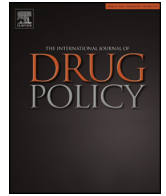




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## Response

## Interpreting the Czech drug decriminalization: The glass is half full – Response to Cervený, J., Chomynová, P., Mravčík, V., & van Ours, J.C. (2017). Cannabis decriminalization and the age of onset of cannabis use

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In a recent contribution to the International Journal of Drug Policy, Cervený et al summarize the Czech laws on cannabis in the following way: “cannabis possession was legal between 1990 and 1998, illegal between 1998 and 2010, and has been decriminalized for personal possession since January 2010” (Cervený, Chomynová, Mravčík, & van Ours, 2015), as they set out to find there has been no impact of the 2010 “de facto decriminalization” on the age of initiation into cannabis use.

Their interpretation of the Czech drug laws seems to echo some previous contributions, but to contradict others. For instance, the 1998 legislation has been described as “repressive change” (Zábranský, 2004), but also as “decriminalizing possession (of a small amount) of drugs for personal use” (Stefunková, 2015) or as “criminal penalties for drug possession effective from 1999, but only if the quantity was ‘greater than small’” (Mravčík, 2015). With respect to the 2010 drug law change, it has been stated that the Czech Republic followed the 2001 Portuguese legislation in “adopting the drug decriminalization model” (Pinto Coelho, 2010), but also that the 2010 amendments “did not constitute criminalization or decriminalization... compared to previous legislation” (Zeman, Štefunková, & Trávníčková, 2017) or that a binding government decree that defined the “greater than small amount” was introduced in 2010 and “cultivation of (five or less) cannabis plants was no longer a criminal offence” (Belacková, Maalsté, Zabransky, & Grund, 2015). Another recent publication has further complicated the picture by revealing that the 2010 decree was “annulled” in 2013 (Mravčík, 2015).

Notwithstanding the fact that the Czech Republic has long been acknowledged for its pragmatic and balanced drug policy and the

positive outcomes it has had in the area of public health (Csete, 2012; Eastwood, Fox, & Rosmarin, 2016), it appears that its decriminalization laws require clarification.

In attempting to do so, this response also illustrates the complexities of implementing drug decriminalization policies.

### Czech drug decriminalization – a timeline

The Czech Republic is a post-communist country; during the communist era, possession of any drug was considered a criminal offence and was classified under the same provision as the unlawful manufacturing, import, export, and supply of drugs. With the transition to democracy after 1989, broader changes were made to the criminal law.

#### 1990 – 1998: Any drug possession decriminalized

In July 1990, the possession of illegal drugs for personal use was decriminalized, i.e. removed from the criminal code and regarded as an administrative offence only. Such “removal of criminal sanctions” for personal drug possession fits well into how decriminalization has been defined (Hughes et al., 2016; Jelsma, 2011); however, drug possession for another person remained a criminal offence.

#### 1999 – 2009: Only personal possession in “small amount” decriminalized

In 1998, political pressure arose to reverse the decriminalization in response to emerging open drug scenes; as a result, a compromise solution was found such that introduced a criminal offence of personal drug possession in a “greater than small amount” (this time classified separately and more leniently than drug supply), applicable since 1999. Possession of a “small amount” for personal use remained an administrative offence (i.e. decriminalized); this applied to all drug types, but in different

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**Table 1**  
Regulations pertaining to drug possession for personal use in the Czech Republic (formerly Czechoslovakia) from 1950 on.

Period	1950–1989	1990–1998	1999–2009	2010–present**
Personal drug possession	criminal offence	decriminalized	decriminalized for "small amount"; criminal offence for "greater than small amount"	decriminalized for "small amount"; criminal offence for "greater than small amount"
Criminal law	Penal Code No. 86/1950 Coll.; Penal Code No. 140/1961 Coll.	revised Penal Code No. 140/1961 Coll. (Amendment of Penal Code No. 175/1990 Coll., since July 1, 1990)	revised Penal Code No. 140/1961 Coll. (Amendment of Penal Code No. 112/1998 Coll., effective since January 1, 1999)	new Penal Code No. 40/2009 Coll. (effective since January 1, 2010)
Criminal law – drug possession "for others"	<i>Section 197/187</i> (1) Whoever manufactures, imports, exports, provides for another person, or possesses narcotics or poisons without permission shall be punished by a prison sentence of up to three years/ <b>two years or a corrective measure or a fine</b>	<i>Section 187</i> possession "for somebody else"	<i>Section 187</i> possession "for somebody else"	<i>Section 283</i> possession "for somebody else", equivalent to <i>Section 187</i>
Criminal law – personal drug possession in "small amount"	<i>Under defined aggravated circumstances a penalty of up to five/eight years may be imposed.</i>	n.a.	<i>Section 187a</i> <i>applied for personal possession, see note*</i> (1) Whoever possesses a narcotic drug or psychotropic substance or a poison in a greater than small amount without permission shall be punished by a prison sentence of <b>up to two years</b> or by a fine. <i>Under defined aggravated circumstances a penalty of up to five years may be imposed.</i>	<i>Section 284</i> <i>Possession of Narcotic Drugs and Psychotropic Substances and Poisons</i> Whoever, for his/her own use, in a "greater than small amount", without authorization, possesses (1) any addictive substance containing tetrahydrocannabinol, isomer, or its stereochemical variant (THC) shall be punished by a prison sentence of <b>up to one year</b> , a prohibition of undertaking a specified activity, or forfeiture of an item. (2) a narcotic drug or a psychotropic substance other than the ones referred to in Paragraph 1 shall be punished by a prison sentence of up to <b>two years</b> , a prohibition... (as per 1). <i>Under defined aggravated circumstances a penalty of up to eight years may be impose.</i>
Administrative law - personal drug possession in "small amount"	n.a.	Act No. 200/1990 Coll., on misdemeanours: Section 29: Misdemeanours in the health sector g) violation of the obligation concerning handling poisons, narcotic drugs, psychotropic substances, or other substances harmful to health. A fine of up to approx. 190 EUR may be imposed.	Act No. 200/1990 Coll., on misdemeanours: Section 30: Offences in the area of protection against alcoholism and other addictions j) possession of a narcotic drug or a psychotropic substance without authorization in small amount for his/her own use. A fine of up to approx. 580 EUR may be imposed.	Act No. 200/1990 Coll., on misdemeanours***: Section 30: Offences in the area of protection against alcoholism and other addictions j) possession of a narcotic drug or a psychotropic substance without authorization in small amount for his/her own use, k) cultivation of a plant or a mushroom containing a narcotic drug or a psychotropic substance in small amount for his/her own use. A fine of up to approx. 580 EUR may be imposed.
	n.a.	n.a.		

Table 1 (Continued)

Period	1950–1989	1990–1998	1999–2009	2010–present**
Law/by-law defining "small amount"	n.a.	n.a.	Binding Instruction of the Chief of Police	General Instruction of the Supreme Public Prosecutor
Quantities considered "greater than small amount" for cannabis	n.a.	n.a.	>0.3 g THC (20 joints of approx 1.5 % potency), >0.5 g methamphetamine, >1 g MDMA, >0.3 g cocaine, >0.5 g heroin (approx. 10 doses each)	>1.5 g THC (15 g dried herbal cannabis), >1 g methamphetamine, >1 g MDMA (approx. 10 doses each), >0.15 g heroin, >0.25 cocaine, >0.05 g psilocybin (approx. 5 doses each)
				>1.5 g THC (15 g dried herbal cannabis), >1 g THC (5 g hashish), >2 g metamphetamine, >1.5 heroin, >1 g cocaine, >4 pills or 0.4 g powdered MDMA, >40 psilocybin mushrooms
				the same as until 2013 (from 2010), except for cannabis (>1 g THC, 10 g dried herbal cannabis) and for methamphetamine (>1.5 g)

Note: \* Applied when "possession for someone else", as stated in Section 187, could not be proven without reasonable doubt (see Šámal, Půry, & Rizman, 2004). \*\* Additionally, Section 285 was introduced in 2009 and states the following: *Unlawful Cultivation of Plants Containing a Narcotic Drug or Psychotropic Substance*: Whoever, for his/her own use, in greater than small amount, without authorization, cultivates: (1) cannabis plants shall be punished by a prison sentence of up to six months, a fine, or forfeiture of an item; (2) a mushroom or a plant containing a narcotic drug or psychotropic substance, other than the ones referred to in Paragraph 1 shall be punished by a prison sentence of up to one year, a fine, or forfeiture of an item; under defined aggravated circumstances, a penalty up to five years could be imposed. According to Government Decree No. 455/2009 Coll., more than five cannabis plants is considered a "greater than small amount". \*\*\* Since 1.7.2017 these misdemeanours have been regulated by the Act on Addictive Substances No. 167/1998 Coll. (Section 39).

quantities per drug and per offender. Until 2010, only internal guidelines for the police and the public prosecutors were available in the decisions as to what a "greater" or "small" amount of a drug was, and the courts were obliged to consider all the circumstances of the offence (e.g. societal risks); no formally binding laws or by-laws were in place to guide the enforcement of the laws (Zeman, 2007).

*2010 – present: Additionally, personal cultivation "in small amount" decriminalized and higher quantities formally specified*

In 2010, a new Penal Code was adopted in the Czech Republic that had a greater focus on a formal ("as written") rather than material (i.e. considering the circumstances of the offence) concept of the criminal law. Regarding drug crimes, there were minor modifications which aimed to distinguish between different types of drugs, originating from recommendations made by a scientific evaluation of the 1999 change (Zábranský, Mravčík, Gajdošíková, & Miovský, 2001).

First, the criminal penalty for the personal possession of cannabis (in a "greater than small amount") was set lower than for other drugs (see Table 1); on the other hand, the maximum penalty for this offence committed under aggravated circumstances was increased. Secondly, personal cultivation of "plant drugs" was codified for the first time (a criminal offence if a "greater than small amount" is possessed, an administrative offence if this is a "small amount"); until then, personal (cannabis) cultivation was considered as possession for personal use, but sometimes also as (attempted) drug manufacturing.

Finally, to satisfy the formal nature of the new Penal Code, two government decrees specifying "small amounts for personal use" were introduced – one for personal possession and one for plant cultivation; in comparison with the amounts that were stated in internal guidelines before 2010, the threshold amounts for possession were larger for the majority of drugs. However, the Czech Constitutional Court annulled the decree pertaining to personal possession shortly afterwards (in 2013), with the argument that criminal liability cannot be set up by the government; instead, the Supreme Court has issued guidelines on the amounts that should be used in judicial cases (Zeman et al., 2015; Mravčík, 2015). Strangely, the decree pertaining to the cultivation of plant drugs has not been challenged and remains in place. The legal developments are summarized in Table 1.

## Conclusions

To summarize, personal drug possession was decriminalized in 1990 in what was then Czechoslovakia. Personal possession of "small amounts" of any drugs has remained decriminalized (an administrative offence) in the Czech Republic from 1990 until the present; the personal possession of a "greater than small amount" has been a criminal offence since 1999. The caveat of this provision has been the specification of a "greater than small amount", which has mainly been left to the discretion of law enforcement agencies, except for a period between 2010 and 2013 when it was specified in a by-law norm (and still is when it comes to cultivation of "plant drugs").

In 2010, the criminal penalty for personal possession of "greater than small amount" of cannabis was reduced and personal cultivation of cannabis (as well as other "plant drugs") was codified for the first time. This should be interpreted as a decrease or mitigation of criminal penalties and as gradual progression towards non-punitive drug laws rather than any major shift in the Czech drug policy.

The interpretation of the Czech drug laws will depend on the time frame taken into account and on the heuristics of whether the “glass is half empty” or “half full”. From the “glass half empty” perspective, the Czech decriminalization has been limited to “personal” possession since 1990 and was restricted to “small amounts” in 1998 and onwards. From the “glass half full” perspective, however, a proportion of drug possession – that for “personal use in a small amount” – has been decriminalized since 1990, and has remained so throughout the entire history of the post-communist Czech Republic.

### Acknowledgments

The authors would like to thank JUDr Petr Zeman, PhD. for clarification of the legal provisions pertaining to the 1990–1998 era.

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