Response


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In a recent contribution to the International Journal of Drug Policy, Cerveny 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” (Cerveny, Chomynova, Mravcik, & 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” (Stefunkova, 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” (Belackova, 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.


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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<tr>
<td>Personal drug</td>
<td>criminal offence</td>
<td>decriminalized</td>
<td>decriminalized for “small amount”;</td>
<td>criminal offence for “greater than small amount”</td>
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<tr>
<td>possession for personal use</td>
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<tr>
<td>Criminal law – drug possession “for others”</td>
<td>Section 187 possession “for somebody else”</td>
<td>Section 187 possession “for somebody else”</td>
<td>Section 283 possession “for somebody else”, equivalent to Section 187</td>
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<tr>
<td>Administrative law – personal drug possession in “small amount”</td>
<td>n.a.</td>
<td>n.a.</td>
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<td>n.a.</td>
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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/two years or a corrective measure or a fine.

2. Possession of Narcotic Drugs and Psychotropic Substances and Poisons

   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 up to one year, 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 two years, a prohibition... (as per 1).

   Under defined aggravated circumstances a penalty of up to two years may be imposed.

   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.

   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.

   Act No. 200/1990 Coll., on misdemeanours: Section 30: Offences in the area of protection against alcoholism and other addictions
   j) 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.
Table 1 (Continued)

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<tr>
<td>1950–1989</td>
<td>n.a.</td>
<td>n.a.</td>
<td>0.30 THC (20 joints) or approx. 15% potency, 0.5 g methamphetamine, 0.1 g MDMA</td>
<td>15 g THC (5 g hashish), 2 g methamphetamine, 0.5 g MDMA, 0.1 g heroin, 0.25 g cocaine, 0.8 g powdered MDMA, 50 psilocybin mushrooms</td>
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<tr>
<td>1990–1998</td>
<td>n.a.</td>
<td>n.a.</td>
<td>0.30 THC, 0.5 g methamphetamine, 0.1 g MDMA (approx. 10 doses each)</td>
<td>15 g THC (5 g hashish), 2 g methamphetamine, 0.5 g MDMA, 0.1 g heroin, 0.25 g cocaine, 0.8 g powdered MDMA, 50 psilocybin mushrooms</td>
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<td>1999–2009</td>
<td>n.a.</td>
<td>n.a.</td>
<td>&gt;0.3 g THC (20 joints) or approx. 15% potency, 0.5 g methamphetamine, 0.1 g MDMA</td>
<td>15 g THC (5 g hashish), 2 g methamphetamine, 0.5 g MDMA, 0.1 g heroin, 0.25 g cocaine, 0.8 g powdered MDMA, 50 psilocybin mushrooms</td>
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<td>2010–present*</td>
<td>n.a.</td>
<td>n.a.</td>
<td>&gt;0.3 g THC (20 joints) or approx. 15% potency, 0.5 g methamphetamine, 0.1 g MDMA</td>
<td>15 g THC (5 g hashish), 2 g methamphetamine, 0.5 g MDMA, 0.1 g heroin, 0.25 g cocaine, 0.8 g powdered MDMA, 50 psilocybin mushrooms</td>
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Note: *Applied when “possession for someone else”, as stated in Section 187, could not be proven without reasonable doubt (see Śmił, Pil, & Riman, 2004); “Additionally, Section 285 was introduced in 2009 and states the following: Unlawful Cultivation of Plants Containing a Narcotic Drug or Psychotropic Substance. Wherever, 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).”

**Conclusions**

To summarize, personal drug possession was decriminalized in 1998 in what was then Czechoslovakia. Personal possession of small amounts of any drugs has remained decriminalized (and the cultivation of cannabis has also been decriminalized since 1998). The current law, “Cultivation of Plants Containing a Narcotic Drug or Psychotropic Substance” (Government Decree No. 467/2009 Coll.) states that possession of more than five cannabis plants is considered a “greater than small amount.”

In 2010, the new Penal Code was adopted in the Czech Republic and the criminal code on the cultivation of cannabis was added. The Code states that personal use of cannabis is not punishable by criminal law. However, the cultivation of cannabis plants is punishable by administrative fines. The maximum fine for cultivation of cannabis plants is 70,000 Czech crowns.

The legal developments are summarized in Table 1. The legal developments are summarized in Table 1.
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

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References


