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Criminal Code of the Slovak Republic Summary Final

Report Project to Evaluate Selected Drug-Possession

# SUMMARY FINAL REPORT

## PROJECT TO EVALUATE SELECTED

## DRUG-POSSESSION PROVISIONS OF ACT NO. 300/2005

## CRIMINAL CODE OF THE SLOVAK REPUBLIC

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NADÁCIA OTVORENEJ SPOLOČNOSTI  
OPEN SOCIETY FOUNDATION

# Summary Final Report Project to Evaluate Selected Drug-Possession Provisions of Act No. 300/2005 – Criminal Code of the Slovak Republic

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**Legal Review:** Marcela Kosová

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## Executive Summary

The project to evaluate the application of selected illegal drug possession provisions of Act No. 300/2005 – the Criminal Code – is the first project of its kind in Slovakia, evaluating the impact of relevant illegal drug possession provisions of the Act, and examining the trends in illegal drug use and punishment imposed in cases of their possession. The project was initiated by the Open Society Foundation Slovakia and was carried out in the period between January 1, 2006 and December 31, 2009 by the research team cooperating with academic institutions and the Slovak National Monitoring Centre for Drugs and Drug Addiction with the assistance of key departments of the Government of the Slovak Republic. The launch date of the project (January 1, 2006) corresponded with the effective date of the new Criminal Code of the Slovak Republic (“Criminal Code”).

As a result of fundamental changes in the legislative framework governing possession of illegal drugs, the Foundation believed it was significant to find out to what extent the legislative intent presented in the Explanatory Memorandum to the Bill has been accomplished (a clear differentiation between users of illegal drugs and drug traffickers/dealers, application of alternative forms of punishment in cases of illegal drug possession for personal use) through the only criterion specified in the Criminal Code – the quantity of illegal drug. The project sought to compare the legislative intent manifested in the new legislation with the actual application, in judicial practice, of the relevant illegal drug possession statutory provisions. For this reason, we examined the application of § 171 (possession of narcotic drugs and psychotropic substances for personal use) and § 172 (1) (d), any illegal drug possession.

The project combines qualitative and quantitative methods currently considered the most efficient research strategy in similarly designed studies. We pursued the implementation of these fundamental research goals in three formally and structurally separate, but closely interconnected, sub-studies to produce one inseparable whole. Two sub-studies (1 and 2) used qualitative research methods consisting of semi-structured interviews and focus groups. The third, quantitative sub-study combined secondary analyses of the existing public health care and epidemiological statistical results with full meta-analyses of data sources of the existing data sets (population studies, statistical information of the Police Corps Presidium, the Forensic Expertise Institution of the Police Corps Presidium, the Public Prosecutor General’s Office of the Slovak Republic and the Ministry of Justice of the Slovak Republic) during a period of approximately ten years.

The research set applying qualitative methods (n = 228) consisted of 10 subgroups: police officers (n = 13), investigators (n = 25), public prosecutors (n = 13), judges (n = 10), defense attorneys (n = 6), forensic experts (n = 2), problem drug users as defined by EMCDDA (n = 45) and recreational drug users under the EMCDDA definition (n = 13), court experts (n = 8), representatives of treatment facilities and supporting professions (n = 39). Classical qualitative methods of data collection were complemented by formalized analysis of court files (n = 54).

The principal findings indicate that a better distinction between illegal drug users and drug traffickers/dealers was achieved as envisaged by the Explanatory Memorandum to

the legislative bill, but that the other intent – application of a broader scale of alternative forms of punishment with the main focus on preventive measure orders in cases of possession of illegal drugs for personal use or the overall de-penalization and decriminalization – were not accomplished as planned. Other significant adverse findings include, in particular, police intervention with programs of needle and syringe exchange, delayed criminal proceedings due to unreasonably lengthy preparation of forensic expert reports, a non-transparent system of determining the amount of a “single dose as defined for legal purposes”, and questionable efficacy of psychiatrist reports of court experts. From the point of view of illegal drug users, no fundamental changes occurred in drug prices, drug use patterns or methods of obtaining drugs that could be attributed to changes in the relevant drug possession provisions of the re-codified legislation.

Construction formulations of selected drug possession provisions of the new Criminal Code indicate a shift in the correct direction which is in line with the actual trends prevailing in the European Union. Nevertheless, Slovakia still has one of the strictest legislative enactments in this area within the EU, although the research results unambiguously show that those primarily prosecuted are offenders in possession of illegal drugs for personal use, not drug traffickers/dealers. As clearly implied from the research, it is urgent to launch professional, political and public discussions on legislative changes and more efficient use of public funds in the interests of law and order and protection of public health.

### **Key words**

relevant/selected provisions of Criminal Code, drug policy, illegal drug user, application problems in practice, development trends, drug use patterns, drug prices, criminal proceedings, the results of criminal proceedings

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# 1

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## Introduction

The development of drug policy in Slovakia established in the framework of the Criminal Code has passed through various stages since 1993 (the date the Slovak Republic was constituted). The Criminal Code amended by Act No. 248/1994 re-introduced the criminal offense of illegal drug possession<sup>a</sup> for personal use (it was not a criminal offense from 1990 to 1994). The amended Criminal Code ranks Slovakia among the countries with a highly repressive approach to drugs in the Euro-Atlantic Zone [1]. The possible impacts of this legislative change have never been analyzed by any governmental document or research study. In 2005, the new Criminal Code, Act No. 300/2005, and the Code of Criminal Procedure, Act No. 301/2005 entering into force on July 2, 2005 and becoming effective as of January 1, 2006 represented a complete change of the system of criminal law in Slovakia. The new Criminal Code also brought a fundamental change concerning the issues of illegal drug possession for personal use (contrary to previous legislation, drug possession for personal use is defined in terms of the quantity of the drug corresponding with three to ten times the single dose as defined for legal purposes), while under the former Criminal Code, personal use was defined in terms of possession of not more than a single dose. The main (and the only) criterion to distinguish between illegal drug possession for personal use and for illegal trafficking remains the drug quantity (i. e. how many single dose as defined for legal purposes can be produced from the particular substance).

Impact assessment studies in drug policy and drug legislation represent actual trends in the European Union as one of its priorities specified in the European Drugs Action Plan [2] with the establishment of addictology being represented as an international professional association of its own.<sup>b</sup> Evaluation studies have already been carried out in the EU [3], [4] and the states of the so-called “15 old EU Member States” [5], [6] and other advanced western countries [7], but also in the new EU Member States – Poland, [8] the Czech Republic [9] and Hungary [10]. The studies carried on in the two latter countries were commissioned by the government upon the amendment of illegal drug possession legislation in these countries. The Slovak evaluation project is primarily concerned with the application of § 171 (1) and (2) and § 172 (1) (d) in the period after January 1, 2006, i. e. after the effective date of the new Criminal Code and Code of Criminal Procedure.

The Open Society Foundation, acting in line with the intentions of the European drugs strategy for 2005 – 2012 [11], and its requirement to enforce evidence-based policies<sup>c</sup> decided to carry out the project to evaluate selected drug possession provisions of the Criminal Code, and thus to contribute to the implementation of the intent to make and enforce evidence-based policies. In addition, this project is in agreement with the long-standing involvement of the Foundation in the area of harm reduction programs in relation to illegal drug use.

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<sup>a</sup> In the legal system of the Slovak Republic there is no definition of “illegal drug”, despite its frequent colloquial use. This term is used in international conventions, at conferences, etc. Slovak legal terminology uses the phrase narcotic and psychotropic substances, poisons, and precursors. For the purposes of this study the terms drugs or illegal drugs are used as synonyms of narcotic and psychotropic substances prohibited under the current legal order of the Slovak Republic.

<sup>b</sup> see <http://www.issdp.org>

<sup>c</sup> “evidence-based policies”

This project has been completed by a research team in cooperation with external advisory, governmental and academic institutions and was supervised by an external team of reviewers.

This is the first project of its kind in Slovakia evaluating the impact of selected drug possession legislative provisions and analyzing trends in the area of illegal drug use and punishment for illegal drug possession crimes. The findings, conclusions and recommendations may be used to develop a more effective legislative framework and its procedures of criminal justice, and also to prepare action plans and national drug-fighting programs for the upcoming period.



# 2

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## **Recent History of Statutory Regulation of Illegal Drug Possession Crimes in Slovakia**

### **2.1 Current Legislation on Drug Possession**

---

Following the opening of borders in 1989, the pre-revolution regulation of illegal drug possession crimes<sup>d</sup> turned out to be inadequate. The amendment to the Criminal Code of 1961, Act No. 175/1990, effective July 1, 1990, introduced a new term into criminal law, *addictive substance*, and several other provisions concerning drug- possession crimes were also modified. Significant changes, when compared to previous regulation, arose with the removal of criminal sanctions in cases of possession of illegal drugs for personal use. Only possession of drugs for other persons' use was illegal. Under § 188 it was a criminal offense to manufacture, to obtain for oneself or for another, or to possess the material for illegal manufacturing of narcotic and psychotropic substances.<sup>e</sup> Drug crimes were expanded by a new offense of proliferation of toxicomania (§ 188a).

The Criminal Code of 1961 was significantly amended by Act No. 248/1994, effective October 1, 1994, by which possession of narcotic and psychotropic substances became criminalized by inserting into § 187 (1) the phrase “for personal use”. Reintroduced criminalization of drug possession for personal use caused inconsistent interpretation of law in judicial practice. Therefore, the Criminal Collegium of the Supreme Court of the Slovak Republic dealt with these issues in its opinion concerning uniform interpretation of law in the application of § 187 (1) of the Criminal Code concerning illegal production and possession of narcotic and psychotropic substances, poisons and precursors. According to this ruling, it is not illegal possession of a narcotic or psychotropic substance where the drug has not yet been consumed but it was obtained for personal use and its consumption was planned to immediately follow its procurement (so-called possession for consumption).<sup>f</sup> It means that short-term possession of such a substance prior to its consumption by the person who obtained the substance for the purpose of taking it cannot be considered possession of an illegal drug, where such possession for consumption is closely connected to obtaining the substance. [12]

In the next amendment of the Criminal Code by Act No. 183/1999 becoming effective on September 1, 1999, the legislators made an effort to distinguish drug users from drug dealers by a privileged definition for the offense under § 186<sup>g</sup>. This amendment introduced the phrase “possession of narcotic or psychotropic substances, poisons or precursors for 'personal use'”. Possession for personal use was defined as possession of the maximum amount of a single dose as defined for legal purposes punishable by imprisonment of a maximum

<sup>d</sup> The Criminal Code governs illegal possession and manufacture of and manipulating with narcotic and psychotropic substances summarily called herein “drug crimes”. Such crimes include the crime of illegal manufacture of narcotic and psychotropic substances, poisons and precursors and their possession and trafficking (§ 171, § 172 and § 173), the crime of toxicomania proliferation (§ 174). Similarly, reference to drug crimes is made in relation to legal regulation under the former criminal codes effective prior to the Criminal Code in effect since January 1, 2006 (Act No. 300/2005). The crimes that were subject of this research, i. e. § 171 and § 172 (1) (d) are referred to in this report as “illegal drug possession crimes” or “drug possession crimes”.

<sup>e</sup> § 188 (1) of Act No. 140/1961 – the Criminal Code.

<sup>f</sup> Opinion of the Supreme Court of the Slovak Republic of June 1, 1998, Case File No. TPJ 1/98, Judgment No. 24/1998.

<sup>g</sup> *Whoever unlawfully possesses, for personal use, a narcotic or psychotropic substance, poison or precursor, shall be punished by imprisonment term of up to three years or forfeiture of a thing.*

term of three years, while the offense of possession of illegal drugs not for personal use for the duration of any time without any specified quantity of the substance, i. e. under the letter of the law in the quantity exceeding the amount for personal use (more than one single dose as defined for legal purposes) (§ 187 (1) (d) of Criminal Code). The legislators stressed the distinction between users and traffickers, mainly by different imprisonment terms and expanded circumstances for stricter punishment under § 187 of the Criminal Code.

## 2.1 Current Legislation on Drug Possession

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On January 1, 2006 the new Criminal Code, Act No. 300/2005, came into effect and after 44 years completely changed the system of criminal law in the Slovak Republic, also affecting drug possession criminal offenses. According to the Explanatory Memorandum concerning the Criminal Code, previous statutory regulation of drug possession crimes was no longer a solution for Slovakia and the distinction between drug users and dealers/traffickers was ambiguous: *“To some extent, the unfavorable situation in proliferation of drugs and drug addiction was the result of inadequate legislation. The problems related to drug addiction were not resolved by the criminal code amended by Act No. 248/1994, (...). The legislative measure taken in good faith turned against those addicted to drugs (...).”*

The new Criminal Code defines criminal responsibility for possession of narcotic and psychotropic substances according to the quantity of the substance in one’s possession (§ 135). Under Slovak law, criminal responsibility arises only in cases of illegal drug possession and not illegal drug taking. Criminal responsibility arises with drug possession or possession of illegal drugs for one’s own use or for personal use, where the two former phrases are treated as synonyms. Under this law, illegal drug possession for personal use *means holding illegally, for any period of time, narcotic or psychotropic substances, poisons or precursors in quantities corresponding to a maximum three times the single dose as defined for legal purposes for use, i. e. for personal use* (§ 135 (1) of Criminal Code), and *possession of narcotic or psychotropic substances, poisons or precursors for use in larger quantities means illegally holding, for any period of time, these substances in quantities corresponding to a maximum ten times the single dose as defined for legal purposes for use, if held for personal use* (§ 135 (2) of Criminal Code). According to the Explanatory Memorandum, this distinction arose *“by reason of distinguishing between possible punishment for a crime committed by a person using the drug, and a crime committed by the so called drug dealer/trafficker (...).”*<sup>h</sup> For this reason, also the privileged definition in § 171; *... a less strict punishment is imposed on persons obtaining and possessing drugs for personal use.* The new legislation also increased the quantity of an illegal drug falling under possession for personal use: 1) up to a maximum three times the single dose as defined for legal purposes<sup>i</sup> while not changing punishment when compared to the formerly defined possession for personal use; and 2) up to a maximum ten times the single dose as defined for legal purposes for personal use punishable

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<sup>h</sup> Explanatory Memorandum as for former § 144, current § 135.

<sup>i</sup> Drug possession for personal use, § 135 (1) of Criminal Code.

by a maximum term of imprisonment of five years. The law regulates also illegal drug manipulation other than possession for personal use for which punishment was increased from maximum imprisonment of two to eight years to maximum imprisonment of four to ten years (§ 172 (1) (d)). Also under this section, offenders possessing drugs for personal use in quantities exceeding ten times the single dose as defined for legal purposes may be prosecuted. If, however, presence of illegal drugs is found in the suspect's blood or urine, such person cannot be prosecuted for illegal drug possession.

Under the Slovak law the amount of the **single dose as defined for legal purposes is not specified**. The number of single doses as defined for legal purposes is determined upon the opinion of the Institute of Forensic Expertise of the Police Corps Presidium ("Forensic Institute"). The Forensic Institute determines the number of doses according to the volume of seized substance based on its tables, regardless of the nature of the offender and the offender's addiction. However, under the Commentary to the Criminal Code which takes into account also the rulings of the Supreme Court,<sup>j</sup> *"in line with the given interpretation rule, it is necessary to determine, in particular circumstances, the so-called quantity/volume criterion defining the "single dose as defined for legal purposes", according to the degree of the individual offender's addiction and the drug type. To establish this element of the definition will require, in justified cases, to obtain expert observations, or in more complex cases, to order taking expert evidence."* [13]. The National Anti-Drug Unit is of the same view, determining the single dose as defined for legal purposes *"on the basis of effects of such substance on its consumer's mental state. The Forensic Institute, not considering this aspect, uses a statistically average concentration of the active substance in the so-called bags, of which the user has no knowledge."* [14].

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<sup>j</sup> Judgment of the Supreme Court of November 30, 2001, Case No. 6 Tz 17/2001.

# 3

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## Project Design and Methodology

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The project was structured as evaluation research, as any public policy or intervention should, in a democratic country, be monitored and evaluated in the course of its implementation in order to decide whether to continue, to make some modifications or to terminate the public policy. The usefulness of such evaluation is recognized as the degree to which obtained knowledge can assist in decision-making [15]. The method for formulating the project goals and research questions were chosen with regard to the main goal of the research – to compare legislators’ intent of the new criminal codes with reality, i. e. how the selected drug possession provisions have been applied in judicial practice and with what effect. For the purposes of this project we have analyzed § 171 (illegal drug possession for personal use) and § 172 (1) (d), i. e. any illegal drug possession.

### 3.1 Goals

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The project organizer set the goal to analyze the effects of the application of the new criminal legislation concerning **drug possession for personal use** under § 171 (1) and (2) of the Criminal Code and drug possession under § 172 (1) (d) as defined by the Criminal Code and the Code of Criminal Procedure, in particular<sup>k</sup>:

- 1. to describe the application** of criminal legislation concerning illegal drug possession with special focus on possession of illegal drugs for personal use,
- 2. to identify the impact** of the changes in criminal legislation on users and problem users of illegal drugs, as well as various issues related to drug use as such (treatment and supporting professions), with special emphasis on care and social inclusion, and mainly on problem users (expected and unexpected effects), prevalence and availability of drugs;
- 3. to analyze data** revealing trends in illegal drug use (availability, prevalence and patterns of use) and trends in the application of selected illegal drug possession provisions based on statistical outcomes of the police, investigators, public prosecutors, defense attorneys, and judges;
- 4. to compare the intent** of legislators in the framework of the Criminal Code as defined in its Explanatory Memorandum with the actual situation, i. e. practical application of this legislation, and thus to find out whether the intent and goals have been successfully implemented.

### 3.2 Research Questions

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Research questions formulated for each of the three sub-studies were designed to enable detailed and qualified implementation of the project goals. Below is the list of the main

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<sup>k</sup> It follows from the foregoing that the Project focuses exclusively criminal legislation on possession of illegal drugs, i.e. narcotic and psychotropic substances, poisons and precursors governed by the Criminal Code. In none of its parts, the Project deals with possession or use of legal drugs, i.e. alcohol and tobacco, excluding also cases in which it may be illegal.

research questions pertaining to individual sub-studies, with sets of sub-topics precisely defining their subject matters:

### 3.2.1 Sub-study 1

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1. How are the procedures of criminal proceedings conducted in cases of drug possession under the relevant drug possession provisions applied in practice<sup>1</sup>?
2. How is the new legislation perceived by representatives of selected professions and what are their recommendations for possible modifications?

### 3.2.2 Sub-study 2

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#### 1. Drug users

- a) How do drug users describe their experiences and changes in the following areas:
  - methods of distribution and sale of drugs
  - drug quality and availability
  - changes in the drug market

in relation to the existence and implementation of the relevant drug possession provisions of the Criminal Code?

- b) How do illegal drug users describe the actions and procedures of police officers, investigators, courts, public prosecutors, defense attorneys and judges during criminal proceedings conducted in relation to the relevant provisions of the Criminal Code based on their own experiences?
- c) How do illegal drug users describe, based on their own experiences, court ordered treatment and procedures of alternative forms of punishment?

#### 2. Representatives of treatment facilities and supporting professions providing services to illegal drug users<sup>m</sup>

- a) How do representatives of healthcare institutions providing treatment to illegal drug users and representatives of other facilities providing other (non-medical) services to drug users describe, based on their day-to-day experiences, the impact of the relevant provisions of the Criminal Code (if any) on the operation of the institution/facility, services provided and the course of treatment?
- b) How do these representatives describe the impact of the relevant provisions of the Criminal Code on the lives of drug users and their approach to services, medical care and treatment?
- c) Have the respondents noticed, through their work and communication with clients, any changes in the methods of sale and distribution of illegal drugs, or changes in

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<sup>1</sup> Practice in this context means the practice of applying measures repressing offer and reducing demand.

<sup>m</sup> The following professions are included: psychiatrists, psychologists and specialized staff of Centers for Treatment of Drug Dependencies, psychiatric departments specialized in treatment of addictions, re-socialization facilities personnel, lay therapists, field workers of NGOs providing *harm reduction* services, representatives of halfway houses; and court experts as a separate sub-group.

the illegal drugs market (changes in quality, price, availability of illegal drugs, or patterns of drug use) since the Criminal Code became effective?

### 3.2.3 Sub-study 3

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1. What was the development (in perception) of the **availability of illegal drugs** in Slovakia in the surveyed period?
2. What is the history of **drug use prevalence** (types of drugs, methods of drug taking and number of different groups of illegal drug users) in Slovakia in the period under survey?
3. What is **the public opinion** concerning measures that should be taken to prevent proliferation of drug addiction?
4. What was the development concerning **the number and types of criminal proceedings** related to respective **drug possession provisions** of the Criminal Code over the surveyed period?
5. What was the development concerning the **number of persons accused of crimes** under the respective drug possession provisions of the Criminal Code over the surveyed period?
6. What was the development in **the number of court decisions** made pursuant to relevant drug possession provisions of the Criminal Code over the surveyed period?
7. What was the development concerning the **nature of seized drugs** (quantity, type, price, quality)?

## 3.3 Methodological Approach and Definitions

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With respect to the evaluation, the research focused on the collection, analysis, interpretation and provision of information and efficacy of chosen instruments of drug policy (relevant drug possession legislative provisions), and was concentrated primarily on two of the five categories of questions specified by Rossi [16]: (1) the category of questions to evaluate **monitoring of application** of selected drug possession provisions in practice (i. e. monitoring the entire process of application of selected drug possession legislative provisions); and (2) the category of **evaluation of the effects of** application of selected drug possession provisions in the given form and manner.

**Using a combination of qualitative and quantitative methods in this research** is considered to be one of the most effective methods for research in the field [17], and also for research in addictology [18], [19]. Compliance with the main project goals was monitored through three formally and structurally independent sub-studies creating one inseparable whole. Two of the sub-studies (1 and 2) used qualitative research methods and the third study (sub-study 3) represented secondary analysis, and in some cases full meta-analysis of existing data sets and population surveys as well as criminal law, public health care and epidemiology indicators.

**Sub-study 1** focused on realization, analysis and interpretation of semi-structured interviews with police officers, investigators, public prosecutors, defense attorneys, and judges. This sub-study also analyzed court files.

**Sub-study 2** focused on realization, analysis and interpretation of semi-structured interviews with problem drug users,<sup>n</sup> recreational drug users, and court experts, and realization, analysis and interpretation of focus groups conducted with the representatives of treatment and supporting professions.

**Sub-study 3** dealt with quantitative data from various sources describing various aspects of drug problems, including surveys concerning the general population and the population of secondary students, information systems, the information system concerning treatment facilities designed for drug abusers, systems of monitoring health effects of drug use, statistics in the area of criminal justice (through police, public prosecutors' offices, criminal courts and statistics of seized drugs and their composition).

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<sup>n</sup> For the purposes of the research in the Study to Obtain Comparable National Estimates of Problem Drug Use Prevalence for all EU Member States, Lisbon, 1999 p. 7, the European Monitoring Centre for Drugs and Drug Addiction defined the problem drug use as: „injecting drug use or long-duration/regular use of opioids, cocaine and/or amphetamines, with the exception of ecstasy and cannabis drugs“.



# 4

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## Findings

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## 4.1 Goal 1: Describing the application of criminal legislation concerning illegal drug possession with focus on illegal drug possession for personal use

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The findings under this project goal rely on the data and analysis results of qualitative and quantitative data of all three sub-studies. This part combines the case study research plan [20], field research [21], analysis of documents [22], synthesis of quantitative data from various sources describing the area of criminal justice [18] and analysis of relevant legal documents, including court files (see e. g. [23]), along with the Rapid Assessment and Response (RAR) method [24], and the Rapid Policies Assessment and Response (RPAR) method, that are used in the evaluation of impact on the living conditions and life standards of specific social groups [25].

The presented findings rely on the data analyzed in all sub-studies of the project and subsequently triangulated with the aim to achieve maximum validity. Triangulation was used at two levels [20]: data triangulation using the data from various sources; and triangulation of methods. Since a research plan was chosen based on case studies, validity was guaranteed in respect of construct, internal and external validity [20].

### 4.1.1 Data Sources

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#### 4.1.1.1 Qualitative Parts

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**Research Group:** The research group (n = 228) consisted of 10 subgroups of police officers (n = 13), investigators (n = 25), public prosecutors (n = 13), judges (n = 10), defense attorneys (n = 6), forensic experts (n = 2), problem drug users<sup>o</sup> (n = 45), recreational drug users as defined by EMCDDA (n = 13), court psychiatric experts (n = 8), and representatives of treatment and supporting professions (n = 39).

**Court files:** Court files (n = 54) were obtained from 10 district (first instance) courts from 6 regions and included 35 cases related to § 171 and 19 cases related to § 172 of the Criminal Code. The court files were provided directly by the judges who were also interviewed, or by the courts on recommendations of the Criminal Division of the Ministry of Justice of the Slovak Republic (“Ministry”).

**Geographic Coverage:** All regions of Slovakia were covered through interviews with representatives of individual research subgroups and the court materials collected in both qualitative studies, with Trenčín Region being least represented in both sub-studies. The distribution of interviews and collected court materials was, however, not equally balanced.

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<sup>o</sup> For the purposes of the research in the Study to Obtain Comparable National Estimates of Problem Drug Use Prevalence for all EU Member States, Lisbon, 1999 p. 7, the European Monitoring Centre for Drugs and Drug Addiction defined the problem drug use as: „injecting drug use or long-duration/regular use of opioids, cocaine and/or amphetamines, with the exception of ecstasy and cannabis drugs“.

#### 4.1.1.2 Quantitative Parts

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**Data Sets:** For the purposes of quantitative research several data sets were used which were available on an individual level with fully guaranteed anonymity/protection of personal information data<sup>p</sup>:

- Criminal Offense Data Forms and Criminal Offender Data Forms of the Police Corps Presidium from 1999 to 2007. These contained 9,158 persons and 11,615 cases of criminal offenses.
- The nationwide records of the Public Prosecution General's Office of the Slovak Republic ("Prosecutor General's Office") concerning the number of offenders who had been prosecuted, accused and convicted and the number of criminal acts. The Public Prosecutor General's Office provided the research team with data from the 2001 to 2007 period. This database contained a total of 10,214 cases, out of which the set of 7,977 cases<sup>q</sup> were analyzed.
- This research used the records of the Ministry of Justice kept on convicted offenders. The Ministry of Justice provided the data covering the period from 1998 to 2007 in two data sets. One data set contained information on offenders convicted of drug possession crimes and the main provision under which the offenders were convicted. This set originally consisted of 5,280 cases, of which 15 duplicate cases were left out from analysis. The other set contained information about offenders who committed concurrent offenses, i. e. offenders who were convicted also of another crime. However, due to a mistaken encryption key used by the Ministry, we were unable to connect this set with the set of sentenced offenders.
- The Forensic Institute provided data from 2000 and 2007 for individual drugs including heroin, cannabis drugs (dry substance), methamphetamine (pervitin), ecstasy, hashish and cocaine.

#### 4.1.2 Analytical Procedure

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For data analysis, two methods were used: qualitative analysis aiming to find trends ("patterns"), causal relations and variances, facilitating, together with the views of focus groups, analytical generalizations [20], [26]; and the combined model using qualitative and quantitative methods [27].

Coding of interviews in the qualitative research part was based on the principles of grounded theory under Corbin and Strauss [28], using also recommendations for coding methods by Miles and Huberman [26].

For quantitative analysis of statistical data obtained from the police, investigators, public prosecutors and courts, the procedure recommended by Chalmers et al. (2007) was used; i. e. comparing cases from the same period of time before and after the legislative change.

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<sup>p</sup> Thanks to the *EpiCrypt* encrypting program, approved for these purposes by the relevant authorities in Slovakia and the Czech Republic.

<sup>q</sup> The excluded cases lacked an unambiguous identifier, i. e. where the original (non-encrypted) database lacked the information concerning personal/birth number.

The data concerning the criminal law sector also included information on seized drugs and their composition. The surveyed information included cases of seized drugs, data concerning the quantity of seized drugs, and their purity (amount of active substance in the mixture seized).

### 4.1.3 Findings: Criminal Procedures Beginning from Police Search to Final Judgment

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For the purposes of criminal proceedings, the most important distinguishing aspect is that possession of illegal drugs under § 171 (1) and (2) is a misdemeanor<sup>r</sup>, while possession of illegal drugs under § 172 (1) (d) is a felony<sup>s</sup>. In misdemeanors, examination of the seriousness of the crime is also provided by law, which is its material characteristics with respect to the manner of committing the act, its consequences, circumstances, degree of fault and motive. This means, that where, on considering all circumstances of the case, it was established that the seriousness of the act was *marginal*, or *petty* in juvenile offenders, the act was not criminal despite the presence of all subjective and objective elements of crime.<sup>t</sup> Seriousness is defined through taxatively enumerated circumstances required for the commission of a misdemeanor. This, however, is not possible in cases of illegal drug possession under § 172 (1) (d) because it is a felony. Important factors include, for example, also statute barred periods.

### 4.1.4 Findings: Types of Offenders of Relevant Drug Possession Crimes

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The average age of offenders involved in the surveyed criminal conduct ranged between 23.8 and 25.6 years throughout the whole period of analyzed statistical outcomes (1999 to 2007). After 2003, the average age slightly increased, and in the analysis of the period two years before and after the legislative changes, an uninterrupted, continuous trend of the rising age of offenders was confirmed as a whole, and also for individual drug possession provisions. The older age of offenders of crimes of illegal drug possession for personal use (up to a maximum ten single doses) in 2006 to 2007 may be explained by a shift of offenders formerly prosecuted under § 187 (1) (d). In relation to other demographic factors, there are no considerable variations concerning individual drug offenses for the same crime – commonly single males, trained in manual skills, mostly of Slovak nationality, living in Bratislava.

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<sup>r</sup> As defined by § 10 of the Criminal Code a misdemeanor means a criminal offense committed as a negligent or intentional act, the punishment for which, imposed under the special part of this law, is imprisonment for a term not exceeding five years.

<sup>s</sup> A felony under § 11 of the Criminal Code means an intentional criminal offense the punishment for which, imposed under the special part of this law, is imprisonment for a term of not less than five years. Felony may also mean an intentional act for which the strictest punishment fixed for a case of misdemeanor exceeds five years. Felony for which the Criminal Code fixes punishment of not less than ten years is considered extraordinarily serious/aggravated.

<sup>t</sup> § 10 (2) and § 95 (2) of the Criminal Code.

#### ***4.1.4.1 § 186 of the Former Criminal Code in 2004 and 2005***

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This applies to offenders prosecuted for possession of an illegal drug in the amount of a single dose – 90 % of them were males with an average age around 20. The offenders were generally trained in manual skills (43 %), of Slovak nationality (95 %), investigated by police in Bratislava (67 %). Frequently they were unemployed (39 %) and single (90 %). Every tenth offender was a student. Female offenders were older – 23 years on average.

#### ***4.1.4.2 § 171 of the New Criminal Code in 2006 and 2007***

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The offenders prosecuted for possession of an illegal drug in the amount of up to a maximum ten times the single dose as defined for legal purposes were again typically males (91 %), around 23 years of age, females being two years older on average. One-third of the offenders were trained in manual skills, one-third of them were high/secondary school graduates with diplomas/certificates of secondary education. Once again Slovak nationality prevailed (92 %), investigated by police in Bratislava (67 %), and single status (91 %). Over one-third of the offenders were unemployed, 8 % were high school/secondary school or college/university students.

#### ***4.1.4.3 § 187 (1) (d) of the Former Criminal Code in 2004 and 2005***

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Offenders prosecuted under § 187 (1) (d) were mostly males (93 %) aged 24 on average, i. e. older than those prosecuted for illegal drug possession of the amount equal to a maximum single dose as defined for legal purposes. Females' average age was 25. Over half of the offenders were trained in manual skills (58 %), 94 % of Slovak nationality, 85 % investigated by police in Bratislava, 87 % single and over half of them employed (53 %). Every tenth offender was a high school/secondary school or college/university student.

#### ***4.1.4.4 § 172 (1) (d) of the New Criminal Code in 2006 and 2007***

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Offenders who possessed illegal drugs in a quantity larger than ten times the single dose as defined for legal purposes, were, once again, typically males with an average age around 28; females were age 26 on average. One-fifth achieved secondary education with a diploma/certificate of secondary education, 56 % were trained in manual skills. Nine out of ten offenders were of Slovak nationality, 55 % investigated in Bratislava. Four-fifths were single, half of them unemployed, with every tenth offender a high school/secondary school or a college/university student.

### **4.1.5 Findings: Procedures before Criminal Prosecution Begins – Police Arrests**

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The following text illustrates the criminal procedure. Each part contains first of all the description of the legal framework, specifying the type of procedures and the conditions in which they can be used; this description is, however, simplified and does not exhaust all

alternatives that may be practically applied. These facts are supplemented by the findings arising from qualitative parts of the research, and the findings resulting from the analysis of statistical data provided by the Police Corps Presidium, Public Prosecutor General's Office of the Slovak Republic and the Ministry of Justice of the Slovak Republic, where these data can be used with regard to the nature and quality of the information.

Before intervening, a police officer must prove his/her affiliation with the Police Corps where the circumstance and the nature of the official duties so permit. When performing the duties of office connected with interference with a person's rights and freedoms, the police must advise the person, whenever possible, of his/her rights established by law or any other generally binding statutory regulation (§ 8 (2) of the Police Corps Act). Under this Act, the police officer has the authority, in cases of the suspected crime of illegal drug possession, to require the necessary explanation and information, to take the person into police custody, to use a police dog for sniffing, to make a record of identification signs, to seize a thing, to perform the so-called safety frisk and search (the authority to seize a weapon under § 22 of the Police Corps Act), to stop and search a motor vehicle, and to use coercive means. According to the analysis of interviews with illegal drug users of both subgroups, only three of all respondents were advised of their rights at the time of their first contact with the police. Similarly, the majority of respondents of both subgroups of illegal drug users described the search conducted during the first contact with the police as matching with the signs of an intimate body search. One of the interviewed investigators said that procedural errors had occurred during the so-called security searches, which were however, corrected by internal rules.

Qualitative and quantitative findings show that detection of the surveyed drug crimes most often occurred during incidental action: police responding to suspicious activities, or "unconventional" physical appearance, during check-ups of persons known to the police as drug users, regular round visits to sites known for drug-related criminal activities – most frequently during operative-search activities or preventive actions. The patrolling police officers are most commonly the first to come into contact with offenders committing drug possession crimes.

**A significant finding from the focus group** of treatment and supporting professions staff is the fact that the police took advantage of the existence of the programs of needle and syringe exchange to search the clients of these programs as identified problem drug users.

*"Then there were such breaks in the field work, the users stopped coming, and when we then met them in the street and talked to them asking what happened, they told us, and the answer was: 'the police came right after you'. Then it was as if confidence between us, the field workers, and them, went down. Well, as if we automatically had called the police."* (FG 5)

#### **4.1.6 Findings: Regular Course of Pre-Trial Proceedings in Relevant Drug Possession Legislative Provisions**

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The pre-trial proceeding is the beginning of criminal prosecution. The investigator submits the suspect to a rapid test of drug presence for the seized substance (if such a test is available) and makes a report of the seizure of a suspicious substance and the results of the

rapid test. If the ascertained facts adequately justify the conclusion that a suspected crime in relation to the matter for which criminal prosecution was brought was committed by the particular person, the suspect is charged without any delay. Following the rapid testing, but also if no rapid test was made, the seized substance is sent to the Forensic Institute. The aim of the institute is to determine whether the substance is a narcotic drug or psychotropic substance and to determine its amount/weight and the number of “single doses as defined for legal purposes” that can be obtained from the seized amount (in combination with the actual content of active substance).

Upon the results of the expertise of the Forensic Institute (the Institute determines the number of doses from the concentration/strength of the seized substance on the basis of tables, regardless of the offender and his/her addiction), it will be specified whether the case is possession under § 171 or under 172 (1) (d). A summary investigation is started by the investigator in case of misdemeanors (§ 171) and a full investigation is started: (1) in cases of a felony committed under § 172 (1) (d); or (2) in cases of a misdemeanor committed under § 171, in which the person charged with the criminal offense is in pre-trial detention, has served a term of imprisonment or has been a patient on examination in a health-care institution or where it is so ordered by a public prosecutor. Following the full or summary investigation, the police submit the files on the case to a public prosecutor requesting that a formal accusation/indictment or another decision be made: (1) to refer the case to another authority (§ 214 of the Criminal Code); (2) to withdraw criminal prosecution (§ 215 of the Criminal Code); or (3) to stay criminal prosecution (§ 228 of the Criminal Code).

In pre-trial proceedings the public prosecutor can also use the so-called diverted proceedings and decide the case out of court by: (1) a conditional stay of the proceedings in case of a misdemeanor; (2) approving a settlement in the case of a misdemeanor; or (3) requesting a court to confirm a plea bargaining agreement in case of a misdemeanor or a felony.

**In the qualitative part of the project, individual stages of pre-trial proceedings were verified through interviews with respondents participating in respective subgroups.**

None of the respondents within the two subgroups of illegal drug users stated that on being taken into police custody a rapid test was made to ascertain the presence of the illegal drug of the seized substance. The respondents also said that on being taken into police custody to provide a possible explanation another more thorough search was conducted corresponding with the intimate body search. After the search, they were either directly questioned or had to wait for questioning. Based on the information given by the drug users who mentioned the length of time in waiting for further criminal process, the average time spent by a recreational drug user in the cell or waiting for further procedure was two hours, while the average time of problem drug users in the same situation was 9 hours. In seven cases it may be concluded that the knowledge about the respondent’s drug addiction was used against him/her. *“They went so that the more I had to wait, that is, the longer my crisis lasted, they hoped to be able to get more information from me.”* Only one respondent in the relevant subgroup consisting of 45 persons received assistance by a physician requested due to the accused physical health and addiction.

According to several investigators in charge of summary investigations, it is easy to establish a crime under § 171 of the Criminal Code, because, as said literally by one of the respondent: *“the drug has been found, and the police are there, the police who caught the*

*offender are there as witnesses; and the persons charged with the offense mostly admit they are guilty, so that there are no problems in taking evidence*". (INV 22). In the view of the investigators, the problems arise when the drug was not found directly in the possession of the suspect, but on the ground or in a car with several people present with no one admitting any guilt. On such occasions, skin wiping tests for drug spots on hands are made to determine the possessor of the drug discovered. Other possible evidence in these cases is expert reports by psychiatrists, blood and urine toxicological analyses, or witness testimonies. The procedures applied in searching for evidence in cases of the relevant drug possession crimes also depend on agreement with or the orders of public prosecutors.

In one-half of the cases obtained from interviews with subgroups of investigators, public prosecutors, judges and the analyses based on the court files, pre-trial proceedings resulted in formal accusation/indictment. In four cases, the investigators discontinued pre-trial proceedings by conditional withdrawal of criminal prosecution; in nine cases, conditional withdrawal of prosecution was requested by the public prosecutor. From among the interviewed investigators, 40 % used the opportunity to request conditional withdrawal of criminal prosecution; those using this opportunity found it very positive: *"Conditional withdrawal of charges is O. K., anyone can take a faulty step once, it happens. Doing the same again, there will be no second chance to get over it"*. (INV 18).

#### **4.1.7 Findings: Regular Course of Court Procedures**

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Court procedures begin upon filing the formal accusation/indictment based upon the charges against the person suspected of committing the crime and the evidence established against the person, unless otherwise determined by the investigator or the public prosecutor. Whether a formal accusation/indictment under § 204 of the Code of Criminal Procedure is filed must be determined by: (1) a judge acting in pre-trial proceedings (in cases of summary investigation) deciding on accusation/indictment or on requested plea bargaining; (2) a single judge in cases of misdemeanors; or (3) a presiding judge or a panel of judges in cases of a felony (the "court"). Just like the public prosecutor in pre-trial proceedings, the court may, during its proceedings, apply the so-called diverted procedures, which have been newly introduced into Slovakia's criminal justice system and allow to decide a criminal case by out-of-court settlement. Clearly the most frequently used method in illegal drug possession cases is a plea-bargaining agreement.

Interviews with representatives of judges, public prosecutors and defense attorneys (n = 29) clearly show that in all cases the persons were charged based upon the results of expert reports from the Forensic Institute, i. e. according to the number of single doses determined by the forensic experts from the amount of seized drug. At the same time, however, according to statements by respondents from the subgroup of investigators, numerical intervals of the single doses, as defined for legal purposes determined in those expert reports, cause practical problems when such an interval exceeds the number of doses set by the respective sections of law. The established practice in the criminal justice process deals with this problem by applying the principle of *"in dubio pro reo"* (when in doubt, in favor of the accused), which means the lower number of doses determined by forensic experts is decisive

also for the court proceedings and also for the final decision of the case. In some cases mentioned by the respondents, the court decided to re-classify the original offense to a less serious offense during the proceedings. In such cases the judges, having the discretion to evaluate the evidence, took into consideration not only the reported result from the Forensic Institute, but also evaluated all existing evidence in a casual relationship.

The respondents justified such court procedure mainly on the grounds that the offender purchasing the drug did not know its actual strength (this is determined by the Forensic Institute since 2003), and put the focus on the weight of the substance and on the accused' individual dosing: *"In my opinion, not the Forensic Institute, but the judge determines the number of doses. This fact is determined by the judge upon the evidence taken in agreement with the rules of evidence. A common dose may vary in each person"*. (JUD 8)

#### 4.1.8 Findings: Plea Bargaining

Plea bargaining, a new procedure in Slovak criminal law, called 'agreement of guilt and punishment' in Slovak, enlarges the possibilities of the so-called diverted criminal procedures. Its aim is to make the criminal justice process faster, more effective and less costly. It may be initiated by the public prosecutor or by the defendant/the accused. The basic condition is compliance with the material requirements specified in § 232 (1) of the Criminal Code and the conclusion that the results of the full or summary investigation sufficiently justify that the act is a crime and that the crime was committed by the charged person pleading guilty to the charges and that the evidence shows that the person's admission of guilt has been voluntarily made. When both parties fully agree with all the conditions, the public prosecutor will seek the court's confirmation of such agreement. Having considered all circumstances of the proposed agreement and all documents in the files, the court will fix the date for a public court sitting to make a decision on the case or to reject the agreement, in the event of any violation of procedural rules, particularly, of the right to consult an attorney or if the agreement is clearly inappropriate. The decision to reject the agreement by reason of its inappropriateness in the case of a crime for which the maximum punishment set by law exceeds eight years imprisonment is made by a panel of judges sitting in private. The court will confirm the agreement subject to ten affirmative answers by the defendant to ten questions taxatively enumerated by law<sup>u</sup> and considered by the judge presiding over a panel of judges at a public hearing. Through this procedure, the defendant waives the right to a public trial. During the period under examination (January 1, 2006 to December 31, 2007), the criminal justice process pertaining to relevant drug possession crimes was closed by confirming a plea bargaining agreement in 20 % of all cases (in 294 cases). This procedure was most frequently used (in 37 % of these cases) in criminal offenses under § 172 (1) (d)<sup>v</sup>, and in 35 % of cases of possession of an illegal drug for personal use under § 171, even though in offenses under § 171 the provisions of § 39 (4) of Criminal Code do not apply, according to which the court may impose imprisonment reduced by one-third below the minimum term set by law.

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<sup>u</sup> § 333 of Criminal Code.

<sup>v</sup> i. e. possession of illegal drugs in the quantity larger than 10 times the common single dose

Calculated from the total number of offenders, 16 % of those accused of possession of illegal drugs for personal use (§ 171) had their cases closed upon a plea bargaining agreement; and in cases of illegal drug possession under § 172 (1) (d), 79 % were closed upon such agreement. It should be noted, however, that in 2006 – 2007 140 persons had their cases dealt with by courts (or tried) for drug possession under § 172 (1) (d), and 662 persons were so handled for drug possession under § 171.

The agreement based on plea bargaining in cases of drug possession crimes under § 171 was typically confirmed with a suspended prison sentence (72 % of such agreements), a fine (17.5 %), or forfeiture of a thing or forfeiture of property (8.7 %) <sup>w</sup>.

In drug possession under § 172 (1) (d), this agreement was most commonly confirmed with a suspended prison sentence (78 %), unconditional sentence of imprisonment (21 %) and forfeiture of a thing or forfeiture of property together in 21 %.

Interviews analyzed in the qualitative research show that the efforts to reach plea bargaining agreements have fulfilled and endorsed the legislative intent. Their application in practice is motivated also by the fact that the procedure is simple, short and effective. *“The purpose of the agreement will be discharged without involving the court or state mechanisms in extensive evidence taking during trial by calling witnesses and expert witnesses, adjourned hearings, and thus considerably reducing the expenses of the state, as the decision is made within a single public hearing to confirm or reject the agreement.”* (JUD 6)

The interviews clearly show that the plea bargain resulting in an agreement is generally perceived as an opportunity for less strict punishment in cases of accusation/indictment under § 172 (1) (d). This brought some respondents to the conclusion that offenders admit guilt for goal-directed purposes. One of the judges said: *“Difficult to say whether under pressure of evidence during pre-trial proceedings, or I should maybe say, a little bit goal-directed, the accused have admitted guilt for the crime committed, choosing to make the agreement.”* (JUD 6) As a matter of fact the majority of respondents confirmed that as a result of plea bargaining, the accused received more lenient punishment than that which might have been imposed in a classical trial proceeding.

From the statements of the respondent subgroup of judges, it may be seen that application of such an agreement procedure need not be advantageous in cases of drug possession under § 171, and so some of the respondents preferred other forms of closing criminal proceedings: *“... but in cases of first offenders, to whom punishment under § 171 (1) of Criminal Code may be imposed in the interval of zero to three years, and who show regret and admit guilt on their first conviction, it is much simpler for me to apply, during trial, the provisions permitting waiver of punishment, as I believe that dealing with the case before the court was sufficient punishment. But with the plea bargaining agreement I am forced to accept admission of guilt and even impose punishment.”* (JUD 8)

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<sup>w</sup> Statistical figures of punishment imposed for the given criminal offenses (§ 171, § 172 (1) (d)), included also punishment imposed for criminal offenses committed concurrently with other crimes (e. g. in case of forfeiture of a thing or property imposed for another crime).

## 4.1.9 Findings: Evidence in Drug Possession Criminal Activities

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### 4.1.9.1 Expert Reports of the Forensic Institute

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The Forensic Institute must carry out expertise and determine whether a narcotic and psychotropic substance is involved, establish the volume of the addictive substance, and the number of single doses as defined for legal purposes that can be obtained from the given volume.

There are three such expert institutions in Slovakia, one in Bratislava acting as the methodological and research center, guiding its regional institutes in Košice and Slovenská Ľupča which are not independent legal entities.

Seized drugs are analyzed in these institutes. A Central Data Register recording the quantity, purity/quality of narcotic and psychotropic substances, poisons and precursors seized is maintained by the Bratislava Forensic Institute.

### 4.1.9.2 Methodology for Determination of Number of Doses

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The Slovak Criminal Code uses the phrase “single dose as defined for legal purposes”, which is not quantitatively specified. The problems in determining a single dose involve the fact that the dose may vary with each drug user.

Experts of the Forensic Institute only analyze, in their respective specializations, the substance, and not the relation between the seized substance and the drug user. On this basis, it is not possible to determine the actual single dose as defined for legal purposes correctly in each person’s individual case. Therefore, the experts use a numerical minimum - maximum interval of possible doses. Determination of “a single dose as defined for legal purposes” for a particular type of drug is based on the information obtained from the evaluated materials seized in preceding years, evaluated and indicated as single doses from that period. Determination of single doses has changed, adapting to the development of the drug market situation over the years. Consequently, determination of a single dose has changed: for example for cannabis (marijuana – dry matter) where prior to 2003 a single dose meant 0.5 grams of the material, irrespective of the percentage of active THC, since 2003 both the percentage of active THC and the amount of the material presented have been taken into consideration. By determining a single dose independently of the actual user and his/her physical health or degree of drug tolerance, **the legislative intent fails.**

Harmonization of evaluation of the quality of illegal drugs and dose standardization are based on the practices of the Bratislava Forensic Institute.

The most frequent practical problems identified through analysis of the interviews with investigators and public prosecutors concern the **length of time for preparation of the expert reports for** cases located geographically within the jurisdiction of the Bratislava Forensic Institute (taking up to nine months), and the numerical intervals in the dose scale, **which meant in a number of cases that a particular possession could be classified under several different provisions of the Criminal Code.**

### 4.1.9.3 Expert Reports by Psychiatrists

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The circumstances concerning preparation of reports by court psychiatric experts are governed by the Code of Criminal Procedure, Act No. 301/2005. For expert reports, psychiatric experts or the psychiatric institution may be required to participate in the criminal proceedings. This project focused on interviewing court experts in the field of psychiatry appointed by the court (“court experts/psychiatric experts”). The duty of court experts is to explain, on the basis of their professional experience, the circumstances significant for the criminal proceedings, as provided by § 141 of the Criminal Code.

Regarding health conditions of the accused, one expert (and if necessary, more than one expert) can join the case. When a mental health examination or autopsy is involved, and/or clarification of exceptionally complex facts is required, two court experts must join the case. The mental health examination must be ordered by the court or, in pre-trial proceedings, by the pre-trial judge. The court expert is required to present a duly prepared report (in oral form or in writing) within a set time limit and may be summoned for questioning during trial or for a hearing. In a criminal case in which the issues of sanity, reduced sanity or insanity (i. e. mental health issues) of the offender are involved in the context of crime commission, such an opinion is always submitted.

The analysis from our study shows that such reports of court experts are most frequently sought by investigators. Court experts must answer a standard set of questions in the reports. Involvement of experts from medical specializations other than psychiatry depends upon agreement with or the instructions of regional or district public prosecutors. In some regions of Slovakia the established practice is to not involve court experts in cases of seized cannabis drugs. Reference was also made to the practice of not involving any court experts in cases of summary investigation on the grounds that opinions of such experts would not be made promptly within the short time limits. Respondents from the subgroup of investigators, however, tried to obtain information on possible drug addiction through other means (e. g. through the offender’s attending general practitioner<sup>x</sup>).

The number of expert reports depends on whether only a physical examination (one court expert), or a mental examination (two court experts) is required. There was not a uniform understanding among the respondents of the subgroup of court experts whether an expert opinion concerning drug addiction means an examination of mental health. Some said that after one court expert, requested to examine the person’s health condition, found drug addiction, he/she then recommended a mental examination. Another respondent said only one court expert’s opinion was sufficient to deal with drug addiction, and only for clarification

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<sup>x</sup> Under § 80 (3) of Act No. 578/2004 governing health care providers, a medical professional may be released of the duty not to disclose confidential medical information only by a person to whom the information relates or by the authority that may so permit it (i. e. the Ministry of Health or the regional administration authority acting as the founder of the health care institution), at the request of the police, investigators, public prosecutors and the courts. As provided by law, excerpts of a patient’s medical documentation must be submitted upon a written request for the purposes of criminal, civil and administrative proceedings. A physician may be released of the duty not to disclose confidential information also with the consent of the patient, to whom the information directly relates (patient/offender); the form of such consent is not prescribed by law.

of extraordinarily complex facts (e. g. a combination of drug addiction with another mental disorder), two court experts should join the examination.

The most frequent complication mentioned by the interviewed court experts regarding preparation of expert opinions is that many clients fail to appear as requested for the examination appointment. This complication often arose when an expert opinion was required for problem drug users. Most of the respondents had been in contact with the drug users not only in their position as court experts, but also as attending physicians. Despite this, the interviewed court experts did not view the fact that the offenders were their past clients to be a conflict of interest or a reason for refusing to prepare expert reports.

The most frequent reservation regarding court expert reports mentioned by interviewed investigators concerned the standardized form of the report, i. e. general answers by the court experts not describing the specific situation or the nature of the offender, such as his/her age, length of addiction, and the effect of the active substance on the offender. The court experts do not determine an individualized single dose for the user concerned. According to the statement by one investigator, “*in principle, they [the court experts] just swap the names*”. (INV 4) Still other negative implications concern the costs of expert opinions (€ 116 – 166<sup>y</sup> or SKK 3,500 – 5,000, depending on the performance) in contrast to their factual value and the length of time necessary to prepare the opinion, as noted earlier.

#### 4.1.10 Findings: Prevailing Views of Legislative Changes

**Interviewed public prosecutors and judges saw no difference between the procedures and potential results of criminal proceedings compared to the former legislative enactment.** The research question concerning the results of criminal proceedings was often considered too hypothetical and respondents made no comments at all. The only exception was regarding the opportunity of plea bargaining which was not possible under the former legislation. The respondents affirmed the financial and time-related benefits of this procedure. A portion of the respondents made notice of the situation concerning offenders in possession of more than ten doses of illegal drug who were therefore prosecuted under § 172 (1) (d) of the Criminal Code, in which case punishment is stricter than that imposed under § 187 of the former Criminal Code.

In general, however, a majority of the respondents appreciated the new legislation as a positive change in terms of possible application of more lenient punishment imposed on a wider range of offenders.

The purpose of the new legislation to distinguish between drug users and drug dealers/traffickers, with less strict punishment imposed on drug users, was perceived by almost all respondents as beneficial. Different views appeared, however, in the assessment of whether the purpose stipulated in the Explanatory Memorandum had been successfully accomplished by the new legislation.

Most of the respondents considered the current legislation insufficient and not effective enough for distinguishing drug users from drug dealers. One group of respondents

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<sup>y</sup> For conversion, the official rate is € 1 = SKK 30.126.

considered the current legislation too harsh for petty drug users. The minority of respondents maintained that the intent of the new legislation was achieved in practice.

The purpose to distinguish illegal drug users from distributors of illegal drugs was also referenced and evaluated by representatives of the treatment and supporting professions, even though these representatives did not have clear knowledge of the current constructions used in the legislation. According to the prevailing attitude in the focus groups involving representatives of these professions, drug users are sick people in need of treatment and not imprisonment.

#### 4.1.11 Conclusions

**The efforts of legislators to distinguish more effectively between offenders of the crime of illegal drug possession for personal use and drug traffickers/dealers, and the extended possibility to apply the privileged definition (from a single dose as defined for legal purposes to ten doses) in relation to such drug users is unquestionably beneficial. It is evaluated affirmatively also by the majority of respondents in the subgroups of police officers, investigators, public prosecutors, judges and defense attorneys, as well as the representatives of treatment and supporting professions. Although the current legislation defines a wider range of drug users than the former Criminal Code, it is disputable whether the application of a single criterion – quantity of illegal drug in possession – is a sufficiently distinctive factor upon which drug users should be distinguished from drug dealers/traffickers. The possible consideration of other criteria, such as for example the so-called individualized dose is left for judges' discretion and is not taken into consideration in the early stages of the criminal justice process, e. g. in the preparation of expert court opinions. In the current version of the Criminal Code no health or social risks involved in possession of different types of drugs are taken into account.**

There are numerous application problems existing in practice:

1. The main criterion for charging a person with and accusing a person of a drug possession crime under the respective provisions of the Criminal Code is the interval of single doses as defined for legal purposes which can be obtained from a seized suspicious substance according to the Forensic Institute, which, however does not use the nationwide application procedures to determine the number of single doses as defined for legal purposes and which does not take into account the nature of the offender. Inadequate determination of the quantity of narcotic and psychotropic substances has been noted also in professional journals [29].
2. The uneven work load of the branches of the Forensic Institute directly affects the length of time and delays the criminal justice process.
3. The current legislation requires application of qualitative analysis to any amount of suspicious substance, which adds further workload for police officers, investigators, public prosecutors, defense attorneys, forensic experts, as well as the total economic and social costs.

4. The criminal justice process can also be delayed as a result of reports prepared by court experts in the field of psychiatry determining about addiction or examining the physical health conditions of the offenders, or caused by differences applying to court experts (and their number) required to examine the offenders, as may be requested by district or regional public prosecutors. As viewed by the interviewed police officers, investigators, public prosecutors, and defense attorneys, the standardized format of these expert reports and consequently their factual value are also problematic. The law, however, does not require standardized questions. It may be said that the standardized set of questions to be answered by court experts were introduced with the aim to harmonize or simplify procedural aspects of the criminal justice process. However, the established practice negatively affects the purpose of these expert opinions, namely to clarify the facts and circumstances significant or specific to a particular case. The necessity to consider individual doses of different illegal drug users was addressed also by a judgment of the Supreme Court of the Slovak Republic<sup>z</sup>.
5. Deeper analysis should also be necessary as far as the practices described by respondents in the subgroup of court experts concerning court expert reports required for persons who previously were their patients. This situation constitutes a legal ground for rejection by reason of bias and prejudice. The legal standing of an expert who is a physician and his/her obligations and limitations have also been dealt with in professional articles [30].

Based on the procedures applied by police officers, investigators, and prosecutors, the following significant findings are indicated:

1. The incidences of intervention by the police with the programs of syringe and needle exchange, in direct opposition to the policy of public health protection, potentially increases health, social and economic risks not only for illegal drug users, but also for the whole society.
2. The civil rights and dignity of detained drug users are not fully respected by police officers (providing little or no medical assistance before or during questioning, intentionally abusing dependency conditions or withdrawal symptoms for the purposes of obtaining significant information, not complying with the duty to advise the detainees on their rights). Similar problems arise when information is sought from the medical documentation of offenders. These issues will require more attention in order to be in line with the judgment of the European Court of Human Rights on medical records, stressing the duty to keep as confidential any personal information contained in medical documentation and submitting these issues under the provisions of Article 8 (2) of the Convention for the Protection of Human Rights and Fundamental Freedoms concerning private life protection. From case law it can be concluded that any interference with confidential information contained in medical records may be subject to an admissibility test by the Court under Article 8 (2) of the Convention.

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<sup>z</sup> Judgment of the Supreme Court of October 30, 2001, Case No. 6 Tz 17/2001.

3. Public prosecutors and judges have tried to apply the new procedures introduced into the criminal justice system, typically plea bargaining agreements, which contribute to less costly and shorter criminal proceedings. This procedure is justified particularly in criminal offenses under § 172 (1) (d), in which it is possible to reduce the minimum punishment. The minimum punishment for illegal drug possession under § 171 is no punishment - which cannot be further reduced; where this procedure (plea bargaining) is applied to criminal offenses prosecuted under § 171, other forms of termination of the criminal proceedings are not applicable.

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## 4.2 Goal 2: Identifying the impact of changes in criminal legislation on drug users and problem drug users and related matters, with the main emphasis on impact on care and social inclusion of drug users, prevalence and availability of drugs

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This research component combines the research plan of case study [20] and field research [21] with the synthesis of different qualitative data sources describing various aspects of drug problems [18]. In this framework the Rapid Assessment and Response method was applied [24], [31]. Rapid Assessment and Response (RAR) represents a complex of methods and strategies designed for collection of data of a heterogeneous nature and their rapid evaluation.

### 4.2.1 Data Sources

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The research group (n = 97) consisted of two subgroups:

- a group of illegal drug users (n = 58), including problem drug users (n = 45) and recreational drug users under EMCDDA definition (n = 13), and the problem users subgroup also includes a subset of so called clubbers<sup>aa</sup> (n = 6), and
- representatives of treatment and supporting professions (n = 39).

The principal method used in the case of representatives of various groups of illegal drug users was a semi-structured interview. This method is, according to Kvale [32] and Seidmann [33], one of the most efficient means of data collection on a hidden population of illegal drug users facilitating the creation of a binding interview scheme while on the other hand leaving enough room to both participants to adjust to the interview pace, the sequence of topics prescribed in the protocol, and enough freedom for variability and saturation of individual responses [34]. For the professionals from treatment facilities, therapy communities and harm reduction services related to drug use, the focus group method was used [35]. Focused group discussion (39 participants in 7 focus groups) for the representatives of treatment and supporting professions was preferred to interviews with the aim of taking advantage of group dynamics of confrontation and additional discourse [36].

### 4.2.2 Analytical Procedure

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The data obtained from interviews were analyzed in line with the principles of grounded theory, known in our experience mainly from the publications by Strauss and Corbin [28]. For the analysis of responses, also some concepts of structure of social representations [37] were used. Focus groups data were analyzed inductively – based on the assumption that, from research aspects, a focus group can be considered “thinking in a miniature society” [38], and these group dynamics may also indicate deeper meaning in topics relevant to the whole society.

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<sup>aa</sup> Under the EMCDDA (2002) definition “recreational drug users (in the environment of night entertainment) take stimulating drugs and the traditional dance party drug of ecstasy at night parties”.

Coding of interviews in this research part was based on the principles of grounded theory [39] of a later version [28] using generally accepted coding recommendations [26].

The strategy of cross validation of the data was used aiming to get richer information and a more complex picture of the phenomena under research [40].

### **4.2.3 Findings: Impact of Drug Possession Legislative Provisions on the Drug Scene**

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We tested the hypothesis whether a considerable change in the legislative setup of drug possession provisions had brought about observable changes in accessibility of illegal drugs, methods of trafficking, obtaining, and use patterns of drugs. We also analyzed the present situation in the drug scene, focusing on price and availability of drugs, and possible new drugs in the market.

#### **4.2.3.1 Methods of Obtaining Drugs**

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In both groups of illegal drug users – problem users and recreational drug users – the prevailing method of obtaining drugs is by phone. Recreational drug users primarily taking cannabis drugs often get them from their own social circles of friends and acquaintances; in this market considerable attention is placed on informal non-monetary transactions. The majority of interviewed injecting drug users and clubbers actually sell or used to sell, at least for a short time in the past, drugs to the people around them, thus making some money for their own consumption of addictive substances: *“Do you sometimes buy a larger amount from the dealer and then sell it? Yes. Where are you selling? Well, you know how... just over the phone and only to some people, so to say, to my folks, in inverted commas.”* (Protocol 27) In the case of recreational users in the interviewed group (using primarily cannabis drugs), nearly half of them mentioned they did grow or are still growing cannabis at remote locations to protect themselves and also the crop.

#### **4.2.3.2 Drug Prices**

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Drug prices have not been routinely monitored or systematically recorded in the statistical registration system. The information on drug prices published in the reports of the National Monitoring Centre For Drugs and illustrated in standard EMCDDA tables are based on information provided by the National Anti-Drug Unit of the Office for Fighting Organized Crime of the Police Corps Presidium of the Slovak Republic obtained from their operation and investigation activities. [41]

Drug prices have not changed significantly. In various years there are just slight differences, in principle there is a continuous decline in relative drug prices (in comparison to other consumption goods). According to the respondents of both subgroups of illegal drug users, drug prices affect illegal drug users at the drug scene, drug types, regularity of purchase, purchasing locations, and similarly also actual drug accessibility on the market. The interviewed problem drug users did not confirm that with higher drug quality, its price also increased, or the other way round.

According to interviews with recreational drug users, the price per one gram of cannabis drug varied from SKK 100 to 500 (€ 3.30 to € 16.59)<sup>ab</sup>, depending on the region, locality, amount, and drug quality. The most commonly mentioned price by the respondents was SKK 300 (€ 9.95) per gram of cannabis drug. Purchasing more than five grams is more advantageous as viewed by the respondents. *“In [the city] it’s different, it may be so in other cities that you’ll get one more if you’re buying five... mostly there’s a better price, if you take more grams.”* (Protocol 38) Prices sold directly in the streets, i. e. without a contact to a steady dealer, are higher, and prices in smaller cities vary at the maximum limits of price intervals. Similarly, the market also reacts to seasons of the year. From the data contained in Table 1, it is apparent that prices have been gradually rising (or the maximum price of the upper price limits is growing) for cannabis drug since the beginning of the surveyed period (2002). The increase in the price span, however, does not seem to be directly connected with the tested legislation as it showed a continuous trend throughout the whole surveyed period.

The interviewed problem drug users noticed repeatedly that not the price but the quality of drugs has changed, primarily in heroin, where in the environment with a monopoly dealer in a smaller city, it is sold at the upper price span limit and its quality is low. Respondents of both subgroups of drug users stated that the same price policy of dealers existed also before the legislative changes. Only one respondent in the subgroup of recreational drug users said that stricter sanctions under the so-called dealers’ provisions caused a higher price set by the dealer because of the higher risk to the dealer.

**Table 1. Development of drug prices in 2002 – 2007 in Slovak Crown**

Drug Type	2002	2003	2004	2005	2006	2007
Hashish (one gram)	xxx	84 – 627	80 – 500	80 – 300	100 – 150***	n. a.
Marijuana (a cigarette)	80 – 180	80 – 170	80 – 150	80 – 250	200 – 400**	50 – 300
Cocaine (one gram)	2 600 – 3 000	2 600 – 3 000	1 800 – 2 000	2 000 – 3 000	2 000 – 3 000	2 000 – 3 000
Heroin (one gram)	312 – 623	292 – 606	300 – 600	300 – 600 (a dose)	800 – 1 200 (one gram)	200 – 300 (a dose)
Ecstasy (a tablet)	200 – 623	209 – 606	200 – 600	400 – 600	400 – 600	150 – 500
LSD (a piece)	200 – 400	200 – 400	250 – 500	400 – 500	200 – 500	n. a.
Methamphetamine* (unit)	1 646 – 3 115 (cm <sup>3</sup> )	1 630 – 3 051 (cm <sup>3</sup> )	300 (a dose)	300 – 500 (a dose)	300 – 500 (a dose)	200 – 500 (a dose)

\* various kinds of units; \*\* price per gram; \*\*\* wholesale price

Source: NMCD, 2004 – 2008

<sup>ab</sup> As calculated by official conversion rate € 1 = SKK 30.126.

#### 4.2.3.3 Drug Purity

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The average purity of seized cannabis drugs (explicitly marijuana in the statistics of the Forensic Institute) grew at the users' level in the period from 2000 to 2007 from 3.7 % to 9.1 %. The maximum purity determined in a seized sample was 33 %.

The gradually increasing average purity of confiscated cannabis drugs for consumption in Slovakia copied the trends in the EU (and elsewhere in the world) regardless of drug legislation or its changes (for an analysis of aspects affecting this phenomenon, see e. g. King, [42]; Záborský, [43]).

A slight increase can also be observed in the concentration of methamphetamine (pervitin) at the users' level - very likely depending on users/mini-dealers gradually learning how to "cook" relatively new methamphetamine (pervitin) at the new Slovakian scene. The purity of seized drug of about three single doses as defined for legal purposes (according to analysis by the Forensic Institute) grew from 50 % (in 2000) to 54.3 % (in 2007). Respondents in the subgroup of problem drug users think that the quality of methamphetamine (pervitin) varies depending on successful raids on dealers (quality reduction) or on the actual cooker.

With heroin, the average purity of seized samples in the period from 2000 to 2007 in individual categories varied. Purity of samples of up to three single doses as defined for legal purposes varied in the interval of 10.1 % to 14.1 %; in samples of up to a maximum two grams (10 single doses as defined for legal purposes) the purity varied from 7.5 % to 13 %; and in seized substances of up to a maximum five grams, purity varied from 6.8 % to 12.9 %. The reason for such variation is difficult to interpret. The primary reason for such difficulty is the non-representative proportion of seized drugs to the volume of drugs in the market, i. e. the sample of confiscated drugs in individual categories was small. Respondents in the subgroup of problem drug users state the farther from the capital city, with its developed drug scene, the more contaminated the drug is with additives, which reduces its quality. This corresponds to the "pyramid" scheme of the drug market with its international distribution chain. [44].

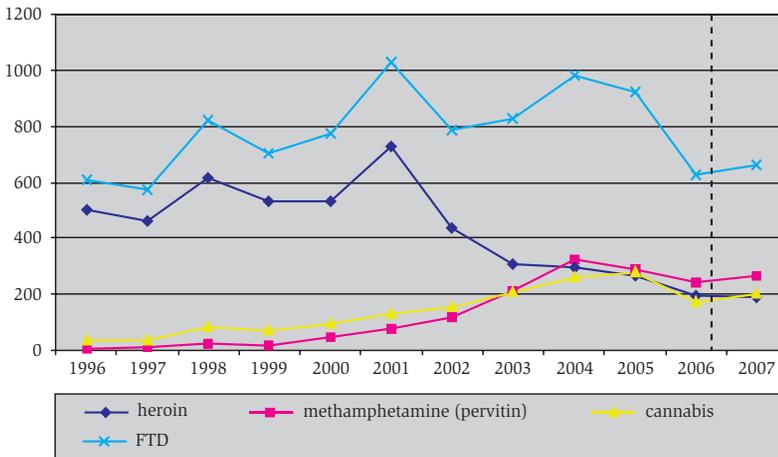
**Interviewed illegal drug users did not mention any new drugs appearing at the drug scene being of "high risks".**

#### 4.2.4 Findings: Significant Impact of Changes in Illegal Drug Possession Sections on Prevalence and Availability of Drugs

Cannabis drugs are the most easily accessible drug in the market. Experience with cannabis use has considerably and continuously grown both among young people and the adult population since 1994. The high availability of marijuana in the market is demonstrated also by its share and development in the number of seizures (see Figure 1).

Since 2001, the spectrum of primary drug use connected with problem drug use documented by figures in the development of illegal drug users treated on first occasion is documented in the statistical outcomes of the Forensic Institute and the findings of the 2006 Annual Report of the National Monitoring Centre for Drugs. The change lies in the dramatic shift from heroin taking to methamphetamine (pervitin). This is confirmed also by the analysis of responses obtained from focus groups; the only exceptions were found in the Districts of Nitra and Sered', in which the long-time preferred drugs include: abused substitution drug of buprenorphine (Subutex<sup>®ac</sup>) and heroin.

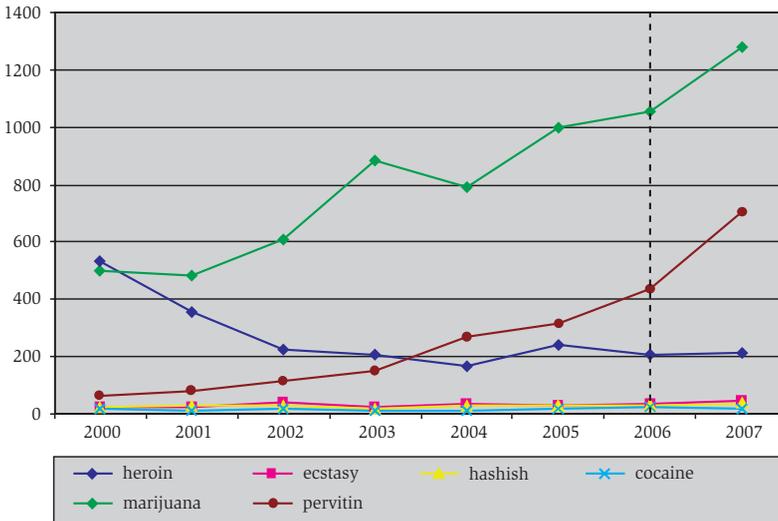
**Figure 1. Development of the number of first-treatment demands in heroin, methamphetamine (pervitin) and cannabis drugs**



The broken line indicates the year of the new Criminal Code.

Prepared by: authors (Source: National Health Information Center, 2008; National Monitoring Centre for Drugs, 2006; Health Information Statistics Institute, 1996)

<sup>ac</sup> At present substituted by Suboxon<sup>®</sup> with apparently less potential for abuse.

**Figure 2. Development of the number of selected drug seizures**

The broken line indicates the year of the new Criminal Code.

Source: Forensic Institute

#### 4.2.5 Findings: Impacts of Changes in Drug Possession Legislative Provisions on Drug Use Patterns

The research sample of recreational users under the EMCDDA definition mentioned their exclusive regular use of cannabis drugs, with over one-third taking the drug every day, or more than once a day. Most respondents preferred drug use in their social groups but almost one-third of cannabis drug users contacted during the research consumed the drug regardless of social context.

A common feature found in the group of problem drug users was poly drug use – injecting methamphetamine (pervitin), heroin, substitution substances and other drugs in various combinations, and almost always in combination with cannabis. The frequency of drug taking varied from several times a day to once a week. Two-thirds of the problem drug users in the sample also used injecting drugs with half of the whole surveyed group exclusively injecting drugs. Almost one-fifth of the interviewed problem drug users used the drug exclusively when alone. Respondents frequently chose the application location with respect to safety/non-disturbance reasons. “Clubbers” use drugs always in parties with others or directly at the parties.

Two respondents tended to use the drug immediately after purchase because of safety reasons. Several respondents in the problem user subgroup repeatedly mentioned that injecting aids were sold directly by the dealers so that application was possible right at the purchase site (in the flat). Other respondents stated that they had to obtain the injecting

paraphernalia by themselves, and even if the dealer may have offered injecting material in the past, this was not the case in the past year. Only one respondent of this subgroup said he obtained needles and syringes from pharmacies.

**Respondents from both subgroups of drug users did not, in the long-term perspective, refer to any changes in the patterns of use that could be attributed to changes in the relevant drug possession legislative provisions.**

#### **4.2.6 Findings: Impact of Changes in Relevant Drug Possession Legislative Provisions on the Work of Professionals in Treatment Facilities, Therapeutic Communities<sup>ad</sup> and Harm Reduction Services**

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**The primary significant finding is that a prevailing majority of participants in all focus groups of “professionals” had no knowledge or just vague knowledge of the relevant drug possession legislative provisions, or even had not noticed any changes.** The participants did not feel authorized to comment on the topic. The general attitude of focus group participants can be summarized through the following statement: *“It’s not so much our business.”* (FG 6) The only exception was found among those representing harm reduction programs who reflected on the necessity to further study the topic.

The respondents did not see and could not refer, right away, to any links between the legislation, its changes and their work. Quite interesting was the contradiction between declared and actual attitudes concerning preference of treatment over imprisonment. Although on one hand the participants described drug users as sick people, on the other hand, the medical/treatment staff showed mostly negative attitude concerning admittance of clients for the purposes of treatment ordered by the court. One of the main reasons offered was that clients of such treatment were not motivated (the clients appeared but showed no motivation for treatment: *“He knows he must be sitting here, but does not collaborate, does not follow the regime, disturbs the group”*). (FG 4) Other factors also mentioned included insufficient size of the institution, financial aspects, bureaucratic restrictions and an inflexible system admitting patients for court ordered treatment when it was not relevant any more.

#### **4.2.7 Findings: Drug Users’ Access to Services**

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**A significant finding arising from the focus groups of representatives of treatment and supporting professions was the fact that police officers do not respect the work of field workers during organized needle and syringe exchange programs.** Police interference with the needle and syringe exchange programs did not seem to be incidental or isolated, rather it was generally prevalent and in some cases was systematic action: *“During the past six months, the police checked our field workers three times”*. (FG 3)

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<sup>ad</sup> Therapeutic communities are also called in Slovakia “re-socialization facilities”. EMCDDA <http://www.emcdda.europa.eu/publications/glossary#t>

Analysis of the statements of focus groups participants further shows that the planned police actions can be directly aimed at problem drug users also by misusing the intent of the programs to inform the police about their activities. All civic association providing low-threshold services always inform the closest police stations of their activities, the exact time and place of organized exchange programs. This information is, in the view of the field workers, misused by the police for checking on the users/clients and even the service providers, which results in interference with the principles of the program of work.

#### **4.2.8 No findings: Impact of Changes in Drug Possession Legislative Provisions on Care and Social Inclusion of Problem Drug Users**

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Based on existing data and the data obtained during research, it was not possible to respond to this part of the research goal.

#### **4.2.9 Conclusions**

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**Regarding obtaining drugs, no key informants in any group of users referred to any changes compared to the previous period** (i. e. changes in the last two years compared to the preceding years) that could be attributed to changes in the relevant drug possession legislative provisions, or to any change in general.

**Drug prices remained stable in the long-term perspective** (thus, effectively decreasing in proportion to the growing purchasing power in Slovakia); during the surveyed period from 2002 to 2007 only slight changes occurred. For cannabis drugs, their upper maximum increased. Heroin prices remained relatively stable with a slight variation in 2007; as for its effective price, the same applies as for all other illegal drugs.

Price differences depend, according to published information, on the country of origin [45], and the price may vary. Drug quality affecting its price was mentioned only by respondents in the subgroup of recreational drug users.

**During the surveyed period, no price fluctuation or any such trend occurred after the effective date of the relevant drug possession provisions.** The gradual increase in cannabis prices did not seem to be the result of legislative changes but rather of the factors mentioned earlier – locality, origin, season of the year, and as stated by recreational users, also by the quality of the substance.

These findings about legislative changes not affecting the market price of illegal drugs are supported by the survey of price development from 2002 to 2007 which are “*based on the information of the National Anti-Drug Unit of the Office for Fighting Organized Crime of the Police Corps Presidium obtained through their operation and investigation activities*”. [41]

**The purity of illegal drugs has varied over the long-term perspective, especially for imported drugs such as heroin.** This varying quality was also confirmed by chemical analyses of seized drugs made by the Forensic Institute.

**There has been a long-term trend (since 2000) of gradual parallel occurrence of declining heroin use on one hand, and increasing methamphetamine (pervitin) use on**

**the other hand.** Apparently there is a direct connection between these two phenomena, but it is **unrelated to the surveyed legislative changes in Slovakia.**

Zábranský et al. [46] describe possible factors of growing use of methamphetamine (pervitin) in Slovakia and in other parts of Central and Eastern Europe:

- A decline in the quality of heroin transported by the so-called “Balkan Route”, and relative irregular supplies by the atomized “Silk Route” which made the habitual polyvalent injecting drug users in Central and Eastern Europe to seek injecting substitutes independent of foreign import – of *psychotropic pharmaceuticals*<sup>ae</sup> and drugs manufactured from *pharmaceuticals having no primary psychotropic effects*<sup>af</sup> – typically methamphetamine (pervitin) (and in some countries also methcathinone); prescription restrictions of psychotropic drugs, naturally, led to higher accessibility and consequential preference of stimulants;
- Relatively simple manufacture of drugs based on ephedrine and pseudo-ephedrine and increasing internet penetration with free access to a number of instructions on how to make methamphetamine (pervitin);
- Formation of an international community of “clubbers”, frequent visitors to dance and music festivals, with their intensive contacts thanks to free movement of persons, sharing cultural patterns, and also patterns of recreational drug use, including methamphetamine (pervitin) and its production<sup>ag</sup>; such a community can easily and effectively spread these patterns within its social environment.

**Following 2006, there was no change in the trends in demanded treatment.** The increased number of first-time treated **methamphetamine** (pervitin) and cannabis drug users in the period between 2006 and 2007 reflected the high accessibility of these drugs in the market, which is a parallel development also in countries where no legislative changes occurred. Post-2006 trends, i. e. trends after the legislative changes, merely represent continuous development occurring before the changes.

**Regarding patterns of illegal drug use, these were described by respondents in both subgroups as stable over the long-term.**

No group of illegal drug users described any changes in patterns of drug use in the past two years, despite goal-directed searches into their personal histories during the semi-structured interviews by interviewers and the follow-up analysis.

With respect to public health protection and the potential spread of infectious diseases, attention should be drawn to the fact that **methamphetamine (pervitin) is sold in Slovakia also in liquid form in injection syringes.**

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<sup>ae</sup> containing opiates (buprenorphin, methadon, hydrocodone), benzodiazepines (flunitrazepam, alprazolam) or “new antidepressants” (tianeptin, fluoxetine), etc.

<sup>af</sup> containing pseudo-ephedrine, phenylpropinolamine, etc.

<sup>ag</sup> This represents a considerable change when compared to the situation in the Czechoslovak Federal Republic, and also after its split-up, with the exclusively pervitin users and “know-how holders” being primarily problem injecting drug users in the Czech Republic, with some isolated groups of “self-producers” rarely communicating among themselves in their own cities and regions – nationwide communication was practically non-existent.

A significant finding of the project with a direct relation to the re-codified criminal codes includes **police interference with the field workers' programs of needle and syringe exchange** – through check-ups at the exchange sites, check-ups of the clients after contacting the field workers and police patrolling close to the exchange sites. Such conduct by the police interferes with effective functioning of the programs and limits their accessibility, thus increasing threats to individual and public health, and limiting economic management of financial resources. This is inconsistent with the goals defined by national or European drug fighting programs.

Further findings relate to the **respondents who are experts in the field of treatment, therapeutic communities and harm reduction services – who do not see how drug possession legislation and the potential criminal prosecution of their clients overlap their work** as far as the progress, quality and accessibility of their services. Not considering themselves experts in legislation, they did not feel competent to comment on this topic despite their clear-cut attitudes to criminalization of drug possession, its impact on the lives and social stigmatization of drug users, as well as the so-called preventive toxicomania treatment (court ordered treatment). In formulating their statements concerning experiences with such preventive toxicomania treatments, participants in the focus groups held that the low motivation of such clients for treatment was a significant and disturbing factor. Vondráčková (2006) however, maintains that the clients' motivation for treatment should be the target of the work and therapy of the clients in treatments ordered by the courts. *“Successful preventive treatment<sup>ah</sup> does not mean curing, but motivating drug users to voluntary follow-up treatments in outpatient centers or in another appropriate facility.”* [47]

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<sup>ah</sup> PT – court ordered treatment.



<b>4.3</b>	<b>Goal 3: Analyzing the data concerning trends in drug use (prevalence, availability of drugs, patterns of use) and trends of application of relevant drug possession legislative provisions based on statistical outcomes of investigators, public prosecutors and judges</b>	<b>55</b>
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### **4.3 Goal 3: Analyzing data concerning trends in drug use (prevalence, availability of drugs, patterns of use) and trends of application of relevant drug possession legislative provisions based on statistical outcomes of investigators, public prosecutors and judges**

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This goal was synthesis of quantitative data from various sources including surveys of the general population or some specific groups (e. g., cohort studies, information systems based on the data of treatment facilities, monitoring systems of health consequences of drug use, criminal justice system statistics, etc.) [18]. The criterion for inclusion in the study was the quality of the data: (i) their validity and reliability; and (ii) the scope of their coverage/national representation, coherence and consistency of definitions, transparency of procedures in their collection, and existence of internal and external mechanisms of quality control.

#### **4.3.1 Data Sources**

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Upon the approval of the study supervisors, the research team used the following sources:

- data on drug use prevalence, perception of accessibility of drugs as shown by school research (European school survey project on alcohol and drugs (ESPAD) in 1995 - 2007, Tobacco - Alcohol - Drugs (TAD) in 1994 - 2006) and a survey covering the whole population carried out by the Public Opinion Institute of the Statistical Office of the Slovak Republic in 1996 - 2006;
- published data, reports and analyses of other core epidemiology indicators defined by the European Monitoring Centre for Drugs and Drug Addiction and the data collected by the Slovak Drug Information System;
- data routinely collected by the police, public prosecutors and the courts concerning individuals in conflict with drug laws (drug crimes);
- data on seized drugs and their composition, specifically processed by the Forensic Institute for the purposes of this project in 2000 - 2007.

#### **4.3.2 Analytical Procedure**

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Based on the available data sources, a combination of full meta-analysis (with available data on cases) and secondary analysis (with cumulated data based on the data sets) were used.

#### **4.3.3 Findings: Perception of Drug Availability**

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Perception of the availability of drugs was directly addressed only in the ESPAD survey. These data were analyzed in relation to four groups of respondents: 15- to 16-year-olds and 17- to 18-year-olds, who said they had personal experiences with drugs and 15- to 16-year-olds and 17- to 18-year-olds without personal experiences with drugs. Trends in the subjective perception of the availability of drugs by high school/secondary school students vary according to different types of drugs.

The perception of drug availability for recreational use, such as ecstasy and cannabis drugs, increased among students since 1995. The perception of the availability of ecstasy continually grew between 1995 and 2007, e. g. from 12 % to 48 % among those students aged 17 – 18 experimenting with drugs, who perceived the drug as “quite available“, and “easily available“. For cannabis drugs, the perception of availability became stable at a relatively high level – 81 %, and experimenting students aged 17 to 18 perceived it as “quite available“, and “easily available“ already in 1995. Since that time this percentage has not essentially changed among such students. The perception of cannabis drugs being more and more available exists mainly in younger secondary/high school students without any experience with drugs, i. e. drug naive students whose responses are considered as “*reflecting the media picture of or the social attitude to drug hazards and omnipresence of drugs*”. [48], [43]

Trends in the perception of availability in relation to problem drug use can be followed until 2007 only in the case of methamphetamine (pervitin). Secondary/high school students with or without drug experience perceived this drug as less available since 1999. With experimenting students aged 17 to 18, the perception of availability dropped from 26 % in 1999 to 19 % in 2007. This trend apparently contradicts the data of other indicators (prevalence of drug use, seized drugs, number of treated persons) which testify to a growing prevalence and availability (mainly of methamphetamine (pervitin)). These trends, however, rather reflect occurrence of methamphetamine (pervitin) use in an out-of-school population since the very beginning of its entry into the Slovak drug scene. [49]

With regard to the fact that the subjectively perceived availability of drugs has been monitored only in one school survey and that there is an extensive time gap between individual waves of surveys (4 years), the results cannot be interpreted in relation to changes in legislation. The previous survey was conducted in 2003, the last one in 2007, i. e. one year after legislative changes. Therefore, we cannot say whether the established trend going beyond the period of the legislative changes does not in fact hide variations occurring in the period around this change. However, considering the implicit consistency of this trend with other indicators, this seems quite improbable.

#### 4.3.4 Findings: Trends in Prevalence of Illegal Drugs

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Lifelong prevalence of **cannabis drugs** began to grow both among the youth and the adult population since 1994. In the adult population, this growing trend slowed down around 2003. At least one experience with cannabis was shown in 1994 (TAD) by 17.9 % of students aged 17 to 18, and 40.8 % in 2007 (ESPAD); in the adult population it was 11.2 % in 1996 and 20.6 % in 2006 [50]. Following 1998, the number of cannabis drugs (dry matter) seized by the Forensic Institute began growing, and with the exception of the only variation in 2004, their number kept this trend (378 seizures in 1998, 1,277 seizures in 2007). Treatment for cannabis drug use showed a slight increase in first treatment demands between 1998 (80 first treatment demands) and in 2001 (130 first treatment demand). After 2001, the number of

first treatment demands began to grow slightly faster until 2005 (277 first treatment demands), then their number began to decline slightly (201<sup>ai</sup> in 2007).

**Ecstasy use** came to the foreground after 2000. According to ESPAD, lifelong prevalence of ecstasy use in the student population aged 17 to 18 (ESPAD) increased from 1.6 % in 1999 to 6.8 % in 2003. In the next wave of surveys in 2007 a slow decline to 5.4 % appeared. In the same group of secondary/high school students, TAD recorded a higher degree of prevalence, but unlike in ESAPD, this trend continued to grow: 4.8 % in 1998; 5.5 % in 2002; and 6.9 % in 2006. Bratislava students aged 17 to 18 retreated from experimenting with ecstasy beginning in 2003 and the declining trend in experimenting with ecstasy in the young Slovak population of the same age group outside Bratislava has been noted since 2006. The number of first treatment demands and all users treated for problems with ecstasy remains low; throughout ten years, the number remained below 10 patients. Similarly, the number of seizures remained at a relatively low level, varying from 30 to 40 seizures per year.

**Experimenting with cannabis drugs shows continuously growing trends** – with no changes documented at the time of adoption of the new Criminal Code or after it during the studied period. Similarly, no changes were documented in life prevalence of cannabis drug use or in the number of seizures. The only slight stabilization of the cannabis-related trends that was found by the analyses within the study (a decline in numbers of first treatment demands) occurred before the re-codification changes of the Criminal Code and – given the steady increase in prevalence of use – is probably related to changes within the treatment system rather than to any other factor.

**Heroin use** culminated in the period from 1996 to 2000, mainly in Bratislava, as also shown by the number of its seizures culminating in 1997 (1,086 seizures), school surveys (in 1996, historically the highest prevalence of heroin use of 6.3 % in 17- to 18-year olds) and the highest number of treated users in 2000 (2,029 treated users). After 2000, these indicators for opioids in general and heroin specifically showed a declining trend.

At the time of the legislative changes in 2006 and thereafter, the development trends in relation to opioids have stabilized (the decline in preceding years was more evident). The relation between these trends and the legislative changes, however, cannot be shown, especially as for the time lag<sup>aj</sup> in the indicator of treatment demands. Presumably this is a reflection of factors affecting the development of the trend before the legislative changes.

Nevertheless, after 2000 the **prevalence of methamphetamine (pervitin) and its availability grew**. According to surveys of methamphetamine (pervitin) use in schools before 2002, it was slowly growing in secondary/high school youth. A considerable increase was then documented between 2003 and 2007 in students aged 15 to 16 (from 2.4 % in 2003 to 7.6 % in 2007; and in students aged 17 to 18 from 5.6 % in 2003 to 8.2 % in 2007). The prevalence of methamphetamine (pervitin) use in the adult population became stable between 2004 and 2006. The number of seizures of methamphetamine (pervitin) was also continually in-

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<sup>ai</sup> Similarly as in the preceding section, data concerning first-time treated cannabis drug users was not available – only data concerning first-time treated marijuana users was available.

<sup>aj</sup> A time lag between the trends in the number of patients starting their first treatment and the indicators of availability of the given drug or its actual availability for intensive and problem users is quite logical, often mentioned in reference literature.

creasing - from 62 seizures in 2000 to 705 seizures in 2007. The number of treated users culminated in 2004 (579 users) and after a slow decline, a slight increase was documented again between 2006 and 2007.

The most notable increase in lifelong experience with methamphetamine (pervitin) use in secondary/high school youth occurred between 2003 and 2007. As for the development of seizures, no changes in the trend appeared at the time of the legislative changes; to the contrary, the most notable year-on-year seizures of methamphetamine (pervitin) occurred between 2006 and 2007. In 2004 the growing trend of first treatment demands for this drug stopped. A slight increase was documented again between 2006 and 2007. At the time of the legislative changes and thereafter no changes were observed that could be attributed to this change - the trend continued as in the past.

The analysis of school surveys specifically for Bratislava showed a trend which could not be identified in the national data, as shown by indicative comparison<sup>ak</sup>. Among students from Bratislava, aged 17 to 18, the climax of experimenting (lifelong prevalence) with highly addictive drugs such as cocaine and heroin and also with recreational drugs such as ecstasy and cannabis drugs was documented in 2003. Thereafter, the lifelong prevalence of all these drugs showed a decrease in this group of Bratislava students (the decrease in cocaine use has been documented since 2006). In younger students, and also in secondary/high school students in other parts of Slovakia, a growing or stable trend can still be observed. Only methamphetamine (pervitin) kept its growing trend of lifelong prevalence in these Bratislava student groups, similarly to what the nation-wide data show.

**These different trends or rather the stable situation in experimenting with drugs found in older secondary/high school youth from Bratislava (aged 17 to 18), when compared to the rest of Slovakia, apply to the period before the legislative changes, i. e. around 2003 to 2006. Therefore, these trends cannot be attributed to the new Criminal Code.**

#### 4.3.5 No findings: Trends in Illegal Drug Use Patterns

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Based on existing data or the new data sources obtained during our research, it was not possible to respond to this part of the research goal. Goal 2 of this project, however, describes the actual situation in patterns of illegal drug use.

#### 4.3.6 Findings: Trends in the Application of the Relevant Drug Possession Legislative Provisions

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In order to be able to analyze the development trends during the entire surveyed period (1999 - 2007) and possible changes in the number of offenders for illegal drug possession crimes, we had to take into account the number of crimes of "illegal drug possession for

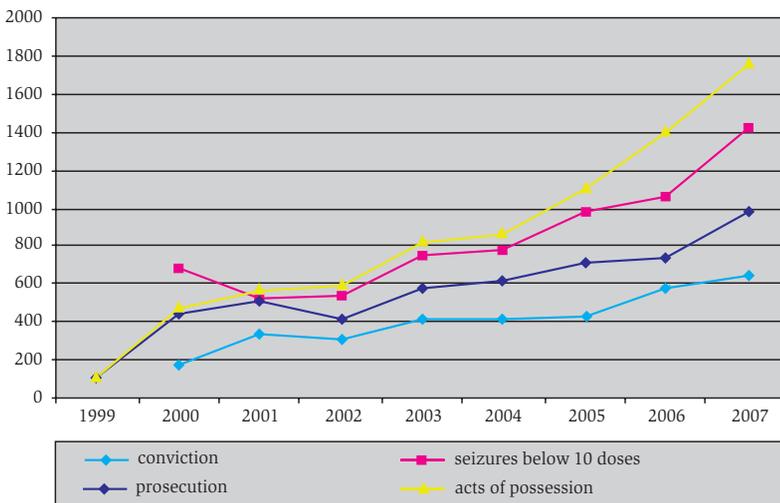
<sup>ak</sup> The term "indicative comparison" as it is used here means that the choice of Bratislava schools was not representative of the capital city in national surveys TAD, or ESPAD, it was just a part of the schools chosen for the whole Bratislava Region. (Nociar, A., 2009)

personal use” (§ 186 of the former Criminal Code and § 171 of the new Criminal Code) in combination with the crime of any possession of illegal drugs (§ 187 (1) (d) of the former Criminal Code and § 172 (1) (d) of the current Criminal Code). Collectively these crimes are referred to as the ‘selected/relevant’ drug possession offenses.

From 2000 to 2005, the number of offenders prosecuted for the relevant crimes of “illegal drug possession for personal use”, and crimes of “any possession of illegal drugs”, remained at a relatively stable level (their number oscillated at about 1,000 offenders per year) and just a slight increase later on. Notable variations occurred in 2005 and 2007, when 1,270 and 1,340 offenders respectively, were prosecuted for the relevant drug possession crimes. The reasons for these variations are not known. On the other hand, the number of drug possession crimes committed was almost constantly growing throughout the whole period from 1999 to 2007.

The number of offenders of crimes of drug possession (for personal use and possession of any amount of illegal drugs) grew faster than the number of offenders prosecuted for related crimes. The same applies also in case of so-called illegal drug possession crimes. This means that while in 2000 illegal drug possession crimes amounted to 51 % (478 cases) and the number of prosecuted persons was 46 % (451 persons) from among all primary drug crimes, their numbers increased to 82 % (1,761 cases) and 73 % (974 prosecuted persons) in 2007. Similar trends are apparent also in the numbers of persons convicted of relevant drug possession crimes.

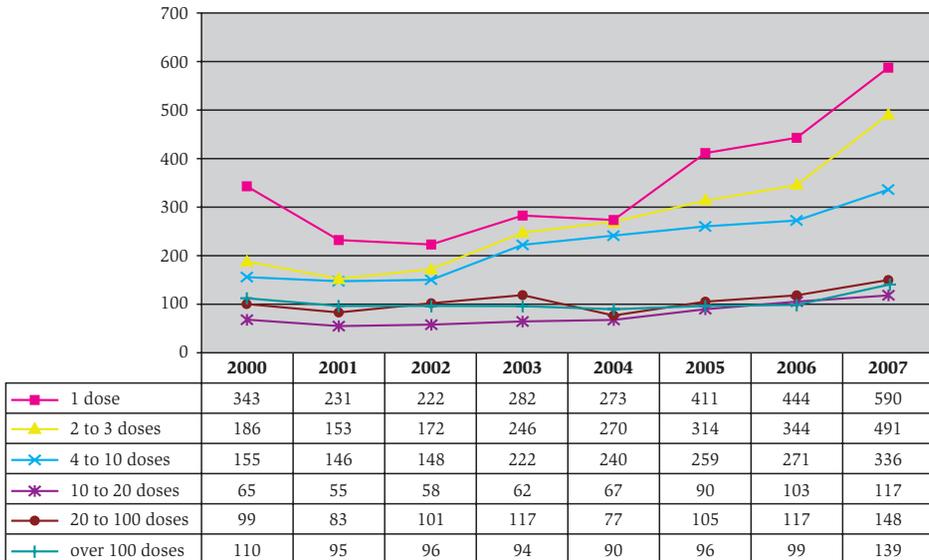
**Figure 3. Comparison of numbers of prosecuted persons, crimes and persons convicted of illegal drug possession (§ 186 and § 187 (1) (d) of the former Criminal Code and § 171 and § 172 (1) (d) of the current Criminal Code), and the number of seizures up to the maximum of ten doses**



Prepared by: authors (Source: Slovak Police Corps, Ministry of Justice of the Slovak Republic, Forensic Institute)

A more detailed analysis showed that since 2000, the constantly growing number of drug seizures are mostly seizures of up to a maximum one dose and then up to a maximum three doses (§ 171 (1)). The category of the drug amount “possessed for personal use in larger amounts”, i. e. within the span of 4 to 10 doses (§ 171 (2)) grew at the slowest pace. The most frequently seized drug was cannabis, in which the number of petty seizures (up to 1.5 gram, i. e. up to three doses) grew proportionally faster than the number of other seizures of this drug.

**Figure 4. Development of number of cases according to the amount of doses**



Prepared by: authors (Source: Forensic Institute)

The analysis of criminal data clearly showed that at the time of the adoption of the new Criminal Code, the growing trend in numbers of prosecuted and convicted persons for the relevant drug possession crimes, and in the number of drug seizures, continued. It may be noted here that following the legislative changes, i. e. between 2006 and 2007, the most prominent year-on-year increase throughout the entire surveyed period of eight years related to the small amount of seized drug – up to a maximum one and three doses. These data correspond also with the more notable increase in the numbers of persons prosecuted for crimes under provisions governing illegal drug possession.

**Table 2. Number of prosecuted persons**

Number of persons primarily prosecuted for drug crimes									
	1999	2000	2001	2002	2003	2004	2005	2006	2007
<b>Total number of prosecuted persons</b>	458	983	1027	979	1062	1006	1270	1033	1340
§ 186	79	309	345	277	357	329	464	5	0
§ 187 (1) (d)	26	142	172	142	217	289	247	4	4
§ 171								683	886
§ 172 (1) (d)								47	84
<b>Drug possession</b>	105	451	517	419	574	618	711	739	974
<b>Other provisions</b>	353	532	510	560	488	388	559	294	366

Source: Slovak Police Corps

**Table 3. Drug crimes**

Number of primarily drug crime crimes									
	1999	2000	2001	2002	2003	2004	2005	2006	2007
<b>Total number</b>	428	940	1034	1111	1307	1262	1669	1724	2140
§ 186 – crimes	91	336	384	439	573	559	835	7	0
§ 187 (1) (d) – crimes	24	142	179	155	241	306	269	6	5
§ 171 – crimes								1314	1656
§ 172 (1) (d) – crimes								68	100
<b>Drug possession crimes</b>	115	478	563	594	814	865	1104	1395	1761
<b>Other sections/provisions</b>	313	462	471	517	493	397	565	329	379

Prepared by: authors (Source: Slovak Police Corps)

The continuously rising trend in drug possession crimes in cases of small drug amounts, in particular before 2005, corresponds with European trends [51], and they may be explained by both the growing popularity of recreational drug use (where essentially non-regular, “non-problem” and “non-dependent” drug users possess drugs only for the purpose of immediate consumption), and by increasing police experience in the application of the relatively new legal provisions [52]. The described turning point in the trend concerning the number of prosecuted persons without a parallel turning point in the number of cases, primarily reflects the changed strategy in police reporting of cases and its “extra points awarding system” for cleared-up cases, upon which the police activities are assessed. In practical

law-enforcement activities, the growth of criminal prosecution of these crimes without any changes in the drug situation of Slovakia may suggest a stronger emphasis of the police on this matter – whether as a result of socially greater attention or as a result of low labor input required in proving these criminal offenses.

#### 4.3.7 Conclusions

During the period of our survey (1994 – 2007) **changes occurred in the development of lifelong prevalence and distribution of drug use, and perceptions of drug availability.** The development in the Slovak drug scene after 2000 showed qualitative changes, concerning in particular representation of drugs associated with problem use. In the period from 2000 to 2003, the popularity of heroin fell behind and the prevalence of methamphetamine (pervitin) increased, with the largest increase in lifelong experience with methamphetamine (pervitin) use in secondary/high school youth being from 2003 to 2007. In experimental/recreational drug use, alongside with the growing lifelong prevalence of cannabis drugs, the use of ecstasy also grew primarily in young students after 2000. **Based on the data analysis we found no trend that could be reliably attributed to the legislative changes, mainly on the grounds that a number of the identified trends were visible before the changes in the law.**

In criminal statistics (number of prosecuted, accused, convicted/sentenced persons and drug seizures) concerning the relevant drug possession crimes, no significant changes occurred. Development trends in this area have shown an almost continuously growing tendency, except for some small variations. The development after 2006 was merely a follow-up trend of the preceding period.

Quite paradoxically, however, a situation arose when, after the adoption of the new Criminal Code in 2006, aiming “*to create a strategic tendency for prospective decriminalization and depenalization of the Criminal Code in cases of less serious anti-social conduct*”<sup>al</sup>, **the activities of the police in detaining petty offenders of drug users increased.** During the past eight years, as shown by the police statistics, the most prominent year-on-year increase in persons prosecuted under illegal drug possession provisions (§ 171) and (§ 172 (1) (d)), in the number crimes under these provisions and also in the number of drug seizures, mainly of the small amounts of drugs – up to a maximum one dose and up to a maximum three doses – occurred between 2006 and 2007.

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<sup>al</sup> Explanatory Memorandum 2005.



<b>4.4</b>	<b>Goal 4: Comparing the intent of legislators in adopting the Criminal Code defined in its Explanatory Memorandum with the actual reality, i. e. application of the new criminal legislation in judicial practice, and determining whether this intent has been successfully implemented</b>	<b>65</b>
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#### **4.4 Goal 4: Comparing the intent of legislators in adopting the Criminal Code defined in its Explanatory Memorandum with actual reality, i. e. application of the new criminal legislation in judicial practice and determining whether this intent has been successfully implemented**

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This project goal was defined with respect to the fundamental objective set forth in the Explanatory Memorandum “(...) to create the strategic tendency for prospective decriminalization and de-penalization of the Criminal Code in cases of less serious anti-social conduct, simultaneously respecting the protection of the society against its greatest dangers, by repressive measures (...), and in order to achieve this (...) punishment by imprisonment should be understood as ultima ratio, especially in less serious offenses since (...) illegal drug possession for personal use under § 171 may be classified as a less serious offense falling within the category of misdemeanors.”<sup>am</sup>

Findings concerning this project goal rely on the analyzed data in all sub-studies of the project subsequently triangulated with the aim to achieve the maximum validity of the research work. Triangulation was used at two levels [20]:

- Triangulation of the data using several data sources – semi-structured interviews with representatives of participating professions (police officers, public prosecutors, judges, defense attorneys, court experts, representatives of the Forensic Institute), persons within the criminal justice process (illegal drug users<sup>an</sup>), focus groups (treatment and supporting professions), court files, databases of the Police Corps Presidium, the Public Prosecutor General’s Office, and the Ministry of Justice concerning information on prosecuted persons, charged/accused persons and lawfully convicted.
- Triangulation of the methods

##### **4.4.1 Data Sources**

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In the qualitative part of the research we used the method of semi-structured interviews with respondents representing the police, investigators, public prosecutors, judges, defense attorneys, forensic experts of the Forensic Institute, problem and recreational drug users, and court experts. In analyzing quantitative data we used secondary analysis and meta-analysis of the existing sets of data and statistics. The qualitative research group (n = 228) consisted of 10 subgroups: police officers (n = 13), investigators (n = 25), public prosecutors (n = 13), judges (n = 10), defense attorneys (n = 6), experts from the Forensic Institute (n = 2), problem drug users (n = 45) and recreational users as defined by EMCDDA (n = 13), court experts (n = 8), representatives of treatment and supporting professions (n = 39). Classical qualitative

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<sup>am</sup> Explanatory Memorandum to the Criminal Code, p. 8.

<sup>an</sup> The term “users” includes problem drug users and also those who, under the definition of the European Monitoring Centre for Drugs and Drug Addiction (1999), do not meet the typical features of problem drug use.

methods of data collection were supplemented by an analysis of court files (n = 54). Quantitative data were of national character throughout the whole surveyed period, although showing also some limitations – in some cases the coding key was incorrectly applied in encrypting some data (data sets of the Ministry of Justice) or a relative degree of error and duplication was shown (data sets of the Public Prosecutor General's Office).

#### **4.4.2 Analytical Procedure**

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For data analysis, two methods were used: qualitative analysis aiming to find the “patterns”, causal relations and variables, facilitating, together with the views of target groups, analytical generalizations [20], [26]; and a combined model using qualitative and quantitative methods [27]. A combined model was used for analysis of case studies, with regard to their number (the analysis included 120 cases in sub-study 1) and in respect to the different method of obtaining them because court files provided less contextual factors than interviews.

For quantitative analysis of statistical data obtained from the police, investigators, public prosecutors and courts, the procedure recommended by Chalmers et al. [53] was used; it is based on comparing cases from the same period of time before and after the legislative changes. In this case the aim was to examine the changes from two years before, and two years after the legislative changes. When working with quantitative data within this research component, we used the full meta-analysis of the existing statistical sets and indicators.

#### **4.4.3 Findings: Use of Punishment of Imprisonment as Ultimate Means**

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In the period of two years before the effective date of the new Criminal Code, the most frequently imposed punishment in relation to drug possession crimes under § 186 was a suspended sentence (77 %) with the most commonly imposed conditional prison term of six months. In 65 % of cases, a suspended sentence was imposed in criminal offenses under § 187 (1) (d), with the most common conditional term of imprisonment of 24 months. In cases of drug possession for personal use (§ 186), an unconditional sentence of imprisonment was imposed as the third most common sanction (in 11 % of cases). In criminal offenses under § 187 (1) (d) the second most common was an unconditional sentence (19 %), most commonly for imprisonment of 24 months, followed by a fine (15 %).

After the legislative changes in the Criminal Code, the order of imposed punishment did not change: in cases of drug possession for personal use under § 171, the offenders were most commonly punished by a suspended sentence (67 %), with the most common conditional prison term of 12 months, a fine (17.2 %) and an unconditional sentence (14 %), most commonly for a prison term of 12 months. For drug possession crimes under § 172 (1) (d) a suspended sentence was imposed on an offender in 70 % of cases, with the most common term of conditional imprisonment of 48 months, and the second most common was an unconditional sentence (30 %), with the most common prison term of 36 months.

Even though the ratio of imposed custodial sentences (unconditional sentence of imprisonment and conditionally suspended sentence of imprisonment in combinations) under § 186 and § 171 did not change when compared to other types of punishment (alternative

punishment), there were obvious efforts to apply the new alternative methods of plea bargaining and criminal order<sup>a0</sup> the purpose of which was to simplify and shorten the criminal justice process **by adjudicating criminal cases in pre-trial proceedings**. This effort had a positive impact also on the life of the person who was being prosecuted, but not on the length of the punishment (especially in cases of offenses under § 171). Criminal proceedings can be closed also with no imposition/waiver of punishment (the court convicts the offender without imposing punishment), as one of the lawful forms of sentence. This form was primarily used in offenses under § 186 and § 187 (1) (d). When the former Criminal Code was in force, punishment was waived in approximately 7 % of offenders convicted of the offense under § 186, or § 187 (1) (d). During the surveyed period, 93 % of cases were closed by final judgment.

Following the legislative changes, waiver of punishment in offenses under § 171 (1) and (2) was applied only in 3 % of cases, and in offenses under § 172 (1) (d) this option was not used at all in the surveyed period. The other new alternative diversion from criminal trial – a plea bargaining agreement was applied in 16 % of cases of offenses under § 171; in 79 % of cases of offenses under § 172 (1) (d), punishment was imposed and no waiver of punishment occurred.

#### 4.4.4 Findings: Using Alternative Means of Punishment

In cases of illegal drug possession for personal use, a suspended sentence of conditional imprisonment was followed by fines<sup>aP</sup> (under § 186 – 12 % and § 171 – 19 %) as the second most common punishment. From among the other alternative types of punishment, relatively more common, in the surveyed period, forfeiture of a thing (2.8 %) and forfeiture of property<sup>aQ</sup> (0.6 %) were applied in relation to offenses under § 186. In cases of offenses under § 171 forfeiture of a thing was imposed in 6.7 % of cases and forfeiture of property in 0.2 % cases in offenses under § 171).

These statistical data are supported also by the data obtained from the qualitative research parts. From among the surveyed set of cases (n = 120) a fine, in absence of imprisonment, was imposed only in eight cases of offenses under § 171 (n = 47). The analysis of interviews shows that this type of punishment is scarcely used, if at all: *“Alternative types of punishment are almost never used in practice in this region, I remember perhaps two cases, but I believe it was not in drug criminality, these alternative forms of punishment are little used in general, which is perhaps not very good.”* (PRO 9)

In cases of illegal drug possession under § 187 (1) (d), the order of punishment was different. A fine, imposed as third in priority order (17 % of cases) for offenses under § 187 (1) (d), was preceded by an unconditional sentence of imprisonment which was preceded by

<sup>a0</sup> Criminal order means a judgment made by a single judge without trial where the facts of the offense have been reliably proven in pre-trial proceedings.

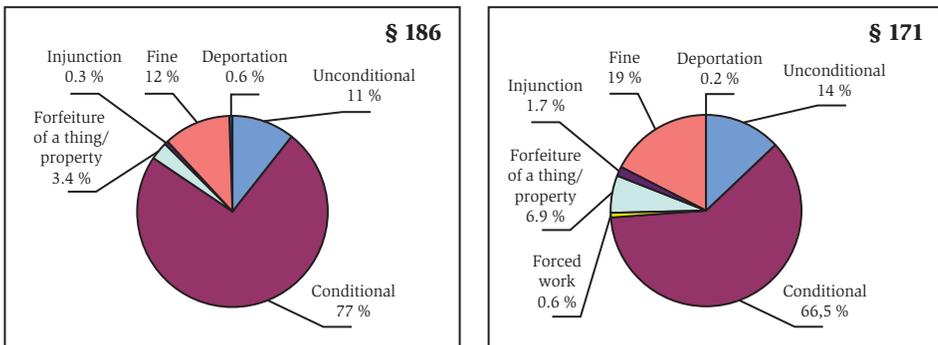
<sup>aP</sup> These data relate to fines imposed as such, not in combination with other type of punishment.

<sup>aQ</sup> Apparently in conjunction with another criminal offense, as this punishment cannot be imposed for a single offense under § 186 or § 171.

a conditionally suspended sentence. More often than in cases of illegal drug possession for personal use, forfeiture of a thing was applied in 8.4 % of cases and forfeiture of property was used in 0.5 %. The last of documented alternative types of punishment under § 187 (1) (d) was an injunctive order applied in 1.2 % cases.

A fine was not used in cases of offenses under § 172 (1) (d). For these offenses during the surveyed period, forfeiture of a thing was used in 19.4 % and forfeiture of property in 1.4 % of cases. The final alternative punishment under § 172 (1) (d) was the injunctive order - 1.4 %.

**Figure 5. Types of punishment imposed for offenses under § 186 during 2004 to 2005 and under § 171 during 2006 to 2007 (in %) <sup>ar</sup>**



Prepared by: authors (Source: Ministry of Justice of the Slovak Republic)

#### 4.4.5 Findings: Imposition of Preventive Measures

In criminal offenses under § 186, preventive measures were imposed in 8 % of cases of convicted offenders. In the surveyed period, two years before the new Criminal Code (2004 to 2005), seizure of a thing was a common preventive measure applied in relation to offenders committing the offense of illegal drug possession for personal use under § 186 (77 % of cases). This measure was followed by an order of preventive treatment in an outpatient center (23 %). Other preventive measures were not imposed.

On the other hand, in cases of illegal drug possession for personal use under § 171, the situation concerning preventive measures imposed under the new Criminal Code changed. Preventive measures were imposed on approximately 9 % of those convicted for the offense under § 171 during 2006 to 2007. In 60 % of cases, an order of outpatient toxicomania treatment was imposed, and in 32 % an in-patient toxicomania treatment order was imposed. Seizure of a thing was not used at all, and similarly, no preventive supervision order (similar to probation) was ordered. In a small number of cases, psychiatric outpatient alcoholism treatment was ordered (3.3 % in both cases).

<sup>ar</sup> It is possible that in some cases combined types of punishment were imposed.

As for illegal drug possession under § 187 (1) (d) in the period of the former Criminal Code, most frequently used were an order of outpatient toxicomania treatment (48 %) and an order of inpatient treatment in approximately 30 % of cases. The third type of preventive measure was seizure of a thing (9 %), followed by a psychiatric inpatient treatment order and outpatient alcoholism treatment (4.5 % in both cases). The proportion of orders of preventive measure in offenses under § 187 (1) (d) to the number of convicted persons was 10 %.

In case of offenses under § 172 (1) (d), a preventive measure was ordered to 16 % of convicted persons. For offenses under this section, the most frequently ordered preventive measure during the surveyed period (2006 - 2007), was in-patient toxicomania treatment (48 %) followed by out-patient treatment in 44 % of cases. The third measure was a probation order/order of preventive supervision - in approximately 9 %, followed by seizure of a thing in 4.3 % of cases.

Based on the analyzed interviews with the representatives of public prosecutors and judges (n = 23), in proposing and imposing preventive measures, the respondents followed the recommendations of psychiatric experts' opinions, naturally in respect of the facts/circumstances of the case: *"(...) a psychiatrist is a person competent to consider, by a variety of methods and procedures, whether the person under examination suffers from such degree of dependence which requires the order of toxicomania treatment, and the expert also may recommend whether an outpatient program will be sufficient or whether inpatient treatment should be preferred..."* (JUD 10)

Similarly the respondents mentioned that they decided the cases on the basis of expert opinion also in cases in which treatment was not recommended by the expert.

Another respondent, however, held that all evidence and the individual situation of the offender must be taken into consideration in imposing orders of preventive measures:

*"Whenever I find out that such treatment is needed as one or two experts were of such opinion, which is merely one out of many other pieces of evidence, and I further find out, for example, that the opinion is three years old, and the person before the court was not taking any drugs for the three year period and is clean at the moment, I won't use it, although it is a part of the opinion. (...) But otherwise, I think, where the experts recommend treatment, and I think it is necessary, and the offender did not submit to such treatment and is still in need of it, I will order it."* (JUD 2)

An absolute majority of interviewed representatives of the participating professions, i. e. treatment and supporting personnel, police, investigators, public prosecutors, judges and defense attorneys, agreed that in case of illegal drug addicts, preventive measures should be ordered prior to custodial sentences.

#### **4.4.6 Findings: Proportion of Cases of Illegal Drug Possession up to a Maximum Ten Doses in the Total Number of Drug Possession Offenses**

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In terms of the aims set forth in the Explanatory Memorandum, there was a focus on facts showing whether the situation described in the Memorandum had been successfully changed: *"Well meant legislative measure turned mainly against the drug addicts, while those*

*responsible for the negative phenomenon, manufacturers and drug dealers were left more or less aside...”*

The trend of the period from 2000 to 2007 indicated an increase in the total number of cases of drug seizures. The most significant growth curvature was seen in cases of a drug quantity up to ten times the single dose as defined for legal purposes. Mainly in cannabis drugs, growing proportionally more rapidly during the surveyed period, was the number of seized drugs of up to a maximum ten single doses as defined for legal purposes (5 grams), while the number of larger seizures (above ten single doses) remained relatively stable or with a minimal increase.

Looking at the proportional representation of drug seizures from 2000 to 2007 (Forensic Institute) with the maximum amount of up to ten times the single dose as defined for legal purposes, when compared to cases considered dealing or trafficking in drugs, this proportion has varied since 2004 at 77 % to 23 %. The analysis was based on the distinction defined by the current Criminal Code as drug possession for personal use being up to three to ten times the single dose as defined for legal purposes. In the course of the years, a shift occurred in the number of seizures in cases of illegal drug possession for personal use – in 2002 the number of cases of maximum ten doses represented 68 % and since 2004 the number has remained stable at 77 %.

On the other hand, the proportion of persons prosecuted under § 186 equaled 37 % in 2005, and 19 % were prosecuted under § 187 (1) (d). In 2006 and 2007, 66 % of offenders<sup>as</sup> were prosecuted for drug possession for personal use under § 171. By comparing these data, the proportion of seizures up to ten times the single dose, and the number of offenders prosecuted for drug possession for personal use, it may be said that the legislation reflects the actual situation in drug use. Based on the comparison of the number of persons prosecuted under individual drug possession provisions, it may be estimated that the legislative change, i. e. “re-classifying the offender” from § 187 (1) (d) to § 171 (1) (2), i. e. the provisions of the new Criminal Code containing the privileged definition of the new Criminal Code, may relate to 30 to 35 % of offenders of relevant illegal drug possession criminal offenses.

#### 4.4.7 Conclusions

Based on the findings it may be maintained that the **set-up of illegal drug possession provisions of the new Criminal Code reflects the actual situation** in the area of drug use and also the legislators’ intent **more realistically than the former Criminal Code**. Legislative changes, i. e. the potential for re-qualification/re-classification of a criminal offense under § 187 (1) (d) in favor of the offense under § 171, may, in theory, apply to 30 to 35 % offenders.

**The growing number of petty seizures of drugs and their large proportion in the total number of seizures, however, indicates that the police and other law enforcement forces take advantage – with drug demand and drug prevalence falling down – of their**

<sup>as</sup> Reference to this Section is made because it applies to offenders in possession of illegal drugs up to a maximum ten doses.

**role in deterring drug users by prosecuting and punishing them**, which can be connected also with the system of assessment of the effectiveness of police officers according to the number of resolved cases, colloquially referred to as “extra points awarding” system. This approach has not changed with the legislative changes; it does not depend on legislative changes, but primarily on established police priorities or chosen strategies. **Thus, a question arises here concerning effective police action focused on a too large number of small seizures when considered from the drug market point of view.** The date for 2007 may serve as an example: In this year almost 200 kilograms of marijuana was seized. The outcome brought altogether by 66 % of marijuana seizures of samples up to 1.5 grams was only 0.6 kilograms. Comparing these two figures, we can see that impact of such efforts (police focusing on small seizures) on the drug market is negligible.

The findings of the research also point to the fact that the **objective set in the Explanatory Memorandum – to use punishment of imprisonment as the ultimate means – has not been successfully implemented in practice.** A suspended sentence of a conditional prison term imposed under § 171 in the surveyed period from 2006 to 2007 occurred in 67 % of cases, an unconditional custodial sentence in 14 % of cases (altogether 81 %). In case of offenses under § 172 (1) (d), a suspended sentence of a conditional prison term was imposed in 70 % of cases, an unconditional custodial sentence was imposed in 30 % of cases. Application of the new plea bargaining process brought a significant change, primarily in the context of reduced length and lower costs of the criminal justice process. Its application contributed to reduced imprisonment terms both in suspended and unconditional sentencing.

In addition to other findings of the project, it remains a fact that **in case of misdemeanors, under provisions of § 10 (2) and § 95 (2) of the Criminal Code the option is afforded to consider the gravity/seriousness of the offender’s conduct by taking into account the manner in which the offense has been committed, its consequences and circumstances, degree of guilt and the motive/intent.** That means where the offence has been found minor in gravity, the young person’s conduct need not be considered a crime, despite the presence of all formal signs of criminal offence, and the criminal proceedings may be discontinued under § 215 (1) (b) of the Code of Criminal Procedure, or the matter may be referred to another authority under § 214 of the Code of Criminal Procedure. In case of adult offenders, this procedure may also apply where the gravity of the offence of misdemeanor has been found minor/insignificant. Subsequently the relevant authority would consider whether the given act could be considered and penalized as an administrative offence. In cases of first offenders of minor age, this procedure could be used in cases with the amount of illegal drug of up to three doses, and thus to fulfill the goals of de-criminalization and de-penalization set in the Criminal Code. This would positively affect the offenders’ lives, and reduce the amount of costs currently spent in criminal proceedings. In cases of adult offenders, the same considerations could apply with minimum amounts of low concentration drug (the objective test) seized from persons whose conduct was close to negligence and carelessness/recklessness (subjective test), for a petty misdemeanor. Other factor that might be taken into consideration may be no criminal history and moral social status.

The next objective set in the Explanatory Memorandum: an **“individual approach in dealing with criminal cases through wide options of alternative sanctions and diverting**

**procedures...” is not adequately used** – the only type of alternative punishment applied to a significant extent in cases of relevant drug possession offenses are fines.

**Similarly, an individual approach is not used in practice in determining the single dose as defined for legal purposes** in relation to the nature of the offender. Practical experience shows that determination of an individual single dose as defined for legal purposes is regularly not a part of court expert reports and consideration of such issues is left to the judge’s discretion in evaluating the evidence. Interviews in this research show that some judges strictly followed the results of forensic experts of the Forensic Institute while other judges also took into account the individual nature of these doses. It is quite possible that regard or disregard of the individual size of a single dose as defined for legal purposes may be affected in practice also through the approach of the representatives of respective professions concerning use of illegal drugs, but **these circumstances do not guarantee legal certainty.**

**Preventive measures** were ordered to 9 % of persons sentenced under § 171 (out of the total number of 662 cases) in the surveyed period from 2006 to 2007. The studies show that preventive measures are ordered almost in all cases where it is so recommended by a court expert in the area of psychiatry. However, these measures are **used only to a small extent, therefore the objective set in Explanatory Memorandum has not been accomplished**, even though the data collected in this research do not permit a fair conclusion as to whether the small number of preventive measures (of toxicomania treatment) results from the nature of the offenders to whom such expert opinions relate, or from disregard of this measure by the court experts caused by practical problems connected with preventive toxicomania treatment (long waiting periods undermining the relevance of such treatment, and also administrative and financial problems).

# 5

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## Summary Conclusions

As for the trends in lifelong prevalence/incidence of drug use and the perception of drug availability, several changes occurred during the surveyed period (1994 to 2007) which, however, cannot be attributed to the legislative changes in the relevant drug possession provisions. The Slovak drug scene changed after 2000 especially as far as the type of problem drugs being used. From 2000 to 2003 the popularity of heroin fell and methamphetamine (pervitin) use increased, with the most significant increase in lifelong experience with methamphetamine (pervitin) use being among secondary/high school youth during the period from 2003 to 2007. In experimental/recreational drug use, alongside with lifelong prevalence of cannabis drugs, the use of ecstasy grew also primarily in young students after 2000.

The project focused on the direct and indirect impacts of the new construction of illegal drug possession provisions on the drug scene, patterns of illegal drug use, forms of obtaining drugs or drug prices. None of the groups of illegal drug users interviewed (problem drug users and recreational drug users) described any changes in the drug scene, concerning patterns of drug use, obtaining illegal drugs or their prices in the period of the last two years that could be fairly attributed to changes in the legislative setup of drug possession provisions. The changes occurring in the given areas resulted from the standard development in the black market of illegal drugs, or local or regional police strategies.

The respondents who are experts in the areas of treatment, therapeutic communities and harm reduction services do not acknowledge how illegal drug possession legislation and the potential criminal prosecution of their clients overlap their work – as far as this concerns the course of their services and its quality and accessibility.. In addition, the analysis of findings from this part shows a non-transparent and problematic setup of the system of preventive toxicomania treatment. However, for actual conclusions or recommendations, a separate research study or monitoring of the system should be carried out.

Other research findings show problems in practical application pertaining to the criminal justice process, the most important of which are the following:

- 1) The Forensic Institute has no standardized national procedures applied for determination of the single dose as defined for legal purposes, which does not guarantee a sufficient degree of transparency or legal certainty.
- 2) The values of the single dose as defined for legal purposes are re-evaluated by the Forensic Institute in Bratislava every year, and the “interval method” of determination of the number of doses in cases when the interval includes borderline values in relation to respective legislative provisions bears no information value for consideration of the seriousness of a criminal offense.
- 3) The branches of the Forensic Institute are unevenly loaded with expertise work, directly affecting the length of the criminal justice process and its delays.
- 4) Opinions prepared by court experts in the field of psychiatry for determination of dependency or evaluation of the physical health of the offender are marked by varying practices in admitting/involving court experts and their number for the purposes of examination of offenders, primarily depending on the instructions or agreement with the district or regional public prosecutors.
- 5) A standardized form of reports prepared by court experts arising from a standardized set of questions for court experts disregards specific features of each case, and

the resulting limited factual value can have negative impact on the outcome of the criminal justice process for the offender.

- 6) In practice, police officers intervene with the programs of needle and syringe exchange (checking field workers on duty, checking the clients close to the exchange program sites, seizing the material provided for the clients), which is in direct contradiction with the policy of public health protection, potentially increasing health, social and economic risks.
- 7) During the early stages of criminal proceedings, the rights and dignity of drug users are not consistently respected (e. g. absence of medical assistance before or during questioning, intentional abuse of the dependency conditions or waiting for withdrawal syndromes) by the police officers for the purpose of obtaining significant information as well as non-compliance with advising suspects of their rights.

The research monitored the implementation of several objectives set forth in the Explanatory Memorandum. The findings have confirmed that a “... *individual approach in dealing with criminal cases through wide options of alternative sanctions and diverting procedures...*” is not adequately used – the only type of alternative punishment applied to a significant extent to cases of relevant drug possession offenses are fines. In case involving § 172 (1) (d), forfeiture of a thing is used but this has no impact on the ultimate outcome of criminal proceedings for the offender.

Another objective set forth in the Explanatory Memorandum – to use punishment of imprisonment as an ultimate means – has not been successfully implemented in practice. A suspended sentence of a conditional prison term imposed under § 171 in the surveyed period from 2006 to 2007 occurred in 67 % of the cases, an unconditional custodial sentence in 14 % of the cases (altogether in 81 %). In cases involving § 172 (1) (d), a suspended sentence of a conditional prison term was imposed in 70 % of the cases, an unconditional custodial sentence was imposed in 30 % of the cases.

Another research finding concerns insufficient application of the possibility afforded by the Criminal Code under which in cases of misdemeanors, the seriousness of the offense may be considered with respect to the manner of its commission and consequences, circumstances, degree of fault and intent. This means, that where, in considering all circumstances of its commission, the seriousness of the act is *marginal/minor* or *petty* in juvenile offenders, the conduct would not be considered criminal, despite the presence of all subjective and objective elements of crime.

Another objective set forth in the Explanatory Memorandum specifically concerned § 171 and § 172 – “*Contrary to that, more lenient punishment is expected to be imposed on such drug users, and the importance of orders of preventive measures is expected to be imposed on such persons*” – have been implemented only partially. Preventive measures were ordered in 9 % of persons sentenced under § 171 in the surveyed period from 2006 to 2007; in more than half of these cases, preventive outpatient toxicomania treatment and one-third of preventive inpatient treatment were ordered. In case of § 172 (1) (d), a preventive measure was ordered to 16 % of sentenced persons. It may be concluded that this measure is applied only to a small extent, i. e. the objective set in Explanatory Memorandum has not been implemented. The data collected in the research, however, do not permit a fair conclusion as to

whether the small number of preventive measures (toxicomania treatment) may be the result of the type of offenders to whom the expert opinions relate, or may result merely from disregard of this measure by the court experts due to practical problems connected with such preventive orders (long waiting periods undermining the relevance of such treatment, and also administrative and financial problems).

The efforts of legislators in striving to distinguish between offenders of crimes of illegal drug possession for personal use from drug dealers/traffickers and to expand the possibility of application of a privileged definition (concerning the amount corresponding to one single dose as defined for legal purposes to ten times the single dose as defined for legal purposes) to such persons are certainly positive. Legislative changes, i. e. possible re-qualification/re-classification of criminal offense under § 187 (1) (d) to the offense under § 171, theoretically applies to 30 to 35 % of offenders. At the same time, practical experience shows that the efforts to apply the new institutes of criminal law, such as a plea bargaining agreement contributing to a less costly and shorter criminal justice process, to cases of offenses under § 171 need not be beneficial for the offender.

Even though the current legislation defines drug users more extensively than the former legislation, it is questionable whether the application of a single criterion – amount of the drug in possession – is a sufficiently distinctive factor for distinguishing between drug users and drug dealers/traffickers. Similarly questionable is the efficacy of the present system according to which possession of any amount of illegal drug is criminal, since no regard is taken to the social or health risks represented by the respective drug for the individual and the society (so called categorization of illegal drugs).

The trend in the growth of petty seizures and their high share in the total volume of seizures further indicate that the police and other law enforcement forces take advantage – with drug demand and distribution/prevalence falling down – of their role in deterring drug users by means of prosecuting and punishing them.

A number of international studies and researches have indicated that for drug users the criminal justice system (i. e. punishing drug use, drug possession for personal use and other closely related activities) has very little impact on drug use [54], [55], [56]. Moreover, criminalization of drug users may lead to their social exclusion or reinforcement of their existing social exclusion, which may then affect increased risk behavior (fast, i. e. injecting of illegal drugs), and consequently increase harm and risks to health [57], [58], [59]. By comparing the economic and social impact – high costs of the state for prosecuting petty drug users, time consuming work load of the police, investigators, public prosecutors and judges who are required to deal with one drug user (in cases of drug possession of up to one to three single doses as defined for legal purposes) – and, on the other hand, stigmatization of drug users – a record in criminal history registers, etc. (impact on their working life and life in general) – questions arise whether it is a rational approach and whether it would not be more effective to create possibilities for releasing the specialized police capacities for detention for more significant cases, which may be more time-consuming but may have a higher potential to affect the drug market.

The project findings provide clear evidence to justify launching professional, political and public discussions in Slovakia concerning drug policies and their relevant legal framework.

# 6

## Recommendations

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Recommendations formulated in this project are based on research findings and expert observations collected during interviews with individual groups of respondents and also on analyses of data sets routinely collected, e. g. by various criminal authorities, provided to aid the purposes of this project. These recommendations can be divided into short-term recommendation which may be incorporated into the system without any substantial changes (e. g. immediate termination of police interference with the needle and syringe exchange programs, adjustments in the form of collection and recording of statistical data), and long-term recommendations requiring broader professional discussions and intervention into the system (e. g. categorization or decriminalization issues concerning illegal drug possession for personal use subject to specified conditions, changes in the system of opinions made by court experts or the system of orders of preventive toxicomania treatment). The aim of these recommendations is to provide assistance in bringing more effective procedures into the criminal justice process, to increase efficiency of public costs, and to decrease possible harmful impacts on the society and the individuals.

## **6.1 Variants of Legislative Changes**

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The variants of legislative changes presented concerning illegal drug possession for personal use in Slovakia are based on international experience, professional discussions, and trends in European drug policy. All proposals will require professional discussions of representatives of all persons and entities concerned and decision-making supported by scientific evidence.

### **6.1.1 Decriminalization of Illegal Drug Possession for Personal Use**

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Current trends in some EU countries include the use of instruments of protection and assistance to drug users against their criminal prosecution (e. g. Belgium, U. K. Spain, Portugal, Italy, and Switzerland). In other European countries, such as Germany, possible withdrawal of criminal prosecution by public prosecutors and non-application of “unreasonable punishment” have been used. The UN international conventions do not explicitly require criminal sanctions, affording the signatory states with discretion in dealing with the issues relating to illegal possessing, obtaining, and growing illegal drugs for personal use. One of the possible solutions is decriminalization of narcotic and psychotropic substances, poisons and precursors. Typically in the EU, the drugs may be confiscated and administrative sanctions and/or mandatory treatment or counseling intervention, and/or conditional administrative sanctions may be imposed. Decriminalization should be distinguished from legalization of drugs which means making drugs legal, permitted by law, which, contrary to decriminalization, is not considered to be subject to international conventions.

Similar legislative provisions to decriminalize illegal drugs occurred also in the Czech Republic at the close of 2009, where possession of narcotic and psychotropic substances was illegal in amounts larger than trivial. For the determination of amounts larger than trivial, tables were made for the purposes of the police and public prosecutors who are

guided by them in their decisions whether to continue or discontinue the criminal case at the respective stages of criminal justice process.

Adoption of similar legislation is recommended for serious consideration and discussions also in Slovakia. This might affect also drug possession provisions. One of the possible solutions may be analogous to the Czech legislation, based on a decree of implementation (governmental decree), according to which tables will determine the active substance for specified gram weights of the drug, with set borderline limits below which the investigators and public prosecutors would divert the case for administrative procedures. Based on such borderline limits of amounts larger than marginal, possession of narcotic and psychotropic substances will be criminal only beyond the borderline limits showing also percentage of the particular active/effective substance.

Such proposed legislation would abandon lengthy, costly, and error-prone determination of the number of “single dose as defined for legal purposes” in favor of the situation existing in the majority of European countries [60].

### 6.1.2 Categorization of Illegal Drugs

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One of the other statutory possibilities regarding drug possession crimes on which some respondents agreed, is to distinguish between high and low social and health risks. Illegal drugs are so categorized in 12 EU countries, in which the judicial authorities are required to make a distinction between individual types of illegal drugs throughout the entire criminal justice process [60] and to use a graded scale of punishment according to such categorization. The so-called categorization can be governed by a generally binding statutory regulation or by a governmental decree for categorization as such, or categorization accompanied with decriminalization.

According to scientific studies the outcomes of which were more or less incorporated in their governmental policies in these EU countries, narcotic and psychotropic substances represent various health risks for their users, with a variety of effects and side-effects. Various categorizations exist in the EU countries primarily based on the effects caused to the drug user’s health. The categorization of illegal drugs at the national levels not always coinciding with the categorization/classification established by the UN Convention [60] is the result of scientific research led by commissions or teams constituted at national levels upon approval of their funding by the representatives of the ruling political parties.

For example in the U. K., drugs are classified according to their health hazards into three classes A, B, and C, with class A being the most harmful, which includes, e. g. heroin; medium harmful class B with, e. g. cannabis drugs which were upgraded to B from class C<sup>at</sup> in 2009. This division serves also for considerations on punishment of individual offenses committed in relation to the respective drugs. In the Netherlands, drugs are classified according to harmfulness based on medical, pharmacological, sociological and psychological criteria. Thus, drugs are divided into “drugs presenting unacceptable risk”, unofficial-

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<sup>at</sup> Despite recommendations made by a British professional commission [http://news.bbc.co.uk/2/hi/uk\\_news/politics/8353685.stm](http://news.bbc.co.uk/2/hi/uk_news/politics/8353685.stm)

ly also called hard drugs, and the other group consisting of cannabis drugs, unofficially called soft drugs.

**Categorization would require classification of drugs included into a generally binding statutory regulation containing borderline quantitative limits for respective drugs.**

Narcotic drugs are substances causing addiction, mental and physical dependence, characterized by behavioral changes and serious physical and mental disorders (§ 2 (1) of the Act governing narcotic and psychotropic substances). Psychotropic substances affect mental health through the central nervous system, with less harmful health effects and special disorders (§ 2 (2) of the same Act). Under this Slovak law, narcotic and psychotropic substances are divided into three groups according to the health risks involved.

***6.1.2.1 Categorization without Decriminalization of Drug Possession for Personal Use***

In respect of the preceding, categorization might be considered through a decree of implementation with reference to the decree being included in the Criminal Code. Such decree would divide narcotic and psychotropic substances into three categories (e. g. A, B and C), according to their health effects, with C class being the least harmful and A class being the most harmful to health. The decree would also specify quantitative borderline limits of respective substances by gram weight and percentage of active substance (the so-called quantitative determination of drug amounts) similarly as in 6.1.2 by abandoning determination of a single dose defined for legal purposes.

This method of determining gram weights of narcotic and psychotropic substances and their strength might bring uniformity into the current non-uniform system of determining a single dose defined for legal purposes which lacks transparency and depends on subjective evaluation of several relevant factors by experts of the Forensic Institute.

Such a legislative solution would affect also the construction of the Criminal Code in its § 171 under which drug possession would not be based on “single doses” but on the gram weight of the substance and/or its strength expressed in percentage, also taking regard to individual tolerance of each offender.

***6.1.2.2 Categorization of Drugs Connected with Decriminalization of Drug Possession for Personal Use or Partial Decriminalization of Possession of (some forbidden) Drugs for Personal Use***

Another solution applicable in the Slovak system of laws could be based on categorization (see 6.1.2) and consequent decriminalization of narcotic and psychotropic substances. Decriminalization, i. e. referral of drug possession to be dealt with as an administrative offense would be applicable to class C drugs, i. e. drugs of the least health and social harmfulness, below the limits set forth, for example, the implementation decree as in 6.1.2. Such proposed legislation might require also changes in the definition of drug crimes (exclusion of criminal responsibility for such activities)<sup>au</sup>, changes in the Act of Administrative

<sup>au</sup> Act of Administrative Offenses § 2 (1).

Offenses (by inserting a new provision) and abandoning determination of the single dose defined for legal purposes for personal use.

## 6.2 Partial Recommendations Concerning Goal 1

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### 6.2.1 Re-distribution of Work within the Forensic and Expertise Institute

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One of the possible solutions for the situation in Bratislava Region may be to open a specialized **Office of the Forensic Institute to analyze “chemical traces”**. An important problem in investigating drug possession cases is the execution of expert opinions by forensic experts. The research shows that the largest load of expertise examinations concerning illegal drugs occurs in the Bratislava Region. The number of experts in this region, however, does not correspond with the incidence of criminal activities, which causes excessive lagging behind the time limits for expert opinions also in individual cases of drug possession. As a result, investigation in cases of possession of a small amount of illegal drug seized, where it is not possible to make a rapid test because of possible destruction of the sample, becomes unreasonably delayed by the requirement to have the expertise made by forensic experts. This is mainly in the cases of drug possession under § 171 (1), the summary investigation of which should be closed within two months, but the length of execution of the expert opinion by the Forensic Institute may be several times longer.

### 6.2.2 Considering the Effects of Seized Substances on the Offenders (so-called individual doses)

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As shown by the research conclusions, in the majority of cases charges were made as determined by forensic expertise, i. e. according to number of the single dose as defined for legal purposes that could be made from the suspicious substance. Because there are no guidelines unifying the procedure of all branches of the Forensic Institute, determination of the number of doses in the seized material depends on the expert’s individual judgment and a combination of factors considered by the expert analyzing the material. As shown in the findings based on the interviews with the police, investigators, public prosecutors, judges and defense attorneys, during court proceedings, in some regions the effect of the amount of seized substance on the offender’s discrimination and mental abilities was also taken into regard, i. e. the judges considered the fact that when obtaining the drug, the offender did not know how strong of a substance he/she was buying.

20 % of all cases of surveyed drug offenses were resolved by a plea bargaining agreement in which the offender was required to agree with the number of single doses as defined for legal purposes as determined by the forensic expertise which, however, need not be to the benefit of the offender in all cases. In considering the effect of the seized substance on the offender (in respect to so-called individual doses), the number of doses would be reduced and as a result the offense could be re-qualified/re-classified, for example, from drug possession under § 172 (1) (d) to drug possession under § 171 (2).

**If the current legislative framework is sustained, it will be important to place greater emphasis on considerations concerning the offender's so-called individual dose in compliance with the decision of the Supreme Court<sup>av</sup>.** However, this would require a number of changes in the system, including the method of demanding and making court expert reports and re-evaluation of the system of expert analyses made by the Forensic Institute.

A possible solution would be to make legislative changes or to adopt the appropriate statutory regulation taking into consideration the so-called individual single dose and the fact that when obtaining the drug, its user has no knowledge of its strength/effect. With this alternative, the law or a regulation should precisely define the drug amount which must be considered maximum of three doses or maximum of ten doses (for common drugs). This means that the expert analysis by the Forensic Institute should determine only whether the substance is or is not a narcotic or psychotropic substance, without any considerations of the purity of seized material. This could support a considerably shorter criminal justice process.

### 6.3 Partial Recommendations Concerning Goal 2: Increasing availability of injecting material

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In the context of limited support of the state to harm reduction programs, we recommend **drawing greater attention to the role of pharmacies in obtaining injecting material for drug users. The importance of such commercial operations and the attitude of pharmacists** were described in Vacek, Gabrhelík and Miovský [61]. Possibilities for the implementation of such harm reduction services by pharmacies seems to be one of the efficient methods for the Slovak environment with its long-term deficit of systematic support of such services which are considered fundamental pillars of the EU anti-drug policies [11], [4].

Another area in need of concrete measures and attention is **the level of police information and understanding of the needle and syringe exchange programs** which must be improved. Such programs are integral parts of services provided for public health protection, tertiary prevention of drug addiction, and supported also in the framework of the national drug policy. It is crucial that the police are regularly advised of the importance of such services, their purposes, structures and forms, either through training offered in the police academy curriculum or through in-service courses. Similarly important is to secure vertical communication inside the police and their departments (so that the information provided at the level of regional or district police directors reaches all police officers). Also desirable would be to secure communication with NGOs providing harm reduction services in relation to drug use so that the relevant police department may have contact persons authorized to deal with possible problems arising from police encounters with the programs.

**Increasing the effectiveness of the system of preventive toxicomania treatments** is an issue which requires further professional discussions of all entities concerned. The changes may be implemented in a short-term manner (e. g. increasing flexibility of communication

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<sup>av</sup> Judgment of the Supreme Court of October 30, 2001, Case No. 6 Tz 17/2001.

between the courts and facilities providing inpatient toxicomania treatment, clear identification of financial responsibility for partial steps in treatment of clients in these facilities), but also in the long-term (optimization of the system of treatment). In both cases, it is crucial to make necessary modifications or essential changes on the basis of thorough knowledge of the current situation and its deficiencies.

## 6.4 Partial Recommendations Concerning Goal 3

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The following recommendations result from the experience obtained during the research aiming to interconnect databases of the police, public prosecution and criminal courts and to compare the trajectories of offenders before and after the legislative change [62]. Records of persons contain their personal numbers and dates of birth; both of these data are encoded by the EpiCrypt program through one-way encryption so that one person could be traced in various databases. However, the nature of databases and other formal deficiencies did not allow such interconnection, thus complicating the analysis of separate data sets. As the offenders repeatedly appear in the database, personal numbers do not serve as unambiguous indicators of a given case and therefore it is not possible to interconnect the records of persons across the databases. Therefore it may be necessary to consider possible cooperation between these three institutions with a uniform form of common variables identifying the case in all databases - it could be artificial variables or uniform numbering of case files at all three levels.

**For that reason we submit several recommendations for keeping proper documentation concerning the prosecuted, accused and convicted persons of drug possession crimes in a manner that may use the data in the maximum possible way**, whether for scientific purposes or as supporting material for evaluation of the practical impact of public policy. Such measures may be important for evaluation of the efficiency of individual institutions and evaluation of the criminal justice process or for looking for weak and strong points in individual institutions.

### 6.4.1 Police Database

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More precise record keeping should be used for closing cases. It was not possible to distinguish whether charges were brought in a case or whether a decision was made not to proceed with the case/to set the case aside. These two possibilities were joined into one variable. Similarly, during the surveyed period, there were a large number of cases indicated as “not recorded” - in 1999 5 % of such cases and in 2007 their number grew to almost 40 %. “Not recorded” cases most often related to offenses of criminal drug possession for personal use (§ 171, § 186). In this context, the number of cases closed with “offender charged” or by “case set aside” declined. For that reason it is not possible to make a relevant conclusion as to how the case was closed by the police.

### 6.4.2 Public Prosecution Database

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With regard to their condition, formal inadequacies, and incomprehensible or unusable records, the documentation system in the offices of public prosecutors deserve a comprehensive revision. Based on experience from this research, this database allows high error rates and/or varying documentation/record systems among the individual offices of public prosecution across Slovakia. At the same time, even if there are uniform rules of database formation, the control over compliance is presumably very low in practice.

- **Incomplete or missing records.** In one-fifth of cases, personal numbers were missing, even though the records concerned Slovak citizens. Therefore, the system of recordkeeping should be equipped with mandatory cells/boxes without which the records could not be filed. In cases where the information value of the relevant cell/box cannot be found or the information is irrelevant (such as filling out personal numbers of aliens), the system should have substitute options (e. g. not found, irrelevant, and the like.)
- **Erroneously completed data, graphical symbols in variables.** The system used by public prosecutors contains a number of complex variables carrying different meaning in a given cell. This refers, e. g. to quotation of the law under which the offender is prosecuted (accused), the date of commencement of criminal proceedings, the date of charging the offender, all of which should be kept in records with clear head cells (for example for recording such variables as proposed punishment 1, proposed punishment 2, proposed punishment 3, (also showing length of sentence in months or amounts of fine in euro), proposed preventive measure 1, proposed preventive measure 2, etc. Such structure would enable more precise analysis and recordkeeping. Inspiration can be taken from the police recordkeeping.
- **Non-uniform practice.** Inserting information entries should be uniform at all levels and in all individual offices. This concerns the format of the entries (see the preceding paragraph), but also changes in documentation. The system should anticipate possible changes and contain the variants to record any changes, showing that a change occurred and what kind. Practical monitoring and analyzing must show the original request of the public prosecutor so that it could be compared with the final court judgment. In existing practice, there are several public prosecutor's offices retrogressively re-writing the data (e. g. sections of pertinent criminal offense) under which the person was finally convicted, while other public prosecution offices keep in their database the original request of the public prosecutor referring to a particular offence. Without changes, the actual work of prosecution offices cannot be monitored.

Generally, most of the problems could be dealt with by a modern database system allowing insertion of unambiguously defined formats of information or offering substitute filling of variables.

### 6.4.3 Database of the Ministry of Justice – Database of Criminal Courts

The documentation would be more comprehensible/easier to understand if the recorded data used uniform methods for recording the missing parts/variable values. Some of the cells in the tables were empty, other contained a zero – the differences between such records were not clear. Once again, this problem could be dealt with by using, e. g. the variants of “not found” or “irrelevant”.

## 6.5 Partial Recommendations Concerning Goal 4

**A very rarely used, or practically not used institute of criminal law in cases of drug possession crimes is consideration of the dangerousness of the offense for society, the so-called material corrective measure.** With very limited application left under the current criminal law, through a material corrective measure, it may be possible to deal with the harshness of law in less serious offenses. This possibility exists only in drug possession crimes for personal use under § 171. The commission of such an offense will not be considered criminal if **its seriousness is marginal (petty in young offenders)** in terms of the manner of its commission and the consequences of the act, the circumstances under which the offense occurred, the degree of fault, and the offender’s intent, which means that it is possible under the current Criminal Code to refer a case of illegal drug possession for personal use to administrative offense proceedings or to withdraw/dismiss criminal prosecution.<sup>aw</sup>

**An obvious recommendation in the area of punishment imposed for drug possession crimes is to increase the application of alternative types of punishment or orders of preventive measures, where reasonable.** It is recommended to thoroughly examine the existing system and its inadequacies and to make proposals for improvement or modifications with the assistance of working groups of experts from the appropriate sectors.

According to our findings, probation officers are used in a limited number of cases of illegal drug possession offenses. The law provides for the possibility of contacting probation officers by the police, investigators or public prosecutors with the aim to facilitate the use of diverting programs in an effort to avoid imposition of custodial sentence.

**Increasing the number of cases of offenders under probationary supervision** may be worth considering also in cases of suspended sentence or conditional imprisonment, provided that the court would order the conditions to be complied with by those convicted. The so-called educational/rehabilitation effect of punishment would also be achieved.

**It is, however, necessary to draw constant attention to the need of considering individual circumstances of each case.** For it is among the objectives set forth in the Explanatory Memorandum to the current Criminal Code and because mainly in cases of illegal drug possession for personal use, it is very important to consider individual circumstances and the effect of illegal substance on the particular offender. As confirmed by these re-

<sup>aw</sup> C. f. R 56/1972, R 3/1974 (Annotations/Commentary to Criminal Code (Act 300/2005)).

search findings, such consideration of individual circumstances is not a common procedure in practice. On the one hand there is absence of consideration of mental effects of seized substances on the offender, and on the other hand, individual circumstances of the case are not taken into account by the police, investigators or public prosecutors. Such considerations would imply also compliance with the preceding recommendations concerning respect for the marginal seriousness of misdemeanors, imposition of punishment according to the individual needs of the offender's rehabilitation, application of diverting programs, and alternative types of punishment and orders of preventive measures, as well as the involvement of the offender in re-integration processes, etc. The necessity to consider the individual aspect of cases is defined also by the Code of Criminal Procedure, according to which when considering the type of punishment, the courts are required to consider, in particular, the method of crime commission and its consequences, degree of fault, intent, aggravating circumstances, mitigating circumstances and the nature of the offender, his/her background and rehabilitation prospects (§ 34 (4)).

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## Annexes

Tables and graphs included in the annexes do provide additional, contextual information that served as background for the Project. They also include more detailed information about the main areas that were subject of research.

**Table 1. Methods recommended to determine the number of doses in 2000 – 2007**

Drug	Methods recommended to determine the number of doses
<b>Cannabis drugs - dry matter</b>	In marijuana, prior to 2003, a common single dose typically meant 0.5 g of the material irrespective of THC content (low concentration of effective substance). Since 2003, determination of doses has been based on the amount of THC and the amount of the material presented. A marijuana common single dose means 10 – 30 mg THC plus the information on the drug weight of 100 to 500 mg. Experts base their evaluation on the combination of both of these criteria, and also on the importance of individual criterion independently.
<b>Hashish</b>	In 2000 – 2004, a single dose meant 135 mg of seized material regardless of THC amount. Currently (since 2006) also the amount of THC in hashish is taken into regard, namely, 10 to 30 mg THC per single dose.
<b>Heroin</b>	In 2000 – 2003, a single dose meant the amount of 10 mg of effective substance. Later, the following amounts were recommended as follows: <ul style="list-style-type: none"> <li>• <b>2004 – a single dose</b> of 8 mg of effective substance;</li> <li>• <b>2005 – a single dose</b> of 13 mg of effective substance;</li> <li>• <b>2006 – a single dose</b> of 10 to 20 mg of effective substance.</li> </ul>
<b>Cocaine</b>	In 2000 – 2004, a single dose regularly meant 10 mg of effective substance. Since 2005, a single dose means the interval of 10 to 20 mg of effective substance.
<b>Metamphetamine (pervitin)</b>	In the entire period of 2000 to 2007, the doses were determined in the interval of 20 to 40 mg of effective substance.

Source: Forensic Institute

So far there are no internal directives or regulations to standardize or unify a “common single dose” for the experts working in all Forensic Expertise Institutions. Determination of doses in the seized material, therefore, depends, to a considerable degree, on the judgment of the given expert making the expert analysis.

Table 2. Classification of drugs into weight categories used in the Project analysis

Expected criminal offense classification	Cannabis drugs dry matter	Heroin	Metamphetamine (pervitin)	Cocaine	Hashish	Ecstasy (tbl.)
1 dose (§ 186)	≤ 0.5 g*	≤ 0.1 g	≤ 0.1 g	≤ 0.05 g	≤ 0.135 g	1
Up to 3 doses (§ 171 (1))	≤ 1.5 g	≤ 0.6 g	≤ 0.2 g	≤ 0.2 g	≤ 1 g	≤ 3
Up to 10 doses (§ 171 (2))	≤ 5 g	≤ 2 g	≤ 0.7 g	≤ 0.6 g	≤ 3.5 g	≤ 10
§ 172 (1)**	≤ 100 g	≤ 5 g	≤ 2 g	≤ 1 g	≤ 50 g	≤ 20
	≤ 1 kg	≤ 50 g	≤ 20 g	≤ 10 g	≤ 500 g	≤ 200
§ 172 (2)	≤ 10 kg	≤ 500 g	≤ 200 g	≤ 100 g	≤ 5 kg	≤ 2 000
§ 172 (3)	≤ 50 kg	≤ 2.5 kg	≤ 900 g	≤ 600 g	≤ 25 kg	≤ 10 000
§ 172 (4)	over 50 kg	over 2.5 kg	over 900 g	over 600 g	over 25 kg	over 10 000

\* The amount of marijuana 0,5 g was long considered one dose until marijuana occurred in THC concentration over 10 %, thereafter also its concentration started to be taken into regard.

\*\* In order to obtain a more detailed classification of seized drugs under weight categories, the amount corresponding with the provisions of § 172 (1) was divided into two subcategories.

Source: Forensic Institute

Classification of drugs into individual weight categories is based on the economic value of the drug (in respect of average purity and weight), according to which a seized sample could be categorized under individual provisions of the current Criminal code, or the amount of doses (their lower limit). This classification into weight categories was prepared for the purposes of this Project, as the relevant determination of doses in individual cases, as found in the relevant case files, are not available. The calculation made for the purposes of this study, however, correlates, by an expert opinion, with the reality, with any possible differences in the determination of relevant doses under the Project analysis, and in real cases being minimal<sup>ax</sup>.

<sup>ax</sup> Interview with a forensic expert.

**Table 3. Changes in the proportion of the type of punishment in the total number of convicted persons under relevant criminal provisions before and after changes in the Criminal Code (%)**

	\$ 186	\$ 187	\$ 187 (1) (d)	\$ 187 (1) (a), (b), (c) excl. (d)	\$ 187 (2), (3), (4) ...	\$ 188	\$ 186 and \$ 187 (1) (d)	\$ 171	\$ 172	\$ 172 (1) (d)	\$ 172 (1) (a), (b), (c) excl. (d)	\$ 172 (2), (3), (4)	\$ 173	\$ 171 and \$ 172 (1) (d)
1998 - 2007	Unconditional imprisonment	13.4	26.9	22.2	25.5	26.3	18.0							
	Suspended prison term	77.8	63.3	65.9	65.3	72.7	71.6							
	Forced work	0.0	0.0	0.0	0.0	0.0	0.0							
	Forfeiture of a thing/property	3.9	9.5	10.4	7.8	16.9	7.3							
	Injunction	0.6	1.3	1.8	0.9	0.0	1.3							
	Fine	8.2	9.9	12.0	9.1	1.6	10.2							
	Deportation	0.4	1.0	0.7	1.0	2.7	0.5							
2004 - 2005	Unconditional imprisonment	11.0	24.5	19.0	21.7	20.0	15.3	14.0	35.7	29.5	30.8	74.2	50.0	16.8
	Suspended prison term	76.8	58.5	64.4	58.0	12.0	70.1	66.5	63.4	69.8	67.7	25.8	50.0	67.1
	Forced work	0.0	0.0	0.0	10.8	0.0	0.0	0.6	0.0	0.0	0.0	0.0	0.0	0.5
	Forfeiture of a thing	2.8	10.0	8.4	10.8	18.0	5.8	6.7	22.1	19.4	23.1	32.3	0.0	9.0
	Forfeiture of property	0.6	0.3	0.5	0.0	0.0	0.5	0.2	0.9	1.4	0.0	0.0	0.0	0.4
	Injunction	0.3	0.8	1.2	0.3	0.0	0.8	1.7	2.1	1.4	4.6	0.0	0.0	1.7
	Fine	11.9	16.7	16.9	19.3	0.0	14.6	18.9	0.0	0.0	0.0	0.0	0.0	15.5
Deportation	0.6	0.3	0.0	0.7	0.0	0.3	0.2	0.0	0.0	0.0	0.0	0.0	0.1	

Prepared by: authors (Source: Ministry of Justice of the Slovak Republic)

**Table 4. Preventive measures according to individual criminal provisions before and after legislative changes (%)**

	§ 186	§ 187	§ 187 (1) (d)	§ 187 (1) (a), (b), (c)	§ 187 (2), (3), (4) ...	§ 188	§ 186 and § 187 (1) (d)	§ 171	§ 172	§ 172 (1) (d)	§ 172 (1) (a), (b), (c)	§ 172 (2), (3), (4)	§ 173	§ 171 and § 172 (1) (d)
Preventive supervision order	0.0	4.1	2.3	8.7	0.0	0.0	1.3	0.0	22.9	8.7	14.3	63.7	0.0	2.4
Alcoholic outpatient treatment	0.0	4.1	4.5	4.3	0.0	0.0	2.7	3.3	0.0	0.0	0.0	0.0	0.0	2.4
Alcoholic inpatient treatment	0.0	1.4	0.0	4.3	0.0	0.0	0.0	1.7	0.0	0.0	0.0	0.0	0.0	1.2
Psychiatric outpatient treatment	0.0	2.7	2.3	4.3	0.0	0.0	1.3	3.3	0.0	0.0	0.0	0.0	0.0	2.4
Psychiatric inpatient treatment	0.0	2.7	4.5	0.0	0.0	0.0	2.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Seizure of a thing	77.4	9.5	9.1	8.7	14.3	0.0	5.3	0.0	2.1	4.3	0.0	0.0	0.0	1.2
Toxicomania outpatient treatment	22.6	44.6	47.7	39.1	42.9	0.0	60.0	60.0	33.3	43.5	35.7	9.1	0.0	55.4
Toxicomania inpatient treatment	0.0	33.8	29.5	0.4	42.9	100.0	26.7	31.7	47.9	47.8	50.0	45.5	0.0	36.1
Sex therapy outpatient treatment	0.0	1.4	2.3	0.0	0.0	0.0	1.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total number of preventive measures (N)	31	74	44	23	7	1	75	60	48	23	14	11	0	83
Total number of convicted persons under relevant criminal provisions	390	811	462	299	50	20	852	662	237	140	65	32	2	802
Proportion of convicted persons with a preventive measure imposed (%)	7.9	9.1	9.5	7.7	14.0	5.0	8.8	9.1	20.3	16.4	21.5	34.4	0.0	10.3

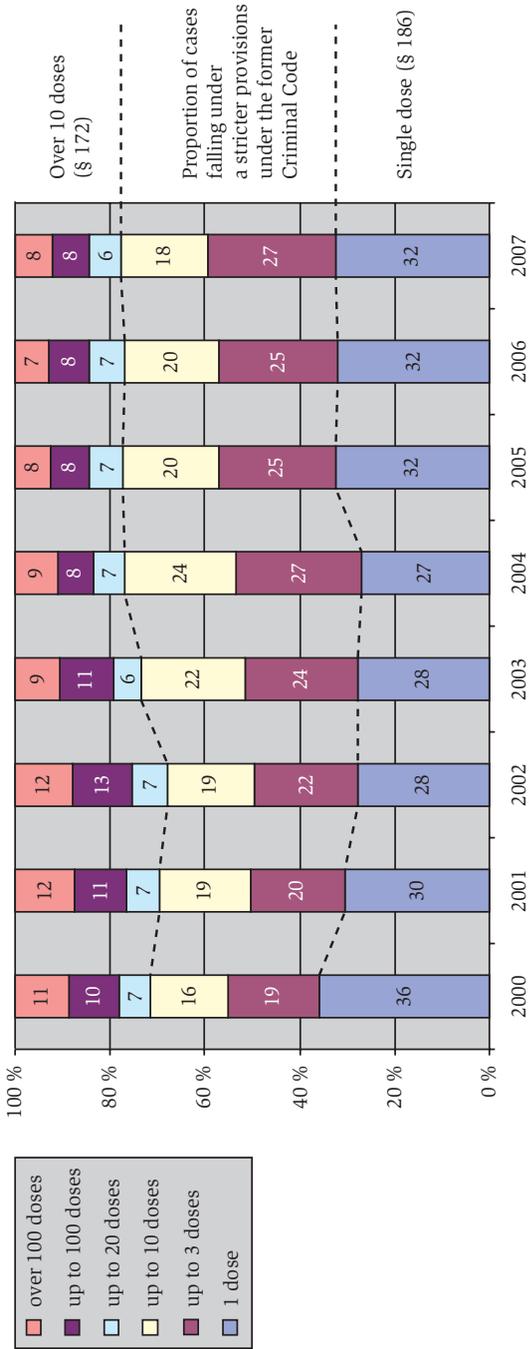
Source: Ministry of Justice Database

**Table 5. Proportion of plea bargaining agreements in punishment imposed on individual offences under relevant provisions according to the type of punishment (%).**

	Unconditional imprisonment	Suspended prison term	Forced work	Forfeiture of a thing	Forfeiture of property	Injunction	Fine	Deportation	No. of plea bargaining agreements (N)
§ 171	6.8	71.8	3.9	8.7	0	2.9	17.5	1.0	103
§ 172	31.2	67.7	0	23.1	1.1	2.2	0	0	186
§ 172 (1) (d)	20.9	78.2	0	20.9	1.8	1.8	0	0	110
§ 172 (1) (a), (b), (c) without (d)	27.5	70.6	0	25.5	0	3.9	0	0	51
§ 172 (2), (3), (4)	84	16	0	0	0	0	0	0	25
§ 173	0	0	0	0	0	0	0	0	0
§ 171 and § 172 (1) (d)	14.1	75.1	1.9	15	1.9	2.3	8.5	0.5	213

Prepared by: authors (Source: Ministry of Justice of the Slovak Republic)

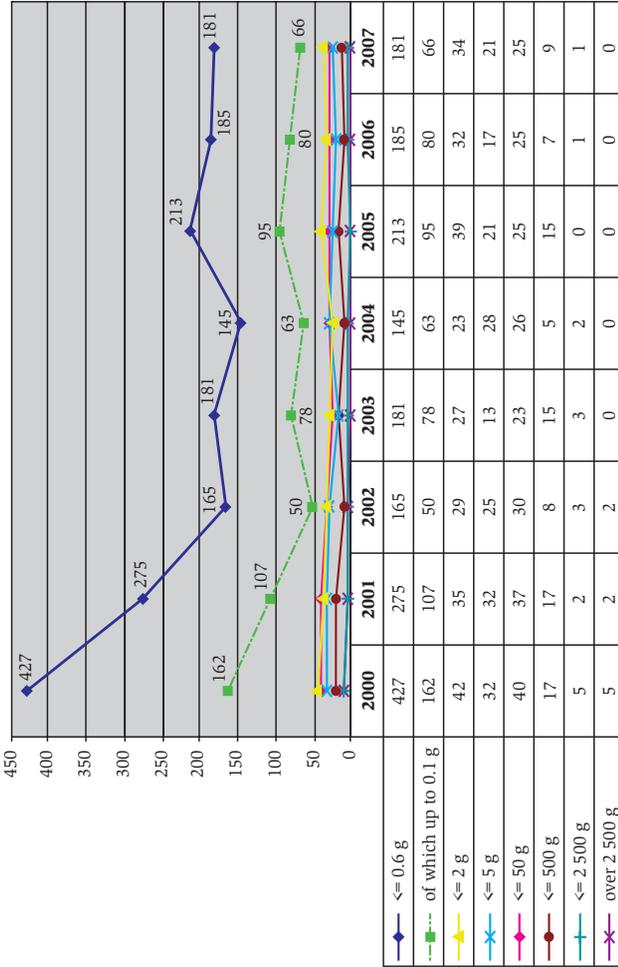
**Diagram 1. Development in the proportion of cases according to number of doses – all types of analyzed illegal drugs (%)<sup>ay</sup>**



Source: Forensic Institute

<sup>ay</sup> The total amount of case does not include cases of 0 doses, as cases are not subject to criminal prosecution.

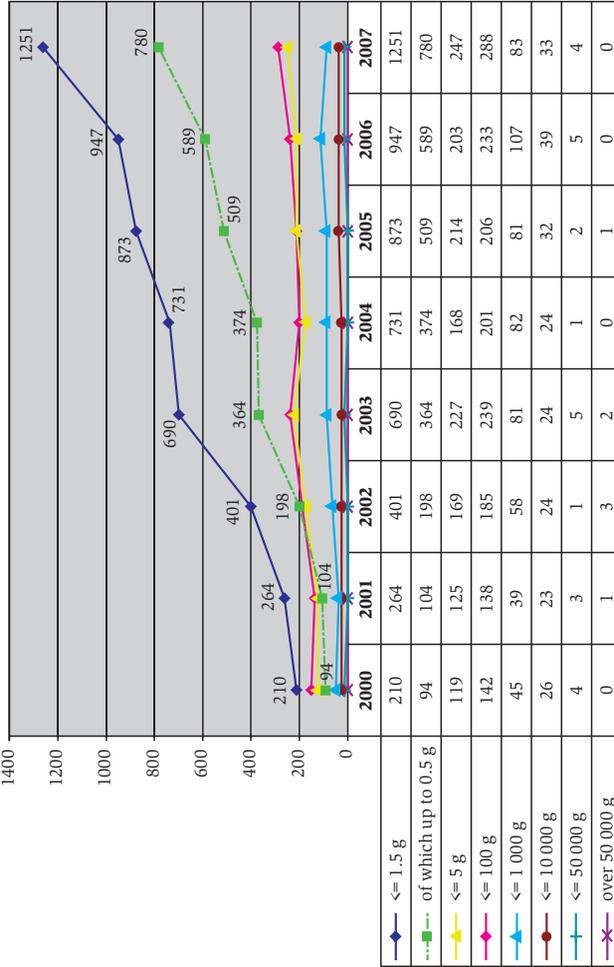
**Diagram 2. Development of heroin seizures in weight categories<sup>az</sup>**



Source: Forensic Expertise Institute of the Police Corps

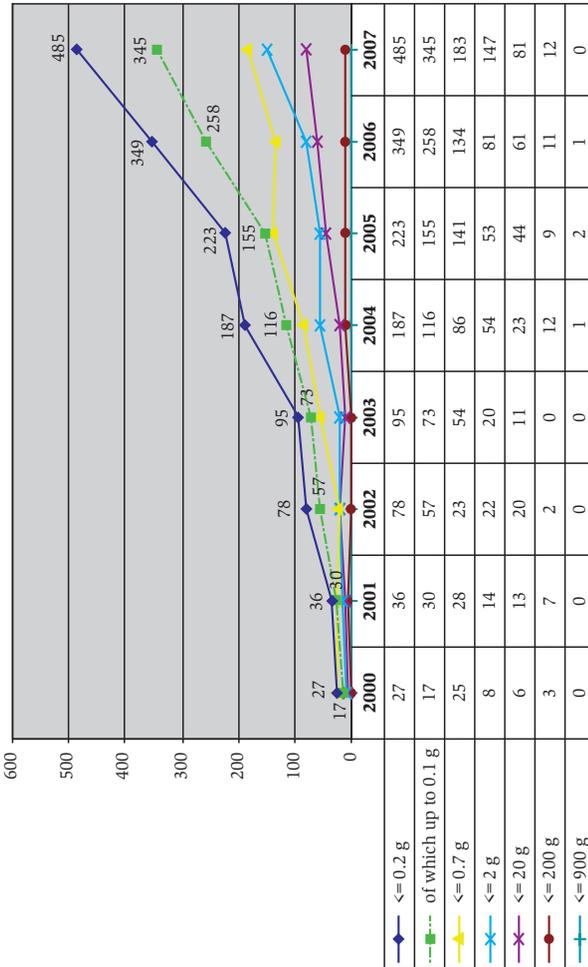
<sup>az</sup> In these diagrams the smallest weight category is included (is a part of) of the second smallest category indicated by a green dash-and-dot line

**Diagram 3. Development of seizures of cannabis drugs – dry matter in weight categories**



Source: Forensic Institute

**Diagram 4. Development of seizures of metamphetamine (pervitin) in weight categories**



Source: Forensic Institute

Table 6. Survey of drug crimes with focus on criminal provisions concerning drug possession

Number of prosecuted persons									
	1999	2000	2001	2002	2003	2004	2005	2006	2007
Total number of prosecuted persons	458	983	1027	979	1062	1006	1270	1033	1340
§ 186	79	309	345	277	357	329	464	5	0
§ 187 (1) (d)	26	142	172	142	217	289	247	4	4
§ 171								683	886
§ 172 (1) (d)								47	84
Drug possession	105	451	517	419	574	618	711	739	974
Other criminal provisions	353	532	510	560	488	388	559	294	366

Number of criminal offences									
	1999	2000	2001	2002	2003	2004	2005	2006	2007
Total number of offences	428	940	1034	1111	1307	1262	1669	1724	2140
§ 186 – crimes	91	336	384	439	573	559	835	7	0
§ 187 (1) (d) – crimes	24	142	179	155	241	306	269	6	5
§ 171 – crimes								1314	1656
§ 172 (1) (d) – crimes								68	100
Crimes – drug possession	115	478	563	594	814	865	1104	1395	1761
Crimes – other criminal provisions	313	462	471	517	493	397	565	329	379

Number of convicted persons									
	1999	2000	2001	2002	2003	2004	2005	2006	2007
Total number of convicted persons		362	579	468	603	635	586	721	785
§ 186		96	162	166	187	185	205	157	40
§ 187 (1) d		77	181	139	225	239	223	158	65
§ 171								248	414
§ 172 (1) d								13	127
Drug possession		173	343	305	412	424	428	576	646
Other provisions		189	236	163	191	211	158	145	139

Number of seizures									
	2000	2001	2002	2003	2004	2005	2006	2007	
Up to one dose	343	231	222	282	273	411	444	590	
Up to 3 doses	186	153	172	246	270	314	344	491	
Up to 10 doses	155	146	148	222	240	259	271	336	
Up to 20 doses	65	55	58	62	67	90	103	117	
Up to 100 doses	99	83	101	117	77	105	117	148	
Over 100 doses	110	95	96	94	90	96	99	139	
Total number of seizures	958	763	797	1023	1017	1275	1378	1821	

Note: „Drug possession“ includes the provisions of § 186 + 187 (1) (d) and also § 171 + 172 (1) (d)  
 Prepared by: authors (Source: Slovak Police Corps)

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