

**Legal implications of the consumption of psychoactive substances and other addictive behaviors: Unidad de Valoración y Apoyo en Drogodependencias**

***Implicaciones jurídicas del consumo de sustancias psicoactivas y otras conductas adictivas: Unidad de Valoración y Apoyo en Drogodependencias***

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### Abstract

The relationship between drug dependence, criminal responsibility, and social reintegration constitutes a particularly complex field within forensic and clinical practice. The experience of the Unidad de Valoración y Apoyo en Drogodependencias (UVAD) highlights the need to understand addictions not only as a health or social phenomenon but also as a factor influencing criminal responsibility and resocialization processes. Interdisciplinary collaboration between the judicial and healthcare fields offers an opportunity to address more appropriately the problem of substance use and the criminal behaviours associated with it. In this context, forensic assessment becomes a valuable instrument for the judicial individualization of the sentence, considering the specific circumstances of each case.

### Keywords

Addictive disorder, criminal responsibility, forensic assessment, social reintegration, interdisciplinarity, health and justice.

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## Resumen

La relación entre drogodependencia, imputabilidad penal y reinserción social constituye un espacio de especial complejidad en la práctica forense y clínica. La experiencia acumulada por la Unidad de Valoración y Apoyo en Drogodependencias (UVAD) evidencia la necesidad de comprender las adicciones no sólo como un fenómeno sanitario o social, sino también como un elemento que incide en la responsabilidad penal y en los procesos de resocialización. El trabajo interdisciplinar entre los ámbitos judicial y asistencial es una oportunidad para abordar de un modo más adecuado la problemática del consumo de sustancias y las conductas delictivas asociadas a las mismas. La pericial forense se convierte en un valioso instrumento para la individualización judicial de la pena, atendiendo a las circunstancias de la persona.

## Palabras clave

Trastorno adictivo, imputabilidad; pericial, reinserción social, interdisciplinariedad, salud y justicia.

## I. INTRODUCTION

Services providing care to individuals with addictive problems who are detained or have pending legal proceedings vary depending on the autonomous community. Generally, these are Detainee Social Care Units (UASD), located in some court buildings, offering social assistance and referring detainees with addiction problems to therapeutic programs.

Among the services that present certain similarities to the Drug Dependence Assessment and Support Unit (hereinafter UVAD) is the SAJIAD (Counseling Service for Judges and Care for Drug-Dependent Detainees), located in the Plaza de Castilla Courts in Madrid and managed since 1989 by the Interdisciplinary Service for Attention to Drug Dependence (SIAD) Association. It operates under the Institute of Addictions of Madrid Salud.

In the Principality of Asturias, the Drug Dependence Intervention Program has been managed since 2003 within the Courts of Oviedo and Gijón, through an agreement between the Department of Health of the Principality of Asturias, the General Council of the Judiciary, and the Interdisciplinary Service for Attention to Drug Dependence (SIAD) Association.

In the Courts of Valladolid, Burgos, and León, there is the Court Counseling and Guidance Service (SOAD). The service is managed by the ACLAD–Association for Assistance to Drug-Dependent Individuals.

In the Valencian Community, the UVAD began operating in 1997. Currently, there are four UVADs: two in Valencia managed by Asociación Avant and Asociación Adsis Hedra; one in Castellón managed by Asociación Patim; and another, recently created, in Villena (Alicante), managed by Asociación Nueva Vida. Until 2023, the UVAD in Alicante was managed by the Asociación Apralad.



## 2. DRUG DEPENDENCE ASSESSMENT AND SUPPORT UNIT

The UVAD finds its justification and purpose in the intervention derived from the very concept of addictive disorder contained in Title VI, on Drug Dependence and Other Addictive Disorders, Chapter I, Article 60.2 of Law 10/2014 of 29 December, of the Generalitat, on Health of the Valencian Community. The law emphasizes a multidisciplinary approach and the promotion of individuals with drug dependence problems, based on the legal recognition of drug dependence as a common disease with repercussions on the biological, psychological, and social spheres of the individual.

From this perspective, and in accordance with criteria of effectiveness, efficiency, and continuous evaluation of outcomes, the UVAD operates in coordination with various resources within the public healthcare network. Its work essentially involves stimulating treatment demand and connecting individuals with addictive disorders to the system's care services, thereby strengthening the link between treatment programs and social reintegration initiatives. This highlights the need for the UVAD, which also serves as an entry point for many individuals with active addictive behaviors into public healthcare resources, whether for the first time or by re-engaging with previous treatment.

Regional legislation on drug dependence establishes that the Generalitat shall promote medical, legal, and social assistance programs for drug-dependent individuals in detention, in collaboration with the justice administration. The UVAD has carried out this function from 1997 to the present.

The UVAD is defined in Decree 132/2010 of 3 September, of the Consell, on the registration and authorization of centers and services for the care and prevention of drug dependence and other addictive disorders in the Valencian Community. Chapter II addresses the typology of centers and services for the care and prevention of drug dependence and other addictive disorders, and Article 3, section 9, describes the Drug Dependence Assessment and Support Units (UVADs) as “services that provide support and advice on drug dependence and other addictive disorders to judicial bodies, law enforcement agencies, and persons who have committed offenses associated with drug use or as a consequence of their addiction, or who are detained in connection with such offenses.” Article 4 further establishes that they must include at least the following professionals: (...) “h) Drug Dependence Assessment and Support Units (UVAD): a lawyer, a psychologist, a social worker, and a physician when intervention programs are conducted in police stations. 2. All professionals must have officially recognized experience and specific training in the field of care and/or prevention of drug dependence and addictive disorders, related to the functions to be performed.”

### 2.1. Justification for the UVAD

According to Cabrera and Fuerte, “Addictive disorders have significant implications, not only due to their social and healthcare repercussions, but also because of the high rate of criminality frequently associated with them. Specifically, drug dependence—but also certain non-chemical or behavioral addictions—often constitutes a causal factor in crime, particularly property-related offenses as well as small-scale drug dealing. This is driven by a dual phenomenon: on the one



hand, by the very nature of addictive substances, which generate a continuous need for consumption and have a substantial impact on an individual's cognitive, particularly volitional, capacities. On the other hand, since these substances are prohibited and obtainable only on the illicit market, they carry high prices and lead the consumer to operate within marginal environments with a high prevalence of criminal activity. Related to this, it must be noted that many personality disorders attempt to compensate for their deficiencies through the consumption of toxic substances. In other cases, latent psychopathological states (e.g., schizophrenia) manifest as they are precipitated by the use of such substances; and finally, individuals with specific personality traits—instability, impulsivity, and low tolerance for frustration—may become destabilized by the ingestion of certain drugs, engaging in violent behaviors followed by complete amnesic states” (Cabrera & Fuertes, 1997).

Judicial individualization of penalties requires consideration not only of the criminal act itself but also of the personal circumstances of the offender, insofar as these circumstances hold relevance within legal proceedings. This may lead to a reduction in criminal responsibility and, consequently, the application of alternatives to imprisonment, permitting the substitution of custodial sentences with other measures more appropriate for achieving the reintegration of individuals with addictive disorders, or even the suspension of sentence execution, conditioned on compliance with specific requirements.

The usefulness of advisory services on addictive behaviors directed at legal professionals, particularly judicial bodies, finds its basis in the Spanish Constitution itself. Article 25.2 establishes that “*Prison sentences and security measures shall be oriented toward re-education and social reintegration.*”

## 2.2. Objectives of the UVAD

The main objective of the Drug Dependence Assessment and Support Unit is to “offer advisory and support services on drug dependence and other addictive disorders to judicial bodies, law enforcement agencies, and individuals who have committed offenses associated with drug use or as a consequence of their addiction.”

The work of the UVAD, from a psychosocial–legal perspective and with full awareness of the complexity of addictive behaviors, enables various legal actors to access complementary information regarding the circumstances surrounding the individual's addictive behavior: its progression over time, substances consumed and their effects on the user, any comorbid pathology, the most appropriate therapeutic program, and its prognosis and follow-up.

The specific objectives of the UVAD include:

- **Informing and guiding** the individual attended to regarding available alternatives for the treatment of addictive behaviors.
- **Facilitating the treatment** and rehabilitation of individuals presenting an addictive behavior.
- **Establishing evidence of the addictive behavior** and proposing an appropriate treatment plan through the preparation of expert reports.
- Contributing to improved judicial **individualization of the penalty**, oriented toward re-education and social reintegration.



### 2.3. Methodology of the UVAD Managed by the Avant Association

The UVAD staff consists of two psychologists, one lawyer, and one administrative assistant. Its scope of action is provincial. However, it should be noted that although individuals are assessed by the professionals either at the UVAD headquarters or at the Picassent Penitentiary Center (Valencia), the resulting report may be directed to other judicial bodies in any province within the national territory, with the ratification of the report during Oral Trial proceedings carried out via videoconference.

**Requests for services** may be made by:

1. Service users.
2. Courts.
3. Care Centers: Addictive Behavior Units (UCA/CAD) and other drug dependence resources.
4. Lawyers.
5. Family members.

**The expert report issued is always addressed to the competent court**, with the purpose of informing and advising it regarding the addictive disorder experienced by the individual and the most appropriate treatment proposal. Once the person has established contact with the UVAD, and depending on the nature of the request, the first assessment appointment is scheduled either with the Unit's lawyer or with the psychologists.

As a general rule, the **lawyer** conducts at least one interview with the service user in order to clarify their legal situation. Most individuals who receive legal coun-

seling from the UVAD are referred by care services. These are generally people who have a pending legal proceeding but who often lack essential information. The counseling mainly consists of guiding them on the actions required to understand their legal situation and, where applicable, connecting them with the lawyer responsible for their defense, so that the latter can advise them and continue the role assigned—generally through the court-appointed legal aid system—in coordination with their client.

In other instances, individuals are unfamiliar with the procedural dynamics and may believe, after being released from custody, that they have already been tried, equating their release with the final resolution of the case. In such situations, efforts are made to explain, in an understandable manner, the status of the investigated person within the proceeding and the importance of reestablishing contact with their lawyer for an adequate defense.

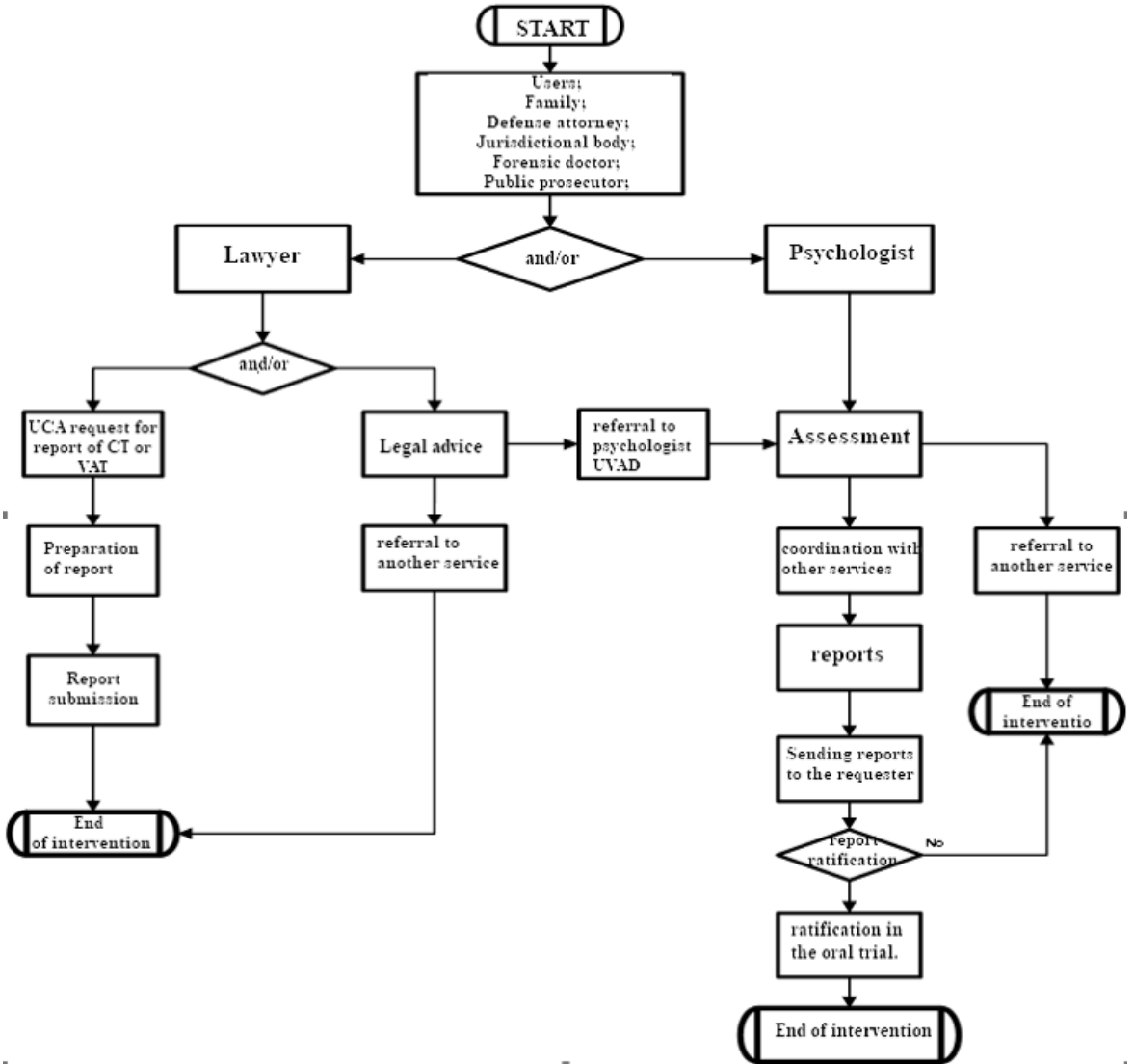
The **functions of the lawyer** include:

1. Providing information to lawyers about the UVAD, its functioning, and other resources related to drug dependence.
2. Offering legal guidance to service users.
3. Providing legal advice to resources within the public care network.
4. Coordinating with judicial bodies and social and care services.

The Unit's psychologist conducts one to two clinical assessment interviews with the individual, each lasting approximately an hour and a half, along with a family assessment interview.



Figure 1. UVAD process diagram





The **functions of the psychologists** include:

1. Psychological assessment of the service user.
2. Collection, study, and analysis of available treatment reports related to the case.
3. Referral, when appropriate, to a treatment center.
4. Coordination with the various resources responsible for the individual's treatment.
5. Diagnosis of the addictive disorder presented and, where applicable, any comorbid pathology.
6. Proposal of the most suitable treatment plan, as well as assessment of the individual's motivation level at the beginning and/or maintenance of treatment.
7. Preparation of the expert report.
8. Preparing reports to process the suspension or substitution of the sentence.
9. Validation of the expert report before the judicial authority.

#### **2.4. Results of UVAD Avant**

From its creation in 1997 until December 2024, UVAD Avant has assisted 6,623 individuals, having carried out more than ten thousand interventions.

Throughout the 28 years of UVAD Avant's existence, the profile of the individuals attended by the service has evolved. In its early years, the main drug reported by users was heroin, typically administered intravenously. From 2004 onward, cocaine displaced heroin as the primary substance consumed, with alcohol constituting an im-

portant substance that often accompanies the use of other drugs.

Approximately 98% of the legal proceedings in which UVAD services are requested are criminal in nature. First, it is worth noting the high number of **offenses against property**, mainly theft and burglary, followed—though to a lesser extent and in this order—by robbery with violence or intimidation, fraud and embezzlement, property damage, and various types of financial wrongdoing, in proportions similar to those published in the 2024 Annual Report of the Public Prosecutor's Office of the High Court of Justice of the Valencian Community.

Second, there is a significant number of **offenses against persons**, many of which involve violent behaviors within family, social, or workplace settings. Notably, there has been an increase in assaults and abuse occurring within intimate partner and/or family environments.

Interventions in proceedings involving alleged offenses of threats and/or coercion, as well as homicides or murders, have been comparatively infrequent within this category.

Third, since 2008, there has been a significant increase in **drug trafficking offenses**. Proceedings for violation of restraining orders or other forms of sentence breach have also risen.

### **3. MODIFYING CIRCUMSTANCES OF CRIMINAL RESPONSIBILITY**

The Criminal Code takes into account, and provides specific sentencing treatment for cases in which crimes are committed under



the influence of psychoactive substances. The impact of substance influence or addiction on an offender's capacity to act must be considered.

In some cases, responsibility may be fully exempted (Article 20.2); in others, it may be significantly mitigated (Article 21.1 in relation to Article 20.2 or Article 21.2 in its highly qualified form), or simply mitigated (Article 21.2).

The fact that the existence of circumstances modifying criminal responsibility may exempt a person from criminal reproach does not imply that proven criminal conduct is free of legal consequences. When it is shown that the individual poses a danger to social coexistence, **Security Measures** may be applied. While penalties are imposed for a crime committed and constitute the legal consequence of that act, security measures are the legal consequence of the offender's criminal dangerousness, evidenced by their conduct, and are applied as a means of preventing future crimes.

Book I, Title IV of the Criminal Code regulates Security Measures, which may be imposed on two categories of individuals:

- Those declared not criminally responsible (inimputable), when the offense committed allows for an assessment of future dangerousness.
- Those declared partially responsible (semi-imputable), whose capacity for culpability is diminished but not entirely excluded; these individuals may receive both the corresponding penalty and, when a prognostic assessment of dangerousness is made, an additional security measure.

Article 95 of the Criminal Code sets out the conditions for applying security measures (commission of a criminal act, circumstances of the act and of the individual supporting a prediction of future behavior indicating a probability of re-offending...), and Article 96 establishes the types of security measures, which may be custodial (for drug-dependent individuals: compulsory admission to a detoxification center) or non-custodial (mandatory external treatment in medical or socio-health institutions).

### 3.1. Grounds for Exemption from Criminal Responsibility

The Criminal Code establishes in Article 20.1 that the following is exempt from criminal liability: *“anyone who, at the time of committing the criminal offence, due to any anomaly or psychic alteration, is unable to understand the unlawfulness of the act or to act in accordance with such understanding.”* Article 20.2 further provides that exempt from liability is *“anyone who, at the time of committing the criminal offence, is in **a state of complete intoxication** resulting from the consumption of alcoholic beverages, toxic drugs, narcotics, psychotropic substances, or other substances producing similar effects, provided that such intoxication was not sought with the purpose of committing the offence or that its commission was not foreseen or should not have been foreseen, or who is under the influence of **withdrawal syndrome** due to dependence on such substances, which prevents them from understanding the unlawfulness of the act or acting in accordance with such understanding.”*

For this reason, the forensic expert must assess whether, at the time the offence was committed, the individual fell within any of



the three circumstances contemplated by the statute: being in a state of complete intoxication, being under the influence of withdrawal syndrome, or acting as a consequence of severe addiction.

A state of **complete intoxication** implies that the individual is under the effect of the substance. It is not required that the person be drug-dependent; episodic consumption is sufficient, since what is relevant is not the pathology of addiction but the specific effect of full intoxication resulting from consumption. Such intoxication may be incompatible with the more common forms of offending associated with drug users, typically property crimes, and may carry greater significance in cases involving violent acts linked to drug-induced psychotic episodes. Complete intoxication results in non-imputability, as these situations entail a disturbance of consciousness and, therefore, of freedom of action.

**Withdrawal syndrome**, by contrast, is indeed a circumstance inherent to addiction, as it represents a metabolic manifestation associated with the absence of the substance. What motivates the commission of the offence is the need to obtain money to acquire the substance and, through its consumption, alleviate the syndrome. This particular situation primarily affects the individual's ability to act in accordance with their understanding of the unlawfulness of the act, and transforms the exemption into a quasi-state of necessity in which the person offends to overcome the distress produced by withdrawal. In other words, it gives rise to non-imputability when the syndrome is of such intensity that it prevents the individual from understanding the unlawfulness of the act or from acting in accordance with such understanding.

## 3.2. Mitigation of Criminal Responsibility

Article 21.2 of the Criminal Code establishes as mitigating circumstances "*the offender's acting as a result of his or her severe addiction to the substances mentioned in Article 20(2)*" (alcoholic beverages, toxic drugs, narcotics, psychotropic substances, or others producing similar effects).

## 3.3. Case Law

The first decisions of the Supreme Court addressing this issue regarded drug addiction as "*...a set of depraved appetites, defects, and unhealthy vices of an unbridled youth that had to be brought into line so that it would not contaminate the rest of the apples.*" Heroin users, who were the most common and visible category of drug-dependent individuals, were viewed as incurable degenerates, known to the authorities only once they had committed a crime. In most cases, the solution was imprisonment. This approach bears no resemblance to the more recent case law of our courts, and particularly of the Supreme Court, which holds that addiction may operate as a mitigating circumstance or as an incomplete ground for exemption from criminal responsibility, provided that its severity and causal relationship with the offence are demonstrated. Establishing such addiction is essential for obtaining a suspension of the sentence pursuant to Article 80.5 of the Criminal Code, with medical and forensic evidence being decisive for its assessment.

Thus, the Supreme Court, in Judgment No. 2106/2024 (Second Chamber of the Supreme Court, 9 May 2024), requires that drug addiction be proven on an individual-



ised basis and that its impact at the time of the offence be demonstrated for the modifying circumstance to apply. The ruling reinforces the requirement of rigorous evidence in order to consider addiction as a mitigating factor, as well as the need for medical reports and proof of the link between addiction and the offence.

Similarly, Supreme Court Judgment No. 1160/2024 of 19 December 2024, issued on appeal, in which the appellant alleged consumption of drugs and alcohol on the night of the events, states that in order to apply the mitigating circumstance, the subject's psychophysical impairment at the time of the offence must be specifically proven, confirming the jurisprudential trend requiring solid and specific evidence and rejecting mere assertions of "having consumed."

Furthermore, the Second Chamber of the Supreme Court, in Judgment No. 68/2025 of 30 January, recalled that a causal link must exist between the individual's dependence and the commission of the offence ("acting as a result of the addiction"), emphasising that the mitigating circumstance under Article 21.2 of the Criminal Code has a motivational nature; it is not enough to be addicted—the offence must stem from that addiction.

### **3.4. Substitute Forms for the Execution of Custodial Sentences**

The Criminal Code addresses "*substitute forms for the execution of custodial sentences and conditional release*" to refer to alternative ways of serving a sentence, grounded in the desocialising, or at least non-resocialising, effects of short custodial terms. To this end, the punitive text provides, subject to a series of requirements, the possibility that

short custodial sentences may either be suspended or, in the case of foreign nationals, substituted by expulsion from the national territory (Article 89). The substitute forms for the execution of custodial sentences are suspension and substitution.

The suspension of the execution of the sentence is regulated in Articles 80 to 87 of the Criminal Code as an effective alternative aimed at achieving rehabilitative and social reintegration objectives for the offender.

Article 80.1 states that "*Judges or courts, through a reasoned decision, may suspend the execution of custodial sentences not exceeding two years when it is reasonable to expect that execution of the sentence is not necessary to prevent the convicted person from committing future offences.*"

*In order to issue such a decision, the judge or court shall assess the circumstances of the offence committed; the personal circumstances of the convicted person; their criminal record; their conduct after the act, particularly their efforts to repair the harm caused; their family and social circumstances; and the foreseeable effects of the suspension itself and of the measures that may be imposed.*"

The second paragraph of Article 80 of the Criminal Code sets out the conditions required for the application of sentence suspension:

- The offender must be a first-time offender.
- The custodial sentence imposed, or the sum of such sentences, must not exceed two years.
- Reparation of the harm must be made by satisfying the civil liabilities, or the of-



fender must undertake to satisfy them in accordance with their financial capacity, and it must be reasonable to expect that this commitment will be fulfilled within the reasonable period determined by the court.

- Article 80.3 provides that, exceptionally, even when the requirement of first-time offending is not met, and provided the offender is not a habitual criminal, suspension of custodial sentences not exceeding two years individually may be granted when the offender's personal circumstances, the nature of the act, their conduct, and in particular their efforts to repair the harm caused, so advise.
- In cases where the convicted person suffers from a very serious illness with incurable conditions, Article 80.4 provides for the possibility of granting suspension of any sentence imposed without any further requirement, unless at the time of the commission of the offence the person already had another sentence suspended for the same reason.

For drug-dependent individuals, Article 80.5 of the Criminal Code establishes that *"the judge or court may order the suspension of the execution of custodial sentences not exceeding five years for convicted persons who committed the criminal act as a consequence of their dependence on the substances referred to in Article 20(2), alcoholic beverages, toxic drugs, narcotics, psychotropic substances, or others producing similar effects, provided that it is sufficiently certified by a duly authorised or accredited public or private centre or service that the convicted person is detoxified or undergoing treatment for that purpose at the time the decision on suspension is made."*

As regards drug-dependent persons, Article 80.5 in fine provides that, where the convicted person has not completed the detoxification process and remains subject to it, a necessary condition for suspension is that they do not abandon the treatment until it is completed. It states verbatim: *"In cases where the convicted person is undergoing detoxification treatment, suspension of the execution of the sentence shall also be conditioned on their not abandoning the treatment before its completion."* As a novelty, the Criminal Code specifies that relapses during treatment shall not be considered abandonment, provided they do not demonstrate definitive withdrawal from the detoxification process. For monitoring of this requirement, the centres responsible for treatment are obliged to provide the sentencing court, within the time limits indicated, with the necessary information to verify the commencement, progress, and completion of the treatment. Failure to comply with these conditions will result in the revocation of the suspension.

Suspension of the sentence is generally conditioned on the convicted person not reoffending within a specified period (Article 81 of the Criminal Code), which, in the case of extraordinary suspension on grounds of drug dependence, ranges from three to five years. Articles 83 and 84 of the Criminal Code provide that the court may condition the granting of suspension on compliance with certain prohibitions and duties, setting out an open catalogue of such measures: prohibition from approaching certain persons, their homes, or places they frequent; prohibition from contacting them; prohibition from residing in or leaving a specific place; periodic personal appearances; participation in training or other programmes;



participation in programmes for the cessation of alcohol, drug, or narcotic consumption, or for the treatment of other addictive behaviours; prohibition from driving; or the imposition of other duties the court deems appropriate, in some cases requiring the prior consent of the convicted person, provided that such measures do not infringe upon their dignity and are necessary to prevent the commission of further offences. The measures and/or prohibitions imposed must not be excessive or disproportionate.

Article 85 of the Criminal Code provides for the possibility of modifying the measures adopted under Articles 83 and 84 of the substantive criminal code, allowing for the lifting of all or some of the measures, their modification, or their substitution with others that are less burdensome.

Article 86 of the Criminal Code establishes that failure to comply with the conditions imposed for the granting of suspension will result in its revocation, and the court shall order execution of the sentence.

Regarding suspension of the execution of sentences for drug-dependent persons (Article 80.5 of the Criminal Code), the Constitutional Court has recognised that suspension is admissible when addiction is proven, treatment is ongoing, and the individual demonstrates commitment to detoxification (Ruling No. 37/2025).

Article 87.1 provides that once the suspension period has elapsed without the convicted person having committed “a criminal offence (...) and having sufficiently complied with the conduct rules established by the court, the court shall order remission of the sentence.”

However, Article 87.2 specifies that “*in order to order remission of the sentence in the case of drug-dependent persons, detoxification of the individual or continuity of treatment must be proven. Otherwise, the judge or court shall order execution of the sentence, unless, after considering the relevant reports, it deems continuation of treatment necessary; in such case, it may grant a reasoned extension of the suspension period for no longer than two years.*”

#### **4. EXPERT REPORT ON ADDICTIVE BEHAVIOURS**

The issuance of expert reports on addictive behaviour, the circumstances surrounding the addiction process, and the possibilities and description of the most appropriate treatment is essential for sentence individualisation and its optimisation with a view to the reintegration of individuals with an addictive disorder.

A psychological expert report is understood as any report drafted by an expert specialising in forensic psychology (a knowledgeable, experienced, and skilled professional in a given science or art, who has not had and does not have prior knowledge of, contact with, or any interest in the case being adjudicated or with the persons involved in it), intended to assist the justice system in the matters it requests.

The purpose of the expert report is to establish drug dependence and determine its influence on the imputability of the individual (volitional and cognitive capacities), which is of great importance for applying, where appropriate, modifying circumstances of criminal responsibility (mitigating or exculpatory factors).



#### 4.1. Characteristics of the Report

Guided by the principles of independence, objectivity, and technical rigour, this report—and the subsequent monitoring carried out by the specialised team, may assist the judicial body both in the individualisation of the sentence and, later, in its execution.

The report must be:

- Scientific (DSM-5 or ICD-11 based).
- Responsive to the specific questions posed.
- Written with terminology appropriate for comprehension by the judicial body or jury.
- Non-binding.

#### 4.2. Assessment of Cognitive and Volitional Capacities

To impute an act is to attribute it (responsibility and culpability) to someone. **Imputability** may be defined as the capacity to understand, evaluate, and act accordingly. It therefore requires, first, the preservation of the cognitive capacity to understand and assess the nature and unlawfulness of the act committed, and second, the volitional capacity to act in accordance with that assessment, evaluation, or understanding. Thus, it refers to the physical, biological, psychological, and psychosocial capacities of an individual at the time of committing the criminal act.

A drug may be defined as “any substance which, when introduced into the body through any administration route, **affects the central nervous system, producing a range of effects on behaviour as well as various al-**

**terations in the normal physical and psychological functioning of the individual. In addition, it must be recognised as such by the society in which the individual lives.”** Drugs act on the nervous system and may alter cognitive and affective functioning, as well as behaviour itself.

When assessing the volitional and cognitive faculties of a person exhibiting addictive behaviour, it is essential to:

- Determine the **severity of the addictive disorder** (age of onset, substances consumed, quantities, route of administration, frequency of consumption, failed treatments, physical and psychological consequences, etc.).
- Determine **whether the addictive disorder affects their volitional and cognitive capacities** at the time of the criminal act. To do so, it is necessary to obtain the maximum amount of objective information: police records, forensic reports, toxicology tests (urine, hair, blood, saliva, etc.), treatment reports, hospital records, third-party informants, and so forth.
- Determine **whether the person presents concomitant pathology**, since the comorbidity of drug dependence with another mental disorder may significantly alter their capacities. The term *comorbidity* applies when a person suffers from two or more disorders or illnesses, which may occur simultaneously or sequentially.

In general terms, it may be stated that drug use alters individuals' volitional faculties during periods in which drug dependence is maintained. With regard to cognitive facul-



ties, these may be affected during states of intoxication and/or withdrawal syndrome. The degree of impairment of these faculties (none, mild, moderate, or severe) will depend on the characteristics of the consumption pattern (type of substances and combinations, concentration, quantity, frequency, time elapsed since last use, and route of administration), on the individual (personality, expectations, prior experiences, mood), and on the situational context (environment).

## 5. DISCUSSION

The analysis shows that the relationship between addictive disorders and criminal imputability is complex due to the interaction of legal, clinical, and evidentiary factors. Although the criminal law provides specific mechanisms to modulate criminal responsibility based on the impairment of cognitive and volitional capacities, their practical application is challenging because of the evidentiary requirements of criminal proceedings, which demand objective, verifiable evidence applicable to the precise moment of the offense.

Psychological expert assessment is key. It is not merely a matter of describing an addictive disorder, but of evaluating the severity of the addiction and its causal relationship with the criminal behaviour. Jurisprudence requires rigorous, individualized evaluations to allow for the proper individualization of the sentence.

The increase in poly-substance use, the emergence of new psychoactive substances, and the high prevalence of dual disorders disrupt traditional models of understanding addiction and its effects on impulse control, cognition, and decision-making. This neces-

sitates strengthened specialized training and the promotion of an interdisciplinary approach that integrates knowledge from neuropsychology, psychiatry, criminology, and social work.

Security measures and substitute forms of sentence execution have proven to be effective tools. Their success depends on the real availability of accessible therapeutic programmes, the coordination of the agents involved in their implementation, continuity of treatment, and the judicial understanding of the recovery process, in which relapse is part of the expected clinical course and should not be interpreted as deliberate abandonment.

It is evident that criminal behaviours associated with addictive disorders cannot be analysed in a reductionist manner. Structural factors such as poverty, social exclusion, violence, lack of family support, or the presence of comorbid mental disorders significantly influence both the emergence of criminal behaviour and the possibilities for rehabilitation. Therefore, the debate on imputability and drug dependence must be situated within a broader framework of public policy, interinstitutional coordination, and a comprehensive biopsychosocial approach.

## 6. CONCLUSIONS

1. The determination of the degree of criminal imputability in the context of addictive disorders requires rigorous and specialised assessment. Intoxication, withdrawal syndrome, and severe addiction can significantly affect cognitive and volitional capacities, but their impact must be demonstrated through robust



technical expert evaluations, in accordance with the evidentiary requirements established by jurisprudence.

2. The expert report constitutes a key instrument for the judicial individualisation of the sentence. Its utility goes beyond merely describing a disorder: it allows for assessment of functional impact, determination of the causal relationship with the offence, and guidance for the judicial body regarding therapeutic alternatives and realistic possibilities for reintegration.
3. Courts require clear, specific, and contextualised evidence demonstrating both the existence of the addiction and its influence at the time of the offence, avoiding generalisations or automatic assumptions.
4. Security measures and substitute forms of sentence execution represent effective tools for promoting rehabilitation, particularly when the criminal behaviour is linked to substance dependence.

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