



Drug policy in Poland – time for a change

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- *Drug possession is a prohibited act liable to prosecution and penalty of incarceration. The criminalization of drug possession has been functioning in Poland for 10 years. Now is the time to evaluate its costs and effects.*
- *The criminalisation of drug possession does not meet the policy goals that inspired this approach, proves to be costly and has a number of negative effects. Although punishing for possession is perceived as a helpful instrument of police operations, it fails to reduce the drug use and trafficking, it costs the state budget at least 80 million PLN per year (EUR 20 million) and affects mainly young people and users of marijuana.*
- *The decriminalisation of possession of small quantities of drugs for personal use should be introduced. In practice, this would mean that possession of small quantities for personal use would not constitute a criminal offence and would not be liable to incarceration.*

10 years after its introduction, it is time to evaluate the criminalization of personal drug possession in Poland

Since 2000, possession of any quantity of psychoactive or intoxicating substances (further called narcotic drugs or drugs) is a prohibited act and a criminal offence liable to a penalty of incarceration. Such legal condition is called criminalization. After a decade of functioning it calls for evaluation of its costs and effects.

There are three types of penalty that one can get for drug possession. They are regulated by art. 62 of the Act on Counteracting Drug Addiction (ACDA)¹. The first is incarceration for up to three years and this is called the “basic type” of punishment. The second is incarceration for six months to eight years when the case concerns considerable quantities of drugs. The third type, called the “privileged type” of punishment is a fine, limitation of liberty or incarceration for the term up to one year in cases of lesser gravity.

Regulations adopted for drug possession have not always been as strict as today. The first Act on drug abuse prevention of 1985² did not provide for a penalty for possession of intoxicating substances. Rather, it penalised all acts related to illegal traffic of controlled substances. In 1997³ the penalty for possession of intoxicating substances was introduced, however, it did not apply to possession of small amounts of drugs solely for personal use. In other words, drug possession was recognized as a prohibited act, but no punishment was given for drug possession for own use.

In 2000, the drug law was amended⁴ and criminalization of drug possession, regardless of the amount and purpose was introduced. The principle of legalism was put in force, meaning that every person possessing even the smallest amounts of an illicit intoxicating or psychoactive substance was liable for prosecution.

The challenge today is to evaluate whether the practice of criminalizing possession of drugs meets the goals set 10 years ago. Out of the number of reasons that inspired introducing criminalisation, two were used as the most important in public debate. First was that criminalising possession would help reduce drug trafficking. According to the proponents of this view, when the law allows for possession of small quantities, it becomes more difficult to arrest drug dealers. This, as the argument goes, is because dealers carry only small amounts of narcotic drugs and when detained by the police, they can always lie and say that the dose is for their own use. If petty retail users and dealers cannot be arrested then, as a consequence, it makes it

¹ Journal of Laws of 2005, no. 179, item 1485.

² The Act on Prevention of Drug Abuse dated 31 January 1985 (Journal of Laws of 1985 no. 4, item 15, Art. 1).

³ Act on Counteracting Drug Addiction, dated 24 April 1997 Journal of Laws of 1997, no. 75, item 468.

⁴ The Act dated 26 October 2000, amending the Act on Counteracting Drug Addiction (Journal of Laws of 2000, no. 103, item 1097).

impossible to reach the bosses of narcotics gangs. The second argument is that criminalising drug possession would deter people, mainly the youth, from using illicit substances. The Advocates of this view emphasised the normative role of the law which should guide human behaviour. They also highlighted the susceptibility of the society and its individual members, to drug addiction or, at least, to drug use.

Criminalizing drug possession does not help fight drug trafficking

The practice of law enforcement institutions shows that there is no causal relationship between arresting drug users who carry small quantities and getting to the real drug dealers. Apprehending dealers, especially the serious ones, is more complicated. Operational police officers usually know who, in their area, deals or may deal on a small scale. This, however, is difficult to prove. Usually, it takes months to expose a drug dealer and is done by operational groups or specialised drug enforcement units. In this context, it is a “waste” to use art. 62, which criminalizes possession, against a person suspected of drug dealing. It would be most effective to apprehend them during an operation, for example a transaction, as only then is it possible to charge them with drug trafficking.

Police officers may interrogate a person detained for possession of narcotic drugs in order to obtain information about their source. In other words, art. 62 makes it possible to gather evidence material facilitating operational activity. In practice, however, those who are detained are petty, recreational drug users and addicts who do not have information reliable enough to lead the police to the major traffickers. Secondly, there is no benefit for sharing this information with the police. The police has no say on the sentencing – in case of offences under art. 62, the punishment is irrevocable. Thirdly, even if they testify, it often occurs, they later recant depositions out of fear. Law enforcement officers admit that the depositions of people detained under art. 62 are not credited with apprehending major drug traffickers.

The number of offences connected to drug trafficking makes a smaller share of arrests than drug possession. In 2008, only 24% of ACDA charges concerned trafficking whereas more than half (53%) concerned possession. In terms of statistics, the police are more preoccupied with dealing with possession than with trafficking.

Police officers as a group make an ambivalent assessment of punishment for possession of narcotic drugs as a method of reducing drug trafficking. In a survey conducted by IPA, they were asked to give their view on whether article 62 of the Act on Counteracting Drug Addiction is an effective tool for reducing drug trafficking. Almost half of them (48%) did not agree with the statement.

Opinions of other representatives of law enforcement agencies and the criminal justice are likewise divided. The prevailing opinion, however, is that they do not treat art. 62 as a useful tool in fighting drug trafficking (or they do not have any opinion on that). As many as 60% of prosecutors (8% have no opinion), 45% of judges (17% have no opinion) and 56% of probation officers (13% have no opinion) do not agree with the statement that it is a useful tool for combating drug trafficking.

Restrictive drug policy does not prevent people from using drugs

The proponents of criminalising of drug possession argued that the inevitability of punishment would deter people from using drugs. This view is however countered by the Iron Law of Prohibition, which says that the more intense the law enforcement, the more potent the prohibited substance becomes.

Opinions gathered from officers involved in enforcing the Polish drug law show that they are sceptical about criminalization of drug possession being an effective tool preventing people from using drugs. As many as 66% of prosecutors, 58% of probation officers, 46% of judges (19% have no opinion), and 51% of police officers do not agree that art. 62 is an effective tool to deter potential drugs users (who have not taken narcotic drugs so far). They also, to a large extent, disagree with the statement that art. 62 is an effective tool for reducing the use of narcotic drugs among people who already are drug users. Those who have not agreed with it include: almost half (48%) of police officers (11% have no opinion); half (52%) of judges (15% have no opinion); as many as 61 % of prosecutors (12% have no opinion) and 57% of probation officers (14% have no opinion). Officers and officials who deal with drug possession cases on every day basis are sceptical about the effectiveness of criminalizing possession as a way to deter people from using drugs.

Young people and users of “soft drugs” are affected

Individuals prosecuted for drug possession are usually young males. According to court records 86% of all convicts from art. 62 were under 30 (53% were under 24). Men make up 93% of convicts. The illicit substances that were the subject of charges were in 65% marijuana and in 23% amphetamine. The criminal law affects primarily young people using the so called “soft drugs”.

The penalty for drug possession is incarceration. Although in general the prison sentence is suspended, in 2007, 714 people were incarcerated for drug possession. Regardless of the fact whether ones sentence is suspended or not he or she is always entered into the court register and has a criminal record.

Criminalizing possession improves statistics...

After criminalization of drug possession was introduced, the number of identified offences against art. 62 (possession) rose from 2,815 in 2000 to 30,548 in 2008. This trend surely reflects the fact that drug possession became a new category of criminal acts and naturally started rising in numbers. On the other hand, it reflects the mechanism of art. 62 being a very useful tool for improving the statistics of the police, prosecution and courts – the officers call it a “statistics provision”.

The offence of drug possession is easy to disclose by chance, which usually happens as a result of standard police operations such as traffic inspection or street patrol. Investigations in cases concerning drug possession usually turn out very simple. Defendants generally agree to simplified proceedings, and submit themselves to punishment of their own accord. Cases from art. 62 are quickly dropped from court case lists. In almost half of the cases, all that is required are court sessions without the necessity to hold trials. This means that art. 62 is an effective tool to improve crime detection indicators and increase the number of closed cases.

...but it does not help people addicted to drugs

Diagnosing addiction and enforcing treatment are marginal issues in the practice of implementing the Polish drug law. Law enforcement and courts rarely consult cases with experts from outside. Prosecutors questioned in IPA’s research declared they had ordered psychiatric opinions in only 38% of cases against art. 62, of which 93% aimed at determining the accountability of the perpetrators and two thirds wanted to establish whether the perpetrators had been addicts. In the practice of the courts of law it was found that only 34% of judges ordered a psychiatric opinion in cases against art. 62, of which 88% aimed at determining the accountability of the defendants and 35% wanted to establish the fact of addiction.

Regulations provided in the Polish penal code and the ACDA itself allow the court of law to oblige convicts to undergo treatment (if the prison sentence is suspended). No enforcement of these regulations is seen – in 2009 convicts from art. 62 were obliged to undergo treatment in only 3.5% of cases. At the same time, obligation to refrain from using drugs was imposed in only 11% of cases. Judges were also asked about the sentence they would impose in a simplified, hypothetical situation of a defendant who was caught with a needle containing heroine (laboratory analysis confirmed the content of the substance). He/she has never been convicted before; expert appointed by the court proved the person is addicted but accountable. In theory, the court is required to oblige the convict to go to rehab or treatment in such situation (as stated by

art. 71, par. 1 of ACDA). In effect, only 34% of judges said they would oblige the convict to undergo treatment.

Lack of definition of small and considerable amounts of illicit drugs means risk of severe penalties

Under the current regulations the penalty for drug possession depends, inter alia, on the amount of the controlled substance that the detainee has on them. It is incarceration for up to three years or incarceration for six months to eight years if the case concerns considerable quantities of drugs, or a fine, limitation of liberty or incarceration for term of up to one year in cases of lesser gravity. The legislators have not specified, however, what “a considerable amount” of such substances shall mean or what “a case of a lesser gravity”. In practice this leads to arbitrariness in formulating charges by prosecutors and sentencing by courts.

Opinions among law enforcement officers and the judiciary on what is a considerable and a small amount of drug are significantly different. A considerable quantity is anything up to 10 portions of drug for 58% of policemen, anything between 21–50 portions for 39% of prosecutors and for 46% of judges a considerable quantity starts at above 50 portions. Small quantity, on the other hand, is no more than two portions for 75% of prosecutors and, on average, six portions for judges. This significant spread of opinions implies that whether the person who possessed drugs is sentenced to a fine, limitation of liberty or incarceration for up to one year or to incarceration for up to three years is a matter of the individual attitude of the particular prosecutor and judge or the matter of an unwritten practice adopted in a particular court.

IPA’s research proves that there is a discrepancy between the penalty proposed by the prosecutor (in accusation) and the actual sentencing. In 26% of cases in which the judge sentenced the less severe punishment (fine, limitation of liberty or incarceration for up to one year), the prosecutor demanded a more severe sentence (for up to three years of incarceration). This shows that in general, courts demonstrate a tendency for less severe punishment but points out that it is a matter of attitude of a particular prosecutor and judge whether a less or more severe sentence should be given.

High costs of criminalizing drug possession

In 2008, the implementation of art. 62 of the ACDA cost almost 80 million PLN (approximately EUR 20 million)⁵. The working time of law enforcement and

⁵ The costs have been calculated taking into account the relation of the working time of police officers, prosecutors, judges, probation officers and prison service personnel devoted to cases dealt with under Art. 62 of the ACDA to their wages; the costs of expert opinions ordered in connection with cases dealt with under Art. 62; costs of the

judiciary officers in connection to art. 62 cases was estimated at 203,900 man days. These big numbers can be translated to more tangible sums and actions, for example, the prosecution of one offence under art. 62. costs 2,594 PLN (EUR 650) and takes up almost seven working days of law enforcement and judiciary officials, one inmate serving time under art 62 costs 8,576 PLN (EUR 2,100) and 22 working days. A question therefore arises, whether the costs and the time spent are commensurate with the achieved results and the adopted objectives of art. 62 of the ACDA and what could be changed in order to use the resources better – taking into consideration both the gravity of the offence and the type of substance involved in it.

Conclusions and recommendations

The policy of criminalising for drug possession does not fulfil the goals that its proponents set 10 years ago, proves to be costly and has a number of negative consequences. Drug policy concerned with possession of psychoactive or intoxicating substances needs the following changes:

- Decriminalisation of possession of small quantities of drugs for personal use should be introduced. In practice, this would mean that possession of small quantities of drugs for personal use would not constitute criminal offence and would not be liable to incarceration.
- Definitions of what is small and what is considerable amount of psychoactive or intoxicating substances should be set. This would restrain arbitrariness of formulating charges by law enforcement and sentencing by courts under the current law. In addition it would be a very important tool of decriminalisation of possession of small quantities of drugs for personal use, as it would define what is a small amount.
- The budget spent today on criminalizing possession should be redirected to treatment and harm reduction programs, so that drug policy becomes more focused on treatment, not punishment.
- Until the policy of criminalizing drug possession is not changed, with respect to people detained for possession of small amounts of psychoactive and intoxicating substances, with no previous criminal record (first time offence), a dismissal of such cases should be considered during prosecution proceedings, thus avoiding the entry of such detainees into court registers. Such solution would also help drug addicts who receive suspended sentences, with the suspension automatically annulled after a subsequent offence (which results in serving prison sentence).

execution of sentences issued pursuant to Art. 62 (prison service costs); minus the amount of fines imposed in those cases.

The cost calculation reflects rather the bottom limit of the actual expenditure incurred by the state in connection with those cases, because while making the calculation conservative assumptions have been adopted.

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