

Trávníčková, Ivana – Zeman, Petr:

Možnosti trestní justice v protidrogové politice I. (vývojové aspekty)

Criminal Justice Opportunities in Drug-Prevention Policy I. (Developmental Aspects)

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Summary

The basic aim of this research is to assess the mutual impact of changes in legislation and application of the specific measures studied, in particular criminal law and the development of drug crime and the drug scene in the Czech Republic since 1989.

One of the features of our approach in carrying out the research task was the endeavour to focus on areas which play a fundamental role in the operation of the criminal justice system in the wider context of anti-drug policy. We did not, therefore, attempt to make an exhaustive study of all possible aspects of the connection between criminal justice and anti-drug policy but concentrated on those areas where its impact clearly is or has been particularly strong in the period monitored, namely from 1990 to the present.

The subjects of the research carried out are:

- a) *measures in criminal law (and related areas of law) used since 1989 in prosecution of drug crime*
- b) *development of drug crime and the drug scene in the Czech Republic since 1989.*

Research methodology

In view of the considerable extent of the information and findings studied we have divided their presentation into two parts.

In this first part – the theoretical part – we wanted on the basis of description to extend and deepen knowledge concerning development of the drug scene and drug crime in the context of analysis of changes in criminal legislation.

The second – the empirical part – of the report will present the findings obtained from analysis of specific criminal records and a questionnaire conducted with various groups of experts dealing with the drugs issue, supplemented or adjusted by information obtained from interviews with them.

The second part of the report, including a summary of the results from both phases of the research, will be published in 2008.

The methodological focus applied in the theoretical part consists in:

- a) *analysis of legal regulations and the literature available*, which was used to obtain a comprehensive overview of the current state of knowledge concerning the legal measures used since 1989 in prosecution of drug crime
- b) *analysis of documentation of relevant state authorities* (for example, reports on the security situation, the annual reports of the Czech Police National Drug Enforcement Centre, reports of the Supreme State Prosecutor's Office, the annual reports of the Interdepartmental Anti-Drug Committee, the Government Board for Anti-Drug Policy Coordination, epidemiological reports of the Prague City Hygiene Centre, Prison Service documentation ...), which mapped important changes in the Czech drug scene and in drug crime
- c) *analysis of statistical data of the Czech Police and the Ministry of Justice of the Czech Republic on drug crime*, which determined features of the development of recorded drug crime and its prosecution.

Summary of the results of Phase I of the research¹

The Czech Republic, similar to the other European states, is attempting to restrict not only the use of drugs among the population but also problems associated with it, in particular drug crime. For this reason, in 1993 it approved the basic principles of a national anti-drug policy, which has progressively been updated. In addition, the current system for coordinating anti-drug policy through coordinators from the relevant authorities was created.

A key document approved by the Government is the national anti-drug policy strategy, which defines the basic starting points and directions for dealing with the problem of drug use in the Czech Republic. It forms the basis for creation and implementation of the anti-drug strategies of individual government departments and local, district and regional public administration authorities. The anti-drug policy strategy of the Czech Republic has been based throughout the period studied on a balanced approach to dealing with the problem of drug use in terms of repression, prevention, treatment and resocialising of drug addicts. Implementation of a rational anti-drug policy requires a comprehensive and coordinated approach and linkage between specific interventions, but also cooperation between the institutions concerned in dealing with other serious problems.

Since 1993, the anti-drug policy of the Czech Republic has undergone many changes, and a range of specific measures have been implemented in the fields of legislation, prevention, treatment and resocialising of addicts. Activity has progressively been intensified both in the field of legal repression and in the prevention field. Changes have also taken place in the drug scene in the Czech Republic over the past years, as a result of which new problems have arisen, and consequently also the need to seek new solutions. The key steps implemented in the period studied (outside the criminal justice field) can be outlined as follows:

- harmonisation of legislation with EU law
- adoption of Act No. 79/1997 Coll. on medicaments and on amendments and additions to certain related Acts (it regulates inter alia handling of medicinal preparations containing a narcotic or psychotropic substance or a precursor)
- adoption of Act No. 167/1998 Coll. on addictive substances
- adoption of Act No. 359/1999 Coll. on social and legal protection of children (inter alia this targets social and legal protection at children who use alcohol or other addictive substances)
- adoption of Act No. 258/2000 Coll. on protection of public health and on amendment of certain related Acts (it regulates inter alia hygiene requirements for the operation of health facilities and social care institutions)
- adoption of Act No. 379/2005 Coll. on measures for protection against harm caused by tobacco products, alcohol and other addictive substances and on amendment of related Acts (inter alia it regulates organisation and implementation of anti-drug policy)
- tightening of security conditions for entities dealing with addictive substances, preparations and precursors legally
- improvement of control mechanisms and involving local administration authorities in checks of health facilities and pharmacies; checks on entities requiring a Ministry of Health permit for dealing with narcotic and psychotropic substances (OPL) depends

¹ The purpose of this study was to create a theoretical basis for the empirical part of the research; the final report from phase II will also contain a summary of results from the research project as a whole.

on the current staff numbers in IOPL (Narcotic and Psychotropic Substances Inspectorate)

- a network of anti-drug coordinators, who work in district council offices and city and statutory town council offices. Council leaders and mayors have appointed anti-drug committees composed of representatives from key institutions to advise them. Anti-drug coordinators and local anti-drug committees initiate and coordinate anti-drug activities at local level in accordance with Government strategy
- building of a system of treatment and resocialising for drug users, which will ensure provision of key services throughout the Czech Republic.

So, as drugs and use of them began after 1990 to become a topic of interest in the media and in politics, and as a typical drugs scene began to develop in the Czech Republic, there was also intensification in the activities of legislators in the field of **anti-drug legislation**. It was also necessary for criminal law to respond to new forms of drug crime, all this in conditions of fundamental changes in the whole of criminal legislation relating to the transition to a democratic state based on the law, to the opening of frontiers, to linking the state in with international structures, with globalisation of life as a whole including criminality as part of it, with the arrival of new concepts as to how to approach dealing with crime (diversions, restorative justice...), the appearance of new threats or new forms of threat already known (global terrorism, organised crime...) and so on.

The section on changes in legal regulation in this area mentions a number of trends in legislation since 1990. The facts of drug crimes have been specified and amplified so as to cover different forms of illegal handling of narcotic and psychotropic substances. The effect of these facts was also extended to preparations containing narcotic and psychotropic substances and to precursors. In this connection we need to point out adoption of Act No. 167/1998 Coll., on addictive substances, which inter alia defined at the statutory level for the purposes of criminal law the terms narcotic substance, psychotropic substance, preparation containing a narcotic or psychotropic substance and precursor (although since April 2006 no list of precursors has been given directly in the appendix to the Addictive Substances Act, the Act refers to an immediately applicable European Communities regulation), and so replaced the previous definition given in Government Order No. 192/1988 Coll. The criminal offence of possessing drugs for one's own use (or their possession without proved intent to possess them for another person) was deleted from the Penal Code at the beginning of the period monitored, only to be restored at the end of the 1990s after much rather heated discussion in the form of the controversial provision in Section 187a of the Penal Code, introducing a relatively vague quantity criterion (quantity greater than small).

Between 1990 and 1998 there was a relatively severe increase in the length of sentences for drug crimes and greater differentiation between them in order to reflect better the differences in danger to society from particular forms of drug crime, particularly the typically greater seriousness of production and drug trafficking as part of (international) organised crime. In particular, in connection with this especially serious type of crime a number of provisions were introduced in Czech criminal law in the period under review which were to make the work of law enforcement authorities more effective (monitoring consignments, operational means of investigations...), or already existing provisions were amplified or made more specific (searches etc). Some of these changes also were to ensure more consistent respect for the rights and freedoms of parties in criminal proceedings (for example, incorporation of the legal regulation of phone tapping and records of telecommunications traffic in the Code of Criminal Procedure and later amendments to it).

A marked tendency in the period monitored was an attempt to allow for alternative solutions to individual cases. The sentence of community service was introduced, diversion and probation elements appeared in criminal proceedings, and these procedures also began to be used to a certain extent in less serious cases of drug crime. And finally we should not omit a clear trend to extend and specify legal regulation of legal relations with foreign countries in criminal cases. The constantly increasing internationalisation of crime is leading individual states to attempt to create, not only in the form of international agreements but also in domestic law, the preconditions for making cooperation between police and justice authorities from different countries as simple and effective as possible. The Czech Republic is no exception in this respect, and with the approaching entry to the EU and in the period after this effort was intensified still further.

When interpreting **statistical data** on crime we need to tread carefully; this applies especially to data on drug crime. In looking at statistics on drug offences recorded by the police, or regarding persons prosecuted, indicted and convicted for drug offences committed, we can form the impression that drug crime does not in the extent of its occurrence constitute a particularly serious problem in the Czech Republic in the context of the amount of crime in general. Drug crime represents long-term slightly more than 1 % of all criminal offences registered by the police here. The number of persons convicted of drug crime in the Czech Republic amounts over the last five years to ca 2 % of the total number of persons convicted, and in previous years was even fewer. Even so, the problem of drug crime cannot be trivialised.

A characteristic feature of drug crime, as what is termed “victimless” crime, is its high latency. It can be assumed that drug-related offences recorded in official statistics are only a small fraction of drug crimes actually committed. In addition to this, drug offences under Sections 187, 187a, 188 and 188a of the Penal Code in themselves represent only a small part of the criminal activities related to the principal problem, which is the use of illegal drugs. We need to take into consideration in this connection the far from negligible number of criminal offences committed under the influence of narcotic and psychotropic substances (violent, immoral and property crime) and in particular the crime of supplying drugs. And finally drug crime is only one of a range of mutually related socio-pathological phenomena accompanying the use of illegal drugs (organised crime, truancy, domestic violence, prostitution, passing on the HIV virus and hepatitis and so on). In this context we cannot underestimate the relatively low number of cases of drug-related offences recorded either.

As far as trends in drug crime are concerned, after a period of understandable and relatively significant rise in all basic indicators monitored in the 1990s (the number of criminal offences uncovered by the police, and the numbers of persons prosecuted, indicted and convicted), the situation began to change as we entered the twenty-first century. The number of drug offences uncovered started to fall year-on-year from 2000, except in 2002 (it is not possible to make a particularly reliable comparison with data from the previous period in view of the fundamentally different recording methodology, but in terms of a trend we can speak of a rise up to 1999); this was clear in the last three years. There has been a year-on-year decrease in the number of persons prosecuted and indicted since 2003, and in 2005 the number of persons convicted also fell for the first time in the period monitored. Nevertheless, the number of persons convicted for drug offences rose up to 2004, and much more compared with the figures for the total number of persons convicted in the Czech Republic between 1995 and 2004 (overall a slight rise). However, when we look at the clearly most commonly

committed drug offence, which is illegal production and possession of narcotic and psychotropic substances and poisons under Section 187 of the Penal Code, we can rather speak of stagnation for several years.

The structure of sentences imposed for particular drug offences, and also the extent to which unconditional prison sentences were imposed for them, naturally stemmed during the period monitored principally from the terms of imprisonment stipulated for these criminal offences and changes in them. The judicial statistics, however, also show certain indications of a possible change in the approach of courts in imposing sentences for drug offences, when organised drug trafficking in particular clearly progressively began to be judged during the 1990s as a very serious crime, and also a certain change in stipulating the type of sentence and its length could have been a response to this. Also, constantly more frequent imposition of a community service sentence became evident in the structure of sentences in the second half of the 1990s. Since 2004, the number of juveniles upon whom sentences were imposed by juvenile courts under Act No. 218/2003 Coll. has been recorded separately, but as yet without distinctions being made between the types of penal measures, which affects the proportional figures for other sentences.

Approximately 1300 persons have been legally convicted for drug crime over the last few years in the Czech Republic. The number of drug offence cases uncovered by the police fell below 3000 in 2005 for the first time since 1997. However, in view of the nature of the acts prosecuted under the provisions of Sections 187, § 187a, § 188 and § 188a of the Penal Code, it can be assumed that only a small part of this type of crime is reflected in the official statistics. We should also note the fact that the statistical data provide only a quantitative view of this problem. The experiences of individuals and institutions concerned with the detection and prosecution of drug crime include information and trends which are not reflected in the statistics.

One of the important aspects, and one that is regularly monitored in developed countries, is **development of an illegal drugs scene**, mapped by using data from epidemiological studies and data on the purity and relative prices of particular types of drug. Drug epidemiology has been performed by the Central Drug Epidemiology Office at the Prague City Hygiene Centre since 1995. The basic source for current relative prices is the annual reports of the National Drug Enforcement Centre and General Customs Directorate. A separate section of our study is devoted to progressive developments in the Czech drugs scene and current trends in this area.

Findings of law enforcement authorities concerning the **drug crime situation in the Czech Republic** confirm the view that a standard drug scene was created here of the “Western European” type during the 1990s, including a drugs market, with certain differences arising particularly from the geographical position, history and demographic structure of the country. In connection with general opening up of a drug scene, a drugs market was also opened up at the beginning of the period monitored. However, as a result of intensified interest from law enforcement authorities and clearly also stricter legislation, those committing drug crime progressively began to use constantly more conspiratorial methods of activity. New forms of drug crime appeared and established themselves here, including forms typical for the activities of organised crime groups. The opening of borders enabled an influx of “classical” drugs, which hardly ever appeared on our market before 1990, and also a wide variety of “novelties” (GHB) progressively came into the Czech Republic. An important role in the drug crime field here was assumed by groups of foreign nationals. As a result of the

operation of foreign or international criminal groups in the Czech Republic and also Czech criminals abroad, effective international cooperation in detecting and prosecuting drug crime became increasingly more important.