

ORIGINAL ARTICLE

Crime of Encouraging the Use of Narcotics on Social Networks

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Main Points

- Social networks influence people and users effect each other with interesting posts.
- Broadcasting on social networks that encourage the use of drugs or stimulants seriously threatens especially the health of children and young people.
- It is obvious that there is a need for regulations to prevent the crime of encouraging the use of drugs or stimulants on the internet for the protection of public health.

Abstract

Under the second paragraph of Article 190 of the Turkish Criminal Code numbered 5327, titled “Facilitating the Use of Narcotics or Psychotropic Substances,” encouraging the use of narcotics or psychotropic substances or broadcasting messages with such an intent is ruled as a criminal act. If the encouragement is in the public domain, it constitutes a crime. Evidently, the message-sharing in social media adds publicity to any content. If an individual uses a picture, text, or photograph to publicly encourage the use of narcotics or psychotropic substances by stating that it brings relief and peace of mind and eliminates all problems, it will be constituted as a crime, regulated under the second paragraph of Article 190.

This study discusses the criminal act of encouraging the use of narcotics or psychotropic substances to the detriment of public health, the ways in which it is propagated, and the role of social networks in the execution of this crime.

Keywords: Broadcast, encouragement, internet environment, narcotics or psychotropic substances, publicity, social network

Introduction

It is obvious that social networks influence people and users influence each other with interesting posts in social media. Social networks, which have become indispensable in people’s daily lives, have become a tool for interaction, being used to both receive and communicate news and information. People now communicate with each other through social networks, and the internet and social media have become central to our life. Although this technology makes our lives easier, it has also rendered the online domain of the internet and social networks crime-ridden. It is a crime to publicly encourage the use of narcotics or psychotropic substances or to

broadcast such messages. In practice, such messages are now broadcast on the internet, and through social networks.

The fact that the legislation specifically points to such encouragement in the public domain shows that this crime can easily be committed on social networks. The internet is an interactive environment and the content is created with Web 2.0 (the structure that activates the user with features such as providing and producing information, and sharing and discussing, apart from the position where users only receive information, is called Web 2.0 (see O’Reilly, 2021). Web 2.0 reaches countless users and facilitates the execution of the crime, which is the subject of our study.

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It is appropriate to include the type of crime, which is the subject of our study, in the Law. Article 190 of the Turkish Criminal Code (TCC), titled “Facilitating the Use of Narcotics or Psychotropic Substances,” is as follows: “(1) Any person facilitating the use of narcotics or psychotropic substances by: (a) Providing a particular environment, equipment or material; (b) Taking precautions in order to ensure the avoidance of the arrest of any users, or (c) Providing information to others about the method of usage shall be sentenced to a penalty of imprisonment for a term of five to ten years. (2) Any person who publicly, or through broadcast media, encourages another to use narcotics or psychotropic substances, shall be sentenced to a penalty of imprisonment for a term of five to ten years. (3) Where an offence under this article is committed by a physician, dentist, pharmacist, chemist, veterinarian, health personnel, laboratory technician, midwife, nurse, dentistry technician, patient care nurse, person providing health services or a person engaged in the chemical or pharmaceutical industry, the penalty to be imposed shall be increased by one half.”

It is obvious that there is a need for regulations that will prevent not only the trafficking and use of narcotics or psychotropic substances, but also the commission of a crime from the very beginning, in order to reach such potential victims of substance abuse and to protect the health of the individual before the services of the public health system are required.

The subject is discussed not only in the TCC, but also in other Criminal Codes. For example, Article 8 of the Law of Regulation of Broadcasts Made on the Internet and Fighting Against Crimes Committed Through These Broadcasts, numbered 5651, titled “Execution of content with decisions to remove and block access,” states that it will be decided to remove the content and/or block the access to the broadcasts made on the internet, and to the content, if there are sufficient grounds for suspicion that it constitutes *the crime of facilitating the use of narcotics or psychotropic substances* (Article 190 of the TCC) (see Law numbered 5651 a. 8-1/a-3).

Elements of the Crime of Encouraging the Use of Narcotics or Psychotropic Substances

Narcotics or Psychotropic Substances

Narcotics or psychotropic substances cause narcotic or stimulant effects when used, and create psychological and physical addiction, and passion (Balci, 2009). In the dictionary, the term narcotics has been defined as “the drug with a numbing feature, narcotized (substance), narcotic, prevents you from acting, thinking properly,” and a narcotic substance has been defined as an object that is a “drowsy substance such as morphine, cocaine, heroin, opium, marijuana” (see. www.tdk.gov.). Considering the definition proposed by the World Health Organization, the term “narcotic substance” can be expressed as “All substances of herbal or synthetic origin, affecting the central nervous system, causing physical or psychic addiction, and in some cases creating a single-subject passion (the need to increase the dosage upon continued use), and in other cases, dual-impact passion, such as the use of different drugs by the same person.”

The TCC does not include a description of what constitutes a narcotic or psychotropic substance, or a definition of these

substances. Discretely, identifying narcotics or psychotropic substances is beneficial for protecting individual freedom. However, it should be considered meaningful not to include a definition in the TCC, in order to ensure that the trafficking of newly developed substances does not go unpunished, and that public health is protected (Balci, 2009; Soyaslan, 2016). The justification of Article 188 of the TCC points out that “In this article, provisions regarding the production and trade of narcotics or psychotropic substances are regulated. In here, it is not defined what narcotics or psychotropic substances consist of, and they are not sorted severally. The reason for this is to provide a strong social defence by sanctioning the abuse of narcotics or psychotropic substances and drugs and synthetics that have the same effect. Thus, it has been accepted that all substances which, as psychotropic substances, have narcotic or stimulant effects and cause addiction in a person, will constitute the subject of this crime” (Balci, 2009).

In order for any activity facilitating the use of narcotics or psychotropic substances to be named as a crime, the subject matter of the crime must have the characteristics of a narcotic or psychotropic substance, as we have stated above (see Decision of the 10th Penal Chamber of the Supreme Court, dated November 1, 2019, and numbered 2071/6933).

There is no regulation in our legislation as to what substances are categorized as narcotic or psychotropic. It is difficult to define what narcotics or psychotropic substances are. New substances are added every day. We find it appropriate not to adopt the counting method, for strong social defense.

According to Article 1 of the Narcotics Substance Law in Germany, the word “narcotics” includes substances and mixtures listed in Annexes I and III within the scope of this law. The Federal Government of Germany is authorized to qualify or amend Annexes I to III by issuing a decree, based on expert opinion and with the approval of the federal council. According to paragraph 2/1 of the German Narcotics Substances Law, the definition of a “Substance (Stoff)” is “A processed or unprocessed plant, a certain part of a plant or a plant component or a chemical composition and its esters, ethers, isomers, molecular compounds and salts - raw or purified - and their naturally occurring mixtures and solutions.”

Although it has been discussed whether not counting narcotics or psychotropic substances as one by one would comply with the principle of legality in crime and punishment, in our opinion, the system determined in the TCC would not be contrary to the principle of legality, and to the principle of clarity and definiteness, which is the result of this principle. The legislator does not explain the content of all concepts by defining them separately. We do not agree with the idea that the use of the phrase “narcotics or psychotropic substances” in the code would be contrary to the principle of clarity and definiteness. For example, Article 4 of the Law No. 3298 on Narcotic Substances states that “Raw opium, prepared opium, medical opium and their preparations are considered narcotic substances in the implementation of the Turkish Penal Code.” In the International Conventions to which Turkey is a party, narcotics are defined and counted.

There are provisions in many laws on narcotics. In order to carry out an effective investigation in the fight against narcotics, it is

necessary to collect the scattered legislation and make arrangements under the roof of a single law in the fight against narcotics. For this reason, it is recommended to abolish the provisions in the special laws mentioned above and to enact a special law, called “The Law on Combating Narcotics and Psychotropic Substances,” in accordance with the conditions of the era and of our country. In the doctrine, it is stated that narcotic-related crimes have already exceeded the limits of being a crime against public health, and threaten the health of drug users or potential users, and that it would be appropriate to remove the crimes related to narcotics or psychotropic substances from the systematics of the TCC and to deal with them in the scope of a separate law.

The importance of the type of crime in Article 190 of the TCC in terms of protecting human health is obvious. We can say that there is an expedient practice regarding the crime of facilitating the use of narcotic or stimulant substances, purchasing, accepting, or possessing narcotic or stimulant substances for use, or using narcotic or stimulant substances, especially the crime of manufacturing and trading narcotic or stimulant substances, in the TCC. In criminal law, the criteria for punishing an act as a crime are that the act causes serious harm to society or poses a risk of harm. Considering the context in which the crime of encouraging the use of narcotics or psychotropic substances publicly or through broadcast media is regulated in the law, it should be said that the value protected by the crime is the health of the public. The fact that narcotics or psychotropic substances are easily accessible, on the one hand, makes it difficult for people who use these substances to regain their health; while on the other hand, it creates the danger of non-users and undetected people, whose health could be impaired by accessing these substances. The reason why the acts of publicly encouraging the use of narcotics or psychotropic substances on social networks are considered crimes against public health is that the victims are unidentified. Protection of the society against narcotics or psychotropic substances concerns the health and welfare of the society. It is among the duties of the social law of the state to prevent the abuse of narcotics or psychotropic substances that are dangerous for the health and welfare of the society. Considering the social consequences of drug use, it is seen that this issue is not an individual issue but a social one. Therefore, it cannot be said that even adults use these substances as their own preferences. It is not possible to say that the individuals are free to use substances which will prevent them from living an honorable life in society and which will lead them to physical and mental disorders. As a matter of fact, according to Article 12 of the Constitution, “Everyone possesses inherent fundamental rights and freedoms, which are inviolable and inalienable. The fundamental rights and freedoms also comprise the duties and responsibilities of the individual to the society, his/her family, and other individuals.” A person’s rights over health, bodily integrity and dignity are inviolable, inalienable, and indispensable fundamental rights.

It should be noted that in comparative law, the counting method has been accepted in some laws regarding what narcotic or psychotropic substances are. For example, this system has been adopted in the German Narcotics Substances Law. However, in some laws, only the phrase “narcotics or stimulants” is used instead of the counting method, and the determination of the quality of these substances is left to the experts.

Publicly Encouraging the Use of Narcotics or Psychotropic Substances

According to the second paragraph titled “Facilitating the use of narcotics or psychotropic substances” of Article 190 of TCC numbered 5237 “any person who publicly, or through broadcast media, encourages another to use narcotics or psychotropic substances, shall be sentenced to a penalty of imprisonment for a term of five to ten years.”

The legislation mentions the encouragement regarding the criminal acts included in the paragraph (Bayraktar & Diğerleri, 2019; Tezcan et al., 2021). Encouragement means “to spur, refer, goad someone,” and with the encouragement, a desire to use narcotics is aroused in the person (Gökcan & Artuç, 2021; Şen & Demirbükler, 2021; Tezcan et al., 2021; Yenerer Çakmut, 2019; Yılmaz, 2018; Yokuş Sevük, 2019). The encouragement arouses an individual’s desire to use narcotics or psychotropic substances, because they think that the use of these substances can alleviate the negative effects of their current situation. In fact, statements such as “narcotics do not cause any harm to human health; on the contrary, they are beneficial,” can also be considered as an act of encouragement. If the person acts or makes statements to encourage the use of narcotics outside the limits of freedom of expression, he/she shall be punished in accordance with the second paragraph of Article 190.

A similar regulation is also included in the “Narcotics Substances Law (Betäubungsmittelgesetz - BtMG)” in Germany. Among the acts included in the Article § 29 “Criminal Offences” of the Law, and requiring a prison sentence of up to five years, the crimes include; “providing or giving an opportunity for the unauthorized acquisition or supply of narcotic drugs, publicly communicating such an opportunity, or encouraging another to consume narcotic drugs.”

For an act of encouragement to constitute a crime, it must be done publicly. The dictionary meaning of publicity is “something being outward and in the open, not being hidden, but being in sight” (Devellioğlu, 2007). In acts that encourage the use of narcotics through social networks, the target population is often undefined, and a specific person is not being addressed. The basic criterion that defines publicity is that the act is not specific in terms of the conditions in which it takes place and can be perceived by more than one person.

Not every share on social media mentioning narcotic substances constitutes the crime of encouraging the use of narcotics or psychotropic substances. The specifics of the concrete event should be considered. For example, if a person unwittingly shares a photograph on social networks while wearing a t-shirt with an article that encourages use of narcotics, or broadcasts with this t-shirt, it does not constitute a crime.

The crime of encouraging the use of narcotics or psychotropic substances is committed with a general intent and the offender does not have to act with a specific motive (Tezcan et al., 2021). For an act to be deemed criminal, the motive is not given importance, and it is necessary and sufficient to determine whether the offender has the intention to encourage someone else to use the substance or to broadcast in this way (see Şen & Demirbükler, 2021). It is sufficient for the offender to act encouragingly

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(Çakmut, 2019; Tezcan et al., 2021). However, the type of crime can also be committed with eventual intent. If a social network user who predicted that the video he/she shared in terms of the elective act of broadcasting messages that encourage narcotic use says that the narcotics are very good for the individual, he/she will be punished in accordance with the second paragraph of Article 190. However, the person must act knowingly and willingly in a way that encourages the use of narcotics or psychotropic substances, provided that they remain within the limits of freedom of expression and art. Otherwise, since the crimes that can be committed intentionally can be committed with eventual intent, it is concluded that the behaviors that are likely to encourage the crime, whose penalty is already severe, should also be punished (Tezcan et al., 2021).

To be viewed as a crime, the encouragement needs to be public, and not in the form of a special speech or correspondence. If an undefined number of people are reached with an act of encouraging the use of narcotics or psychotropic substances, the act constitutes a crime. Here, it does not matter whether the people use narcotics with the acts of encouragement (Çakmut, 2019; Çetin, 2016; Gökcan & Artuç, 2021; Özbek et al., 2021; Tezcan et al., 2021; Yokuş Sevük, 2019).

The type of crime falls under “abstract endangerment offenses” (Gökcan & Artuç, 2021; Yılmaz, 2021; Yokuş Sevük, 2019). Even if broadcasts are made on social networks in a way that encourages the use of narcotics, without any result, the act still constitutes a crime (Birsen, 2020; Şen & Demirbükler, 2021). In other words, for the crime to occur, it is not necessary to determine that an individual used narcotics under the influence of the broadcast. In determining whether a crime has occurred, we need to state that the distinctions in saying that there is no encouragement in a song that tells the drama of a person who uses narcotics or psychotropic substances, and that there is an incitement to crime in a song that tells the story of a singer who has become the favorite of young girls, are not correct (see Birsen, 2020). Even if no one is affected by the broadcast, a crime still will occur. It should be noted that it is not necessary to watch the broadcast that encourages the use of narcotics or psychotropic substances. For example, enabling everyone to learn publicly on social networks should be considered sufficient for the crime to occur (Tezcan et al., 2021). Although it is mentioned that the crime remains at the stage of an attempt, when enforcement actions are divided into parts, it is difficult to say that enforcement actions are divided into parts in encouraging actions committed through social networks. The crime is considered complete with the sharing of the article and the publication of the video.

Specific intent is not sought on the offender for the crime of encouraging the use of narcotics or psychotropic substances. In our opinion, in order to prevent the use and trade of narcotics or psychotropic substances, it is necessary to consider the effects and threats of these substances on human health and keep the society away from broadcasts which encourage such activity. For this reason, it is necessary to consider a general intent as sufficient to term the act as criminal.

Since encouragement is mentioned in the second paragraph of the article, providing information about how to use the narcotics, guiding the individual about using narcotics or giving information

about how to supply them should not be considered as an act of encouragement, but within the scope of the first paragraph of the article, should be considered as facilitating the use of narcotics.

In court decisions regarding the crime of encouraging drug use in social networks, it is evaluated whether the act constitutes an encouragement to use narcotic substances or whether it is an artistic activity in the context of freedom of expression. As we stated in the study, it is not appropriate to see an article or video being shared as a direct encouragement, within the limits of freedom of expression.

In court decisions, the substance that constitutes the subject of the act of encouragement must be a narcotic or psychotropic substance, according to the provisions of the “Law on the Protection of Human Health from the Harms of Volatile Substances” numbered 5898. In the Decision of the 10th Penal Department of the Supreme Court, dated November 1, 2019, and numbered 2071/6933, although it was accepted and alleged that the defendant encouraged the U.K. to use the adhesive named Bali, which has volatile properties, this issue has been pointed out by stating: “As the elements of the article do not occur without considering that this adhesive substance, which should be evaluated within the scope of Articles 1, 2/1 and 3/1 of the Law on the Protection of Human Health from the Damages of Volatile Substances Numbered 5898, cannot be the subject of the crime of “openly encouraging the use of narcotic substance” defined in Article 190/2 of the TCC numbered 5237, instead of acquittal of the defendant for the alleged crime in which there is not sufficient evidence to prove that the act is fixed and since the establishment of a conviction is against the law, and the objections of the defendant’s defense counsel are valid for this reason, it has been decided to reverse the judgment.”

In order for the crime of publicly encouraging the use of narcotic or psychotropic substances to occur, the act must be suitably encouraging (Şen & Demirbükler, 2021). Of course, a particular person does not need to be encouraged. Even though it is claimed to be for entertainment purposes, we can say that a crime occurs if the behavior encourages drug use. For example, if an individual wears a t-shirt with a picture of the marijuana plant with the words “I feel better when i use it, you will feel better when you use it,” it can be considered as a clear message encourage actual drug use (Şen & Demirbükler, 2021).

In the decision of the First Criminal Court of First Instance of Muş, dated November 25, 2013, and numbered 502/796, it is determined that “The defendant V.Y created a page on social networking site Facebook on the internet with a username called V.Y. Fan Page, and by liking the social networking page www.facebook.com/esrarkubar through this page, he provided the connection between both pages, and that again the V.Y. Fan Page is linked to the website <http://esrar-kubar.org.tr/gg/>, that the defendant enters these websites with dost432_49@hotmail.com, kaderbenibendenaldi@hotmail.com e-mails, that in the said page, detailed information is given that will encourage the use of narcotics, facilitate the use and show how the use is done, that in this situation, the accused committed the crime of publicly encouraging the use of narcotic or psychotropic substances through social networking sites,” and the decision was approved by the decision of the 10th Penal Department of the Supreme Court dated December 27, 2018, and numbered 5261/10040.

In the evaluations made about the acts that do not have an encouraging character in social networks, it was pointed out that the elements of the crime did not occur. For example, in the decision of the 20th Penal Department of the Supreme Court dated February 26, 2018, and numbered 4949/1118, this has been pointed out with the statement “As it was understood that the posts made by the accused, who used the Facebook account of TY on the date of the incident, did not encourage the use of narcotics, it was decided that the accused should be sentenced instead of acquitted of the accused crime, whose elements did not occur.”

Broadcasting (Social Networks) Encouraging the Use of Narcotics or Psychotropic Substances

The second optional act in the paragraph, which constitutes a crime, is to broadcast in a way that encourages the use of narcotics or psychotropic substances. Here, we will focus on encouraging broadcasts on social networks. According to subparagraph (g) of paragraph 1 of Article 6 of the TCC, it is understood that “through the press and broadcast; publications made by all kinds of written, visual, audio, and electronic mass media” (the press, radio and television, movies, video tapes, records, audio tapes, and especially the internet are among the mass media used today (see İçel & Ünver, 2009). Accordingly, if the perpetrator broadcasts through the press and is broadcasting, for example, on the internet from his social media account, in a way that encourages the use of narcotics, the crime in the second paragraph of Article 190 is considered to have occurred (Yokuş Sevuk, 2019). While it is not clear how many people can access the shares of users who are members of these providers on the software systems and databases established on the websites of social network providers, at what time, and how many people can access these shares, the fact that these data can be accessed by an indefinite number of people, should be evaluated. Therefore, it is undoubted that the shares made over the Internet, within the scope of Article 2 of the Law No. 5651, the shares made by the registered users of social network providers through their personal accounts, should be considered within the scope of broadcasting over the internet (Sec. 19, Court of Appeals, February 17, 2021, 6817/1704).

The legislation also mentions not publishing after publicly promoting the use of narcotics or psychotropic substances. In fact, there was no need to mention a separate broadcast, as an encouragement with a public nature corresponds to an unknown number of people (Çakmut, 2019). However, the author of the subject, for example, has included this situation in the text of the article, considering the importance of the encouragement by means of the press, which will create an effect far beyond an encouragement in the environment of friends.

It is considered to be a criminal act when a person broadcasts on social networks in a way that encourages narcotic use. The offender’s intentions, such as attracting attention and being popular, are not taken into consideration. It is not necessary for an individual to turn to a particular person for encouragement on narcotic use in social media.

The act will constitute a crime if the person broadcasts both written and multimedia shares on social networks and states that the narcotic is good for an individual and relieves all problems, and recommends everyone to use it, or if the person shares a video in a similar way. Even if the user states that he/she shares these

contents for entertainment purposes, the encouragement is still considered criminal (Şen & Demirbükler, 2021). However, the individual shall not be punishable for trade of narcotics (according to Şen & Demirbükler, “incentives to traffic in drugs do not violate the second paragraph of Article 190, since the article mentions encouraging the use of drugs. In order for the act to constitute a crime, the phrase ‘use or trade’ must be added to the text of the article.”).

It should be noted that broadcasting also includes public encouragement. For this reason, it is necessary to regulate public encouragement as the basic form of the crime, and broadcasting as a qualified state that requires a heavier penalty. Considering the effectiveness of media and especially social networks, it will be understood that broadcasting should be considered as a major state (similarly, see Yılmaz, 2018).

It is possible to reach unidentified people through social networks. For this reason, it is necessary to consider social media tools within the media organs (Akkurt, 2017. See also in the decision of the 18th CD of the Court of Appeals, dated December 25, 2017 and numbered 34555/15373 (reason against vote), “The defendant made his insulting remarks on Facebook, the social networking site that is considered a means of press pursuant to subparagraph 6/g of Law No. 5237” is called).

It would not be wrong to argue that these networks are used as criminal communication tools, since crimes committed through social networks have increased significantly. In terms of encouraging the use of narcotics, it is possible to communicate with many people, the number of whom cannot be determined publicly, through social networks. Children and young people are especially encouraged to use narcotics in a way that threatens public health in the context of the crime that is our subject of study.

The type of crime does not have a characteristic in terms of jointly committed offense, and general provisions regarding jointly committed offense are applied. In the crime of publicly promoting or broadcasting in this nature, which is included in the TCC Article 190/2, it does not seem possible to execute the actions by dividing them into parts on the internet. In case of an encouraging behavior or broadcasting, a crime occurs. For example, it would not be appropriate to claim that in case of making preparations for a broadcast on YouTube that will encourage narcotic use, this broadcast will encourage third parties to use narcotics in a concrete way and without hesitation. We point out that the provisions in 190/1 and 190/2 are regulated as two separate crimes that are independent of each other; therefore, the crimes should be evaluated separately. It is possible to commit the encouragement crime in the form of a successive offense (Dutch national rap singer Önder Doğan, nicknamed ‘Murda’, was found to use expressions and content encouraging drug use in his clips and songs, and some of the lyrics in his songs “Duman”, “Pahalı” and “Eh Baba” were determined as encouraging the use of drugs or stimulants. He was detained at Sabiha Gökçen Airport. the previous day. The Dutch musician, whose songs and clips are published on video-sharing sites, is subject to Article 190/2 of the Turkish Penal Code (...).” <https://video.haber7.com/video-galeri/195941-sarkici-murda-uyusturucuyu-ozendirmek-sucunda-n-goaltina-alindi>).

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The crime of encouraging the use of narcotics or psychotropic substances is a crime that is prosecuted *ex officio*. In case of any publication that encourages the use of narcotics or psychotropic substances, the competent court is the court of the place where the publisher of the work is located (CCP art. 12/3).

The Role of Social Networks in Encouraging Use of Narcotics

Activities that encourage children, youth, and society to use narcotics are carried out in the virtual environment, with the opportunities offered by the internet and especially by social networks (Bahar, 2018; Thanki & Frederick, 2016). It is obvious that social networks have become widespread in the digital world and that it is easy to broadcast on these networks, and that many users are reached in a very short time. For this reason, it is necessary to consider it meaningful to include an optional act that includes “broadcasting” in the type of crime.

The concept of “Narkomarketing” is used in relation to the purchase, sale, use and promotion of narcotics on the internet and on social networks (Bahar, 2018). Since social network users think that their real identities cannot be determined while sharing on the internet, the comfort of anonymity can easily encourage the use of narcotics or psychotropic substances in an environment where there is no control and filtering (Bahar, 2018).

Social media represents a widespread, readily available and continually accessed source of information for young people (for statistics on the subject, see Thanki & Frederick, 2016) and combines the power of interpersonal persuasion with the reach of mass media (Moreno & Whitehill, 2014). The most basic feature that makes social media social is that it has the opportunity of interactive communication. This characteristic distinguishes social media from traditional mass media. In addition, since information and data in the online environment can be easily manipulated, the virtual world is attractive to people with bad intentions regarding narcotics or psychotropic substances.

Content related to the use of narcotics, alcohol, or tobacco products in traditional media is kept under control in order to protect public health, and special attention is paid to the protection of children and young people. However, since there is no filtering on social networks and there is no opportunity to reach large masses in a short time, unlike traditional communication tools, judicial authorities face difficulties in the fight against the use of narcotics and activities that encourage their use.

It should not be overlooked that the physical distance between people on social networks increases the tendency to commit crimes. The virtual world, where users from different age groups and from different countries and geographical regions come together, is also a very open space for manipulation.

Publicly Encouraging the Use of Narcotics or Psychotropic Substances and Freedom of Expression

Article 26 of the 1982 Constitution titled Freedom of Expression and Dissemination, states that “Everyone has the right to express and disseminate their thoughts and opinions individually or collectively through words, writings, pictures or other means.” However, there may be restrictions on freedom of expression in

terms of the crime of encouraging the use of narcotics or psychotropic substances. We have to say that encouraging the use, public health is protected in regulating the promotion of narcotic use as a crime. The type of crime is regulated under the title “Offences Against Public Health.”

The fact that especially children and young people use social media in the digital world and that users reach a wide audience through these platforms is obvious. When users with a large number of followers post malicious or harmful content, they manipulate the attention of their followers and inadvertently cause the spread of narcotic use and similar harmful habits. Both in the 1982 Constitution and in the justification for the amendment of Article 188 of the TCC (in the justification for the amendments made with the Law No. 6545 “Protection of children in Article 41 of the Constitution titled “Protection of the Family and Children’s rights”), in Article 58, titled “Protection of Youth,” the duty of taking necessary measures to protect young people from drugs, delinquency, and similar bad habits rests with the State), it is stated that children, young people, and families should be protected from narcotics and similar bad habits.

The legislative has also regulated that facilitating and encouraging the use of these substances is a crime at the very beginning, in terms of narcotic offenses that regulate and punish the use and trafficking of narcotics as a crime. Considering that narcotic use starts with curiosity and pretension, it is necessary to be careful in sharing personal information on social networks where relationships can be established far beyond a limited circle of friends, and to avoid sharing that encourages narcotic use.

Since social networks are not only environments where content is shared, the comments and explanations made in these environments should be evaluated in the context of freedom of expression at the beginning. In social networks, people can share their impressions about a song they listen to, a movie they watch, or a book they read. This should not be considered as an encouragement. Similarly, statements in scientific meetings made on social media (for example, Instagram) are considered within the scope of the enforcement of the right and the act is considered lawful (Altunç, 2018). Here, the reason for compliance with the law, which is the enforcement of the right, is in question.

In the evaluation of the offender’s intent, it is necessary to consider whether his sharing can be considered within the scope of freedom of expression and the perception he creates on social networks (In the indictment dated June 13, 2018, prepared by the Istanbul Anatolian Chief Public Prosecutor’s Office, about the rap artist Sercan İpekçioğlu, known by his stage name Ezhel, it was demanded that İpekçioğlu be punished within the scope of the “Crime of Encouraging the Use of Drugs or Stimulant Substances” regulated under Article 190/2 of the TCC. In the indictment, the lyrics in Ezhel’s songs named “Taste of My City,” “Bathtub,” and “Hello” (For example: “...I have hemp seeds in my pocket, whiskey and vodka and Afghan next to it, they all taste delicious, I eat, my head drops again, again, grass again. oh dear, run away from the police, whatever we do, steal something from the supermarket, sausage and salami”) were cited as evidence. In Article 27 of the Constitution, everyone has the right to freely learn and teach science and art, to explain, disseminate

information, and to do all kinds of research in these fields, therefore, the artistic quality of an expression gives that expression a kind of immunity within the scope of the crime in question, Expressions in fictitious works should be handled independently of the people who produced these works, otherwise it would be possible to assume that not only this crime but also many other crimes occur in every song and film, and that the artist's freedom of expression should be limited only within the framework of certain and necessary criteria in a democratic society. Otherwise, the freedom of expression and art guaranteed in Articles 26 and 27 of the Constitution and Article 10 of the European Convention on Human Rights, will be open to violation in a manner." (see <https://www.amnesty.org.tr/icerik/ezhel-davasi>, 2021). For example, if the broadcast on social networks aims to inform users about the harms of narcotics, the act does not constitute a crime. If a person who expresses that a depressed life causes great trouble and transfers this situation to his lyrics and makes a clip for this song, if he/she puts the vehicles used for narcotic use on the side of his bed and speaks and acts about sleeping peacefully after using narcotics, he/she should be punished for the crime of encouraging use of narcotics.

It can be said that the text written, and the video prepared within the limits of freedom of expression, represent art. For example, while in a movie it is actually intended to focus on the harms of narcotics on health, some sections can be presented about how people are encouraged to use these substances. When the event is evaluated as a whole, it is seen that the filmmaker does not act with the intention of promoting but deals with themes aimed at protecting public health.

Conclusion

We need to state that the provision in Article 190 of the TCC is important and has a deterrent quality in terms of the crime of publicly promoting or broadcasting messages encouraging the use of narcotics or psychotropic substances. In addition, content that encourages narcotic use on social networks should be filtered and blocked from being broadcast on the internet. Social network users are also expected to act consciously about the legal consequences of their posts. For this reason, it is among the most important duties of the state and the legislative to prevent any attempt to facilitate and encourage the use of narcotics or psychotropic substances and to take appropriate deterrent measures. In addition to regulating the act as a crime in the Criminal Laws, activities that raise awareness should be encouraged.

Broadcast of messages that encourage the use of narcotics or psychotropic substances seriously threatens the health of children and young people. Apart from the traditional mass media such as radio, television, newspapers, and magazines, by considering that unfairness and the far reach of such messages to innumerable people, we think that the optional act of broadcasting in a way that encourages the use of narcotics or psychotropic substances, in the second paragraph of Article 190, should be regulated as a qualified state and the offender should be punished with a heavier penalty.

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