

Drugs – narcotics:

written by Dennis_Rombaut_ | March 28, 2022

In Belgium there is still an absolute ban on the possession, use, trade, import and export of narcotics and psychotropic substances.

It is sometimes wrongly assumed that the possession of a small quantity of cannabis for personal use is not punishable. However, there is a policy of tolerance in Belgium, whereby under certain circumstances no prosecution takes place. According to the current guidelines, there is no prosecution for possession of up to 3 grams of cannabis or 1 plant, as long as there are no aggravating elements and/or disturbance of the public order. In practice, the police will only draw up an official report of the observation, seize the drugs and in some cases, an immediate collection (= fine) can be issued.

This tolerance policy does not apply to drugs other than cannabis, such as cocaine, XTC, MDMA and other synthetic drugs. So possession, even for personal use and in small quantities, will not automatically be 'tolerated'. Since the Royal Decree of 26 September 2017, the legislator has chosen to criminalise synthetic drugs at substance level. This means that the molecular composition of a drug is examined to determine whether something is punishable. This was introduced, since previously chemical composition had been looked at. This was exploited creatively by constantly adjusting the chemical composition of so-called 'designer drugs' in order to escape criminalisation. The legislator was always running behind the facts, but with this new Royal Decree this has been met. Simply adjusting the chemical composition of synthetic drugs is no longer sufficient to no longer be considered an 'illegal drug'.

As soon as minors are involved, or if the trade or sale of drugs is involved, prosecution will take place. Then there is no tolerance policy, not even for cannabis. It is important to know that trafficking is a very broad concept and is not limited to 'sale'. Giving drugs to another person, without receiving any consideration or payment for it, is also considered trafficking. Even letting another person use their own drugs is considered trafficking. So, if you smoke a joint and let someone else take a puff of it, this will strictly be seen as trade in narcotics.

The Narcotics Act provides for more favourable punishment for the possession or manufacture of drugs for personal use and/or for the sale of drugs for the sole purpose of financing personal use, unless this is accompanied by aggravating

circumstances such as the involvement of minors or sales in association.

For more information on this offence, a concrete punishment and/or tailor-made advice, please contact our criminal lawyers at info@studio-penale.be.