crime. Crimes derive of a great number of personal, family, social and situational factors (Echeburúa, Fernández-Montalvo & Amor, 2006).

In relation to specific drugs, most crimes committed by heroin addicts are property crimes, but violent crimes are a minority. As to cocaine, acute intoxication frequently causes agitation, hyperactivity, excitation and paranoid symptoms. These symptoms are dose-dependent and may occur in cocaine users without any psychiatric histories (Romero-Martínez & Moya-Albiol, 2015).

Likewise, the relationship between the consumption of cannabis and violent delinquency is scarcely documented, except for when the drug triggers psychotic symptoms (Fernández-Montalvo, López-Goñi & Arteaga, 2015). Furthermore, psychotropic drugs (benzodiazepines, antidepressants, etc.), when mixed with alcoholic beverages, may cause inappropriate or intense reactions of rage, with total loss of control.

Finally, there may be a relationship between the abuse of solvents and problematic behaviour, such as vandalism, fights and theft of products containing these substances. Intoxication by volatile substances may reduce awareness and self-control (Elonheimo et al., 2014).

Many studies have found a relationship between alcohol consumption and violence in general, accidents, gender-based violence, homicide and sexual aggression. The alco-

hol-violence relationship is greater among persons with certain antisocial personality traits, deterioration of cognitive functions and violent history. Most cocaine users also abuse alcohol, resulting in an inhibitory effect on behaviour that may translate into impulsivity, impaired judgment capacity and explosivity. The group of cocaine and alcohol addicts comprises a highly heterogeneous population, wherefore violence is intimately associated with one's personality structure and with other mental illnesses (Delgado, Maza & De Santiago, 2013; Echeburúa, Bravo de Medina & Aizpiri, 2009).

The purpose of this article is to analyse the existing relationship between drug consumption and different delinquency types, as well as to propose several alternatives set forth in amendments to the Criminal Code from the perspective of a comprehensive forensic assessment.

Types of delinquency in relation to drug consumption

The crimes most frequently committed by the drug addict population are given below (Goldstein, 1995):

- a. Crimes due to direct or indirect pharmacological effects of the substance. Cocaine activates the Limbic System, related with impulsivity or aggression, and alcohol inhibits the cerebral regions responsible for self-control ("inhibitory brakes", as used currently in the legal setting). The majority of violent and reckless crimes occur in this case, but there are also others due to omission, as occurs with opiates or cannabis (Bravo de Medina, Echeburúa & Aizpiri, 2010).
- b. Functional or instrumental delinquency, generally property crime, the purpose of which is to obtain enough money to cover one's consumption-related expenses.
- c. Minor drug traffic offenses, the purpose of which is to obtain drugs for personal use, pay debts and resolve situations of economic hardship or basic needs.
- d. Major drug traffic offenses, which also include cases of money laundering, tax evasion, trafficking and illegal possession of arms, coercion, homicide, fraud, etc. This way, violence may be a tool for resolving hierarchical conflicts amongst drug traffickers to settle territorial disputes amongst rival gangs or to seek revenge against traitors or informants.

Nevertheless, not all drug addicts are criminals as a result of their dependency. Some property crimes arise merely of a capricious attitude, or crimes against sexual freedom, or against one's partner, having nothing to do with this pathology.

As regards drug trafficking, the following are evidence of possession for purposes of trafficking (Ujala, 1999):

- a. the quantity of the substance seized,
- b. the drug distribution channels,
- c. the place in which the drug is located,

- d. the purchasing power of the offender in relation to the value of the drug,
- e. the attitude adopted by the person at the time of confiscation,
- f. the variety and abundance of the drugs in one's possession,
- g. the tools used, such as analytical balances or substances that are ideal for altering drugs,
- h. the possession of considerable amounts of money.

Malice, as regards the crime of drug trafficking, includes both the knowledge of the substance's harmful effects on health as well as the personal intent to incur in any of various conducts classified in article 368 of the Criminal Code (the *animus* (intent) of cultivating, elaborating, trafficking or promoting illegal drug consumption). Malice is not considered in the classification when personal use is intended.

Connecting link between drugs and delinquency

The causal relationship between drug use and delinquency is complex and not always one-way. Therefore, it is important to distinguish between *drug addict-offender* (intoxication, abstinence, addiction) that commits crime as a direct result of the effects of the drug (pharmacological assumption) or due to its absence (functional delinquency) of the *offender-drug addict*, who frequently presents an underlying antisocial or narcissistic disorder as well as a far-reaching criminal record, in which drug use is an incidental fact (Esbec, 2005; Echeburúa & Fernández-Montalvo, 2007).

For example, a considerable proportion (30-50%) of heroin addicts have committed crimes before initiating their use of opiates. In these cases, criminal activity continues during non-addiction periods, but there is a sharp drop in criminal activity when use is minimal or inexistent. Decreased crime is also observed when reduced consumption is the result of an effective treatment, as well as under conditions of release on parole or due to spontaneous discontinuance of drug use. Heroin addicts commit six times more offenses when they are users than when they are abstinent. For long-term heroin addicts with repeated failures in drug-free programs, the best results are obtained (in terms of abstinence from heroin and decreased criminal activity) with methadone maintenance therapy (Delgado et al., 2013).

The causal link between drugs and delinquency frequently appears in the following circumstances: (a) violent acts in cases of intoxication by alcohol, cocaine or psychodysleptics; (b) functional delinquency (theft, petty theft, fraud, falsification of prescriptions, etc.) to avoid abstinence, especially in heroin and cocaine addicts; and (c) small-scale production and trafficking solely for purposes of self-supply (Bean, 2014).

The relationship between drugs and crime in response to a latent, unobservable factor underlying both behaviours

cannot be overlooked, including conditions of vulnerable households, social exclusion or a syndrome of antisocial behaviour in general (Contreras, Molina & Cano, 2012; Valenzuela & Larroulet, 2010).

The Criminal Code and jurisprudence as regards "functional delinquency", drug trafficking and drugs that cause "serious health problems"

The Criminal Code (CC), amended by Organic Law 1/2015 and Organic Law 2/2015, in its article 21.2 makes reference to mitigating circumstances when the offender's actions are motivated by a serious drug addiction. This is not an issue, therefore, of cases of abstinence-related syndromes or intoxication, nor of drug-induced psychosis. The mitigating circumstance intends to address those so-called cases of "functional delinquency", in which the drug addict commits a crime to obtain enough money for purchasing the drug object of the addiction, as long as the causal link is clear.

The relationship between addiction-criminal act may be logically inferred, without requiring specific proof (Sentence of the Supreme Court, hereinafter SSC, dated December 21, 1999, SSC dated March 8, 2010 and Sentence of the Provincial Court of Madrid, hereinafter SPC, dated April 28, 2015). This mitigating circumstance is not applicable in cases of trafficking of large amounts of drugs (SSC dated April 29, 2015).

The mere possession of drugs alone is not a crime. As regards drug trafficking, it is important to detect the figure of "drug trafficker for self-consumption". It is common for some drug addicts to sell drugs on a very minor scale, not for purposes of self-enrichment, but rather to obtain enough money to cover one's consumption-related expenses due to lack of resources. Article 21.2 of the Criminal Code is included here, as per our interpretation.

Amendments to the Criminal Code (Organic Law 5/2010 dated June 22 and Organic Law 1/2015 dated March 30) have lightened sentences when a small amount of drugs are seized.

The Supreme Court (SC) uses reports drafted by the National Toxicology Institute, dated October 18, 2001 and December 22, 2003, to define the minimum psychoactive doses, as well as the average daily dose, which continue to be upheld by its jurisprudence (SSC dated May 14, 1990, December 15, 1995 and November 21, 2003). The National Toxicology Institute considers a frequent user to acquire, for self-consumption, the quantity required for 5 days. Some sentences consider that a drug is destined for trafficking when its quantity exceeds the amount stored by a user for consumption over 5 days. This 5-day storage period, according to the report of the National Toxicology Institute, is broken down by substances: 3 grams of heroin, 7.5 grams of cocaine, 100 grams of marihuana, 25 grams of hashish,

3 milligrams of LSD, 900 milligrams of amphetamines, and 1440 milligrams of MDMA (ecstasy).

To the contrary, the Supreme Court considers the following cases as indicative of drug trafficking: a) the quantity and variety of the drugs seized of the offender greatly exceed the common storage of a habitual user (SSC dated December 15, 2004 and March 31, 2006) and the arrival of a person to Spain with drugs and without employment, place of residence or contact person through which to obtain means for self-support (Ruling dated April 24, 2007); b) the performance of surveillance tasks at the place of purchase-sale (Ruling dated May 31, 2007); c) the lack of proof of being a drug addict user, instead being simply a sporadic user with a possession exceeding 5 months of personal use (Ruling dated June 7, 2007); and d) the amount of money seized.

Article 368 of the Criminal Code has notably stiffened sentences for drug trafficking that cause serious health problems and has upheld the mitigating circumstance of notorious importance in article 369.3. In accordance with the agreement of the plenary session of the Supreme Court dated October 19, 2001, the amount defined as of “notorious importance” refers to the unit of measure for daily drug use set forth by the National Toxicology Institute (report dated October 18, 2001) for the purposes of applying the mitigating circumstance of article 369 of the Criminal Code. These amounts are given in Tables 1 and 2.

As regards drugs that cause serious health problems (mitigating circumstance), jurisprudence is sufficiently consolidated, including opiates, cocaine, LSD, amphetamines, ecstasy and other designer drugs in this group. To the contrary, hashish and other derivatives of cannabis, as well as psychoactive drugs, are excluded from this section (SSC dated March 8, 2002 and February 18, 2015).

For other drugs, the Courts inevitably require expert assessments (article 456 of the Criminal Procedure Act), which must refer to the composition, richness of active products, tolerance and dependency as to its purposes and, finally, toxicity or health risk for humans. These reports, given their foreseeable complexity in many cases, must be requested of fully solvent entities and bodies in terms of scientific validity, such as the National Toxicology Institute, the School of Legal Medicine or the General Sub-Directorate of Pharmacies.

Exemptions and mitigating circumstances. “Actio libera in causa”

The Criminal Code includes different situations for the drug addict-offender. Therefore, courts may apply the exemptions of article 20.2 (complete intoxication or abstinence syndrome) or the mitigating circumstances of article 21.1 (incomplete intoxication and abstinence) and 21.2 (serious addiction to the substance), among others.

Given the attitude of tolerance toward drug addicts during the 80s, the Supreme Court has gradually incorporated

Table 1. Drug doses considered of notorious importance

Heroin	300 grams of heroin or <i>horse</i> (600 milligrams per day by 500 days)
Morphine	1000 grams (estimated daily dose of about 2000 milligrams per day by 500 days)
Methadone or Metasedin®	120 grams (estimated daily dose of 240 milligrams per day by 500 days)
Buprenorphine or Buprenex®	1.2 grams (estimated daily dose of 2.4 milligrams per day by 500 days)
Dihydrocodeine or Contugesic®	180 grams (estimated daily dose of 360 milligrams per day by 500 days)
Tramadol (Adolonta®, Tioner®, Tradonal®, Tralgiol®, Tramadol®)	200 grams (estimated daily dose of 400 milligrams per day by 500 days)
Marihuana	10 kilograms of marihuana (estimated daily dose of between 15-20 grams per day by 500 days)
Cocaine	750 grams of cocaine (estimated daily dose of 1.5 milligrams per day by 500 days)
Hashish	2.5 kilograms (estimated daily dose of 5 grams per day by 500 days)
Hash oil	2.5 kilograms of hashish (estimated daily dose of 5 grams per day by 500 days)
LSD	300 milligrams (500 doses)
Amphetamines	90 grams of amphetamine sulphate
MDA (<i>love drug</i>), MDMA (<i>Ecstasy</i>) or MDEA (<i>Eva</i>).	240 grams
Methamphetamine (<i>Speed</i>)	30 grams

Table 2. Doses of benzodiazepines (anxiolytics) considered of notorious importance

Alprazolam (Alprazolam® Efarmes®, Géminis®, Merck®, Trankimazin®)	5 grams (estimated daily dose of 10 milligrams/day)
Triazolam (Halcion®)	1.5 grams (estimated daily dose of 3 milligrams/day)
Flunitrazepam (Rohypnol®)	5 grams. (estimated daily dose of 10 milligrams/day)
Lorazepam (Donix®, Idalprem®, Lorazepam Médico®, Orfidal Wyeth®, Placinoral®, Sedizepam®)	7.5 grams (estimated daily dose of 15 milligrams/day)
75 grams of Clorazepate Dipotassium (Nansius®, Tranxilium®)	75 grams (estimated daily dose of 150 milligrams/day)

demands for mitigation of the sentence for these patients (Esbec, 2005): (a) objectification of the drug addiction using an expert's report (SSC dated December 12, 1990); (b) proof of the current drug addiction and its relation to the criminal act (SSC dated November 21, 1988, November 22, 1989, April 27, 1990 and December 12, 1990); (c) proof of seriousness and chronicity, compared with mere consumption (SSC dated December 1, 1990, April 27, 1990 and December 10, 1990); (d) objectification of the seriousness of the abstinence syndrome (SSC dated November 22, 1989, January 30, 1990 and April 27, 1990); (e) description of the physical and/or psychiatric symptoms of the offender (SSC dated January 27, 1990); (f) study of the type of substance object of the addiction (SSC dated December 3, 1988); and (g) study of the personality of the drug addict-offender (SSC dated January 3, 1988).

Likewise, the SSC dated July 26, 2006, November 4, 2009 and March 8, 2010 and the SPC of Madrid dated April 28, 2015 set forth the following requirements for sentencing:

1. Bio-pathological requirements. In other words, a certain duration of the drug addict's addiction, entailing serious intoxication or abstinence, as only a serious addiction may cause the circumstance that modifies criminal responsibility.
2. Psychological requirement. That the offender's mental faculties are affected. Being an addict is not sufficient for mitigation if the drug has not affected the person's intellect and volition.
3. Chronological, time-based requirement. That drug use and its psychological impact take place at the moment of committing the criminal act, or that the offender acts under the effects of the abstinence syndrome. This analysis also contemplates crimes committed when the offender has a serious drug addiction.
4. Regulatory requirement. The intensity or influence of the drug addiction on the offender's mental mechanisms, resulting in the consideration of a complete or incomplete exemption, or merely as a mitigating circumstance as regards criminal responsibility.

The sole condition of drug addict, without explicit effects on faculties of cognition and/or volition (exceptional cases), does not affect criminal responsibility (SSC dated March 1, 1995, September 26, 1996 and December 2, 1997, among others).

As to the abusive consumption of alcoholic beverages, the SSC dated November 6, 2014 includes different possibilities:

- a. Complete exemption (article 20.2). Applicable when intoxication is complete and coincidental, given the profound alteration it causes on the offender's cognition and volition, preventing the comprehension of the illegality of the act or of acting in accordance with that comprehension. This is equivalent to a temporary mental disorder, as long as it was not pursued for purposes of committing the criminal act and that said act

was neither planned nor foreseeable (negligent intoxication).

- b. Incomplete exemption (article 21.1). Applicable when intoxication is coincidental but incomplete, as long as the offender's cognition and volition are seriously impaired when committing the act. These circumstances do not prevent, but rather significantly hinder the comprehension of the illegality of the act or of acting in accordance with that comprehension. This mitigating circumstance is not applied in cases of negligent intoxication.
- c. Mitigating circumstance (article 21.2). Applicable when intoxication, though not habitual nor sought for the purpose of committing delinquency, affects the offender's cognition and volition without fulfilling all of the requirements of the abovementioned cases, and which may even be classified as a mitigating circumstance if its effects were particularly intense (SSC dated February 4, 2005 and March 2, 2006).
- d. Analogous mitigating circumstance (article 21.6). Applicable when the impairment of volition and of the capacity for comprehension has been slight, regardless of the alcohol-related motivating circumstances. This way, the voluntary or even negligent intoxication, never for the purpose of committing delinquency, causes either a significant obnubilation in the offender's capacity for understanding the scope of the acts committed or a likewise significant relaxation of the inhibitory brakes, in other words, of the capacity for directing one's behaviour in accordance with standards norms of socialization (SSC dated December 5, 2005, November 19, 2008 and July 6, 2011).

Currently, the legal-criminal treatment of drug addiction encompasses: a) criminal responsibility at the moment the act takes place; b) suspension of the custodial sentence after the conviction; and c) special treatment during imprisonment for purposes of detoxication.

However, when a drug addict commits a criminal act directly related with drug use, the legal viability of the so-called "*actio libera in causa*" may be proposed. This means that if the addict knows, time and time again, that the abstinence-related symptoms reoccur and that, despite this, the addict continues with substance abuse instead of seeking therapeutic assistance, then that person is responsible for his or her criminal behaviour. The addict may not hide behind the shield of release from criminal responsibility from a condition that he or she has deliberately pursued. In these cases, the culpability derives of the situation prior to the commission of the criminal act, when the offender, in full use of mental decision-making capacities and abilities, decides to continue with the chain of drug use and criminal acts (SSC dated July 16, 1982). In other words, the patient opts for criminal action instead of seeking assistance.

In other cases, it is important to prove prior attempts as regards detoxication, adherence to treatments and compliance with established guidelines. Quitting the treatment from the start is not the same as experiencing a temporary imbalance or relapse when a patient is currently undergoing rehabilitation (Martínez-González et al., 2014).

Expert evidence in issues related with possession, drug use and drug addiction. Biopsychosocial model

The purpose of different expert evidence on matters related with drug addiction is to obtain specificity as to the possible application of cases for modifying criminal responsibility. It is quite common for an expert's opinion on the offender's drug addiction, differentiating between occasional or erratic use and a possible intoxication (including induced psychosis) or abstinence syndrome during the time the act was committed, as well as indicating whether the drug trafficker acted out of fear or necessity. All of this for the purpose of seeking exemption or mitigation of responsibility when the diverse criminal acts were committed.

Assessment of the duration and seriousness of the drug addiction

The Supreme Court requires a "certain duration" of the drug addiction (SSC dated March 8, 2010). In this regard, it is crucial to complete a thorough examination for the presence of stigmas of habitual drug use, such as venipunctures, scars from abscesses, positive results for hepatitis C or HIV, nasal septum perforations, etc. A complete medical history must be documented, including all types of antecedents as proof of this chronicity.

For criminal purposes, a more or less occasional drug use, or referred to *a posteriori* as a procedural strategy (even with positive drug test results from use during imprisonment), is not the same as a real drug addiction. Supplementary documentation is required to differentiate between both figures: criminal history, prior expert's reports, reports from Drug Addiction Treatment Centres, hospitalizations, family history, etc.

That the Supreme Court requests the experts to establish the "seriousness of the addiction" (SSC dated March 8, 2010) and that these patients tend to exaggerate their references must not be overlooked.

Toxicological analyses and simulation. Need for differentiation from occasional use

Tests (blood, urine, hair) frequently requested during preventive retention or when released while awaiting trial, in general, have no expert value as the expertise must date to the time of the commission of the acts and not to a later drug use and, furthermore, the expert is interested in diagnosing a drug addiction and not mere drug use. Likewise, it is also a well-known fact for experts that some offenders

who are not drug addicts use drugs in prison with the goal of seeking some type of mitigation of the sentence *a posteriori*.

Nevertheless, a drug analysis using hair can define a chronological profile of consumption and reveal whether drug use is occasional or ongoing. It may also provide guidance as to the amounts ingested and the type of drug used.

The report must include the usual dose consumed, particularly relevant in criminal offenses against public health, as in these cases the usual allegation is that the seized drug was intended for personal consumption. On other occasions, the Court or the parties consult as to the usual dose taken by a drug addict of a substance to dilucidate as to the quantity of "notorious importance".

Abstinence syndrome and anticipatory anxiety

Though the instrumental offense committed while under the full effects of an abstinence syndrome is considered an exemption as per article 20.2 of the Criminal Code, part of the doctrine and some sentences extend this syndrome to include the so-called "anticipatory anxiety", "craving" or "abstinence syndrome thresholds", the psychopathological symptoms of anxiety-depression, with a high level of irritability, that significantly impair a person's capacity of volition. This has also been referred to as the "incomplete abstinence syndrome".

It must be highlighted that, in these cases, the criminal act clearly has been planned, with awareness of its illegality, though under conditions of affected volition.

According to the Supreme Court (SSC dated January 3, 1988) this anxiety "reflects the pre-onset or prodromal desire or craving for the drug... It is a type of hyperactivity that quickly degenerates into aggression and that motivates certain types of delinquency, such as violent theft...".

The clinical expression of abstinence varies, depending on the substance and the dose, but also on individual responses and even on the stress generated by the difficulty faced by the addict in finding the substance or a substitute. The intensity of the abstinence syndrome is classified into four levels (slight, moderate, serious and severe). Another, lower level may also be added, more similar to craving than to abstinence in its symptoms. In other words, the need for the drug, characterized by anxiety, nervousness and disorientation (Serrat, 2003).

Cases of "necessity" and "insuperable fear"

In general, doctrine sets forth that the anxiety for drugs does not fit in with cases of "necessity" of article 20.5 of the Criminal Code. On another hand, drug traffickers, informally known as *drug pushers* and who usually use their own body as the means for transporting the drug ("*drug mules*") tell stories of economic hardship or threats received for owing money, usually unverifiable. In these cases, expert opinions of physicians or psychiatrists-psychologists hardly contribute any value (Esbec & Delgado, 1990).

“Insurmountable fear”, in the legal-criminal sense, entails the well-founded fear of serious, imminent harm, clouding one’s intelligence and overcoming one’s volition, thereby motivating the execution of an act that, without that psychic distress, would be considered criminal. Justification of this mitigating circumstance (article 20.6) requires that the fear (arising from threats to one’s own life or that of one’s

children, for example) is the sole motivation for the action charged as a crime (SSC dated June 12, 1991). The insurmountable nature of this fear makes it impossible for the person’s volition to overcome or neutralize it, and it must be invincible, in other words, cannot be dominated by most persons (SSC dated May 9, 1991) (Table 3).

Table 3. Most relevant articles of the Criminal Code and the Criminal Procedure Act for drug addicts

Article		Possible consequence	Associated psychopathology
CRIMINAL CODE ARTICLE 20.2	When at the time of committing the criminal act, one is fully intoxicated due to the consumption of alcoholic beverages, toxic drugs, narcotics, psychotropics, or others that cause similar effects, as long as it was not sought for the purpose of committing the act, or its occurrence was neither foreseen nor could have been foreseen, or when one is under the influence of an abstinence syndrome as a result of the dependency on these substances, which prevents the comprehension of the illegality of the act or of acting in accordance with that comprehension.	COMPLETE EXEMPTION	Complete intoxication Drug-induced psychosis. Serious abstinence syndrome
CRIMINAL CODE ARTICLE 21.1	The causes defined in the previous article, when all of the necessary requirements for exemption from responsibility do not concur in the corresponding cases.	INCOMPLETE EXEMPTION MITIGATING CIRCUMSTANCE	Incomplete intoxication Non-serious abstinence
CRIMINAL CODE ARTICLE 21.2	When the offender acts as a result of a serious addiction to the substances mentioned in point 2 of the preceding article.	INCOMPLETE EXEMPTION OR MITIGATING CIRCUMSTANCE	Small-scale drug trafficking, “drug trafficker for self-consumption”
CRIMINAL CODE ARTICLE 20.1	When at the time of committing the criminal act, as a result of any psychic anomaly or alteration, the offender lacks comprehension of the illegality of the act or of acting in accordance with that comprehension.	COMPLETE EXEMPTION	Dual diagnosis. Personality disorders. Other serious mental illness
CRIMINAL CODE ARTICLE 20.1	The temporary mental disorder will not be grounds for exemption from the sentence when it has been induced by the offender for purposes of committing the criminal act or the offender had foreseen or should have foreseen committing the criminal act.	COMPLETE EXEMPTION	Accidental intoxication with psychotropics
CRIMINAL CODE ARTICLE 20.5	When, given a situation of necessity, to avoid harm to oneself or to another person, inflicts damage on another person’s legal asset or fails to fulfil an obligation, in concurrence with the following requirements: First. That the damage caused is not greater than the damage intended to be avoided. Second. That the offender has not purposely provoked the situation of necessity. Third. That the person in need is not, due to one’s profession or position, obligated to self-sacrifice.	COMPLETE EXEMPTION	Urgent need for drugs Serious economic problem
CRIMINAL CODE ARTICLE 21.7	Any other circumstance sufficiently analogous to the above.	ANALOGOUS MITIGATING CIRCUMSTANCE	Variable pathology
CRIMINAL CODE ARTICLE 80.5	Even when conditions 1 and 2 set forth in article 81 fail to concur, the judge or court, in a hearing with the parties present, may agree to suspend the custodial sentence of up to 5 years of the convicts that committed the criminal act due to their dependency on the substances included in point 2 of article 20, as long as there exists sufficient certification by a duly accredited or approved public or private centre or service that the convict has completed or is undergoing a detoxification treatment at the time of decision-making as to the suspension. The judge or court will request the necessary verifications and will review the corresponding reports.	SUSPENSION OF THE CUSTODIAL SENTENCE OF UP TO 5 YEARS	Mid-scale drug trafficking by the drug addict
CRIMINAL CODE ARTICLE 87	Upon expiry of the established suspension period with the omission of any criminal acts by the offender... and having sufficiently complied with conduct-related rules... Certification of the drug addict offender’s successful detoxication or continuity of treatment.	REMISSION OF THE SENTENCE	Addiction to drugs
CRIMINAL PROCEDURE ACT. ARTICLE 381	In the event that the judge observes signs of mental illness, the offender will immediately be subject to the observation of forensic physicians at the prison if imprisoned, or at another public centre if more suitable or if the offender is not imprisoned.	INCOMPETENT TO DECLARE	Serious intoxications. Drug-induced psychosis. Serious abstinence syndrome

Assessment of criminal responsibility as per mixed criteria

The requirement in jurisprudence of establishing a mixed criteria for assessing criminal liability cannot be overlooked. To this end, it does not suffice to comply with the biopathological criteria of addiction, intoxication or abstinence, but it is absolutely necessary to prove the psychological effect (absence of the capacity for comprehending the illegality of the act or of acting in accordance with that comprehension).

Assessing the drug addict for suspension of the custodial sentence and for remission of the sentence

Amendments to the Criminal Code, implemented through Organic Law 1/2015 dated March 30, also includes a review for regulating the suspension of the execution of the sentence, for purposes of endowing it with greater flexibility.

One possible option for offenders who commit a criminal act imposed a sentence of up to 5 years, as a result of a serious drug addiction, is the suspension of the execution of the sentence (article 80.5). The amendment grants judges the freedom to implement the necessary verifications to certify compliance with legal requirements. In these cases, the suspension of the execution of the sentence obligates the drug addict to commit to completing the detoxication treatment. A novelty of this amendment is that relapses during treatment are not considered abandonment of the same if they do not entail a definitive withdrawal from treatment.

In turn, remission of the sentence (article 87), upon expiry of the established suspension period, mandates the omission of any criminal acts, compliance with conduct-related rules established by the judge, and certification that the offenders has completed the detoxication treatment.

Conclusions

A close relationship exists between delinquency and drug use, though the relationship is not linear and implies many mediating factors. Abusive drug use is not the sole underlying problem of the phenomenon of criminal activity. The offender's environment, personality, mental disorders and personality, as well as social support network and family, modulate the probability of this use and the likelihood of committing criminal acts (Delgado et al., 2013).

At times, delinquency and drug use are more or less directly related with lifestyles, behaviour patterns and vulnerability-related factors of the offender during critical moments of human development, such as adolescence and young adulthood. Likewise, the effects of drugs differ across individuals, depending on a great number of psychological, biological and situational factors (Walters, 2014).

The biopsychosocial expert's report must differentiate between occasional drug use and ongoing abusive use in-

herent to addiction, as well as define the drugs upon which the addict is dependent, the seriousness and duration of the addiction, the doses and method of administration, and highlight the possible existence of comorbidity with other mental disorders.

The extent to which the offender's psychological faculties are affected must be clearly defined (*null, moderate, serious and severe*) as regards the commission of the criminal act, bearing in mind comorbidity and contextual aspects. In exceptional situations (coincidental or accidental occurrences, such as when someone unknowingly ingests hallucinogenic mushrooms or drinks a spiked alcoholic beverage), a temporary mental disorder may be alleged in defence as a mitigating circumstance of criminal responsibility (article 20.1 of the Criminal Code). All of this acquires special relevance for the various legal figures contemplated in the Criminal Code, as have been applied in some relevant sentences of the Supreme Court and of some Provincial Courts (Esbec & Echeburúa, 2014).

Upon the judge's requirement, the expert's opinion may evaluate the possible suspension of the custodial sentence of up to 5 years, as long as the criminal act occurred as a result of the offender's drug addiction, and upon certification of an approved centre that the offender is currently undergoing or has successfully completed a detoxication treatment. The offender may not abandon the treatment prior to its completion, though relapses during treatment are not considered abandonment of the same if they do not entail a definitive withdrawal from treatment (article 80.5 of the Criminal Code). Remission of the sentence may be granted upon certification of the offender's successful detoxication or continuity of treatment (article 87.2 of the Criminal Code).

Experts are also consulted as to the most suitable security measures when criminal responsibility has been annulled or attenuated. Therefore, depending on the seriousness of the acts committed, of the motivation for participating in detoxification, of dual diagnosis, of the social support network and of other variables, a custodial sentence may be proposed in which the offender must undergo rehabilitation in a detoxification centre or through an outpatient program with periodical drug use controls, as well as be prohibited visiting certain places or of driving motor vehicles, among other measures, within a broad spectrum of possibilities included within "probation" included in article 106 of the Criminal Code after its amendment by Organic Law 5/2010, dated June 22.

Finally, when the offender is held criminally responsible and is imprisoned, Penitentiary Regulations (article 116) contemplate the possibility for imprisoned drug addicts to participate in detoxification programs on-site and, exceptionally, off-site (article 182).

Conflict of interests

The authors declare the inexistence of conflicts of interest.

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