



Transmisiones atípicas de drogas (Spanish Edition)

Jacobo Dopico Gómez-Aller

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Desde hace décadas el Tribunal Supremo viene admitiendo pacíficamente la atipicidad de ciertas transmisiones de drogas. Los casos paradigmáticos son la compra para consumo compartido y las donaciones compasivas a adictos: transmisiones que tienen lugar en el entorno de los consumidores y sus allegados, y no en los circuitos de comercio criminalizado de drogas tóxicas.

No obstante, aunque en sede teórica se admite la atipicidad de estas conductas, en los últimos años cierta corriente jurisprudencial ha impuesto una serie de requisitos extraordinarios para la absolución, fundamentándolos en que nos hallamos ante una causa excepcional de atipicidad. Esta "jurisprudencia de la excepcionalidad" hace en muchas ocasiones casi imposible la declaración de atipicidad, y de facto produce una inadmisible inversión de la carga de la prueba, obligando al acusado a probar su inocencia más allá de cualquier posible duda.

El presente trabajo realiza un exhaustivo análisis crítico de esta línea jurisprudencial desde una doble perspectiva material y procesal; y propone un abandono de cualquier régimen de excepcionalidad para estos supuestos. Aquí, como en cualquier otro caso, es la acusación la que debe demostrar más allá de la duda razonable que nos hallamos ante una transmisión típica de drogas y no ante una conducta atípica entre consumidores.

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