

Trávníčková, Ivana – Zeman, Petr:

**Možnosti trestní justice v protidrogové politice II. (empirická část)
Criminal Justice Opportunities in Drug-Prevention Policy II. (Empirical Part)**

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Summary

The submitted study is a continuation of the research task “Possibilities of Criminal Justice in Drug Policy”, the first part of which (theoretical introduction to the subject) was published in an ICSP edition in 2007.

Subject matter

The subject matter of the performed research comprises:

- a) *means of criminal law (and related areas of law) applied after 1989 to prosecute drug-related crime*
- b) *development of drug-related crime and the drug scene in the Czech Republic after 1989.*

The **aim** of this study was to obtain a broader perspective on current criminal justice options in drug policy, as well as specific information on the monitored issue. It sought to do so not only with regard to the relevant legal norms but also (and more importantly) by looking at their application in practice.

Research methodology

The empirical part of the study presents findings from selected criminal files and from questionnaire research among experts in Czech criminal justice system bodies who were actively involved in the drug issue. The Czech Republic currently has a specialised police unit with nationwide powers (National Drug Squad of the Czech Police Criminal and Investigation Service), and other bodies operating within the criminal justice system often have earmarked experts who focus on the protection and enforcement of the law with regard to drugs.

The empirical research consisted of three basic phases: 1. an analysis of the selected criminal files, 2. anonymous questionnaire research among various groups of experts specialising in the drug issue (in order to limit the possibility of wrongly interpreting certain facts obtained, we had additional consultation at the stage of assessing the results), 3. interviews with representatives of individual law enforcement bodies who have been involved in the drug issue in the long term.

The aim of the analysis of criminal files was to obtain information on the practical approach of law enforcement and judicial bodies when prosecuting drug-related crime, as well as on the characteristics of crimes that were dealt with in the investigated cases, and on their perpetrators. We concentrated on selected provisions of criminal law and the degree and form in which they were applied in individual cases.

When selecting the sample of criminal files we proceeded from statistical data on the structure and territorial distribution of drug-related crime¹ and the technical-organisational feasibility of the research. In order to obtain a longer temporal background we decided to request files in cases that were completed upon a final judgement in 1999, 2002 and 2004. We contacted fifteen district courts (incl. the Municipal Court in Brno) and four regional courts (incl. the Municipal Court in Prague) with a request that they allow us to examine a specified number of criminal files on individual drug-related crimes in cases where the judgement became final in the said three years. For statistically less frequent offences pursuant to Section 188 and Section 188a of the Criminal Code² it proved difficult to acquire the relevant criminal files as in normally accessible judicial statistics the data on individual crimes are given by territory according to the jurisdictions of the individual regional courts, i.e. with no possibility to determine which district courts in the relevant regional court jurisdiction actually conducted the proceedings on the monitored crime.

The questionnaire research, which formed one of the main methods of empirical research, was performed on a sample of 168 respondents comprising specialists from the following professional groups: staff from customs administration, police officers from the National Drug Squad, public prosecutors, judges and employees of the prison service.

Although the main goal was to compare opinions of individual groups of experts on criminal justice options in drug policy, the questionnaire's formulation made it necessary to take into account the different roles of respondents within the criminal justice system. As a result, four types of questionnaire were prepared, containing questions of a more general nature suitable to compare the views of individual groups of experts, while other questions were differentiated according to the individual professions of respondents.³ The aim was to obtain the most concrete and realistic aggregate of opinions in the relevant professions on the development of the drug issue and the possibilities available to criminal justice in tackling drug crime. Experts could add their own opinion or experience to practically every answer to any question. This obviously helped to make the individual answers more specific and often also resulted in a coherence in the supplementary information across the individual expert groups. The number of questionnaires returned in the individual groups and the comprehensiveness of some of the information testified to a significant interest not only in the drug issue but also the research performed.⁴

Increased attention had to be paid to the selection of respondents for field research, as only a limited range of experts are involved closely in the monitored issue within the individual professional groups (with the exception of the National Drug Squad officers). For the purposes of our research we decided to approach suitable respondents from the following criminal justice system bodies: the courts, the public prosecutor's offices, the National Drug Squad of the Czech Police Criminal and Investigation Service⁵, the Czech Customs

¹ The source was the Statistical Year-Book of Crime for the relevant year. Ministry of Justice of the Czech Republic.

² These crimes nevertheless appear quite often in drug-related crime, mostly in conjunction with the offence pursuant to Section 187 of the Criminal Code. In judicial statistics the offender, prosecuted, charged and convicted for several drug-related offences, committed in a single-act or multiple-act concurrence, is recorded only once, namely for the most serious of the concurrent crimes, which is usually an offence pursuant to Section 187 of the Criminal Code, at the expense of other drug offences.

³ An identical questionnaire was intended only for experts from the ranks of public prosecutors and judges.

⁴ The relevant versions of the questionnaire are given in an annex to this report.

⁵ The National Drug Squad is a unit of the Czech Police Criminal and Investigation Service with powers in the whole of the Czech Republic; it specialises in the detection and documentation of drug-related crime (mainly

Administration⁶, the Czech Prison Service⁷. The basic criterion for choosing respondents from the individual groups of experts was only their expertise in the drug issue. Other characteristics of respondents (e.g. their age or gender, the status of the workplace in which respondents worked within the structure of the relevant criminal justice body) and other socio-demographic indicators (e.g. relating to the territory that falls within the local competence of the body in which the person works) were not considered decisive with regard to the information we sought to obtain.

The collected data were processed on the SPSS special software for statistical analysis, and information of a qualitative character had to be interpreted through a content analysis.

Summary of the empirical part

The procedures followed by law enforcement and judicial bodies, including the application of criminal legislation in specific cases, are reflected in criminal files. An **analysis of the files** produced more detailed information on the practical approach of law enforcement bodies in prosecuting drug-related crime, as well as on the characteristics of crimes that were handled in the investigated cases, and on their perpetrators. However, it should be pointed out that, for various, at times wholly understandable reasons, much interesting information on the monitored issue does not appear in the criminal files. This concerns data on the procedures followed by law enforcement bodies in what is termed the forefield of crime (especially the police's operative activity), as well as more detailed information on the role that drugs have played in the life of an offender, or on whether they influenced his/her previous criminal career, and if so, how.

The criminal files that made up the analysed sample related to cases in which the judgement based on the relevant merits of the case became final in one of the three years – 1999, 2002 or 2004. With some exceptions (increase in the proportion of offenders using narcotic and psychotropic substances (NPS) who also used other types of drugs) there were no evident differences between the samples from the various years that would indicate a definite trend (the samples were too small for this). The great majority of files predictably concerned by far the most numerous drug-related crime, i.e. the offence of the illegal production and possession of narcotic and psychotropic substances and poisons pursuant to Section 187 of the Criminal Code.

The criminality in the analysed files chiefly consisted in the distribution of NPS or their sharing among users. This mainly involved the illegal disposal of pervitin (metamphetamine), cannabis and heroin. The sample revealed cases of a *modus operandi* referred to in this respect by police and customs bodies, such as the dispatch of drugs from abroad to the offender's own or another address, the use of flights from South America to smuggle cocaine, or the transport of drugs into the Czech Republic in body cavities.

organised). We are aware that street drug crime in particular is also dealt with by units of the Czech Police with territorially limited powers. Nevertheless, the National Drug Squad cooperates with these units as part of its activity and processes data received from them. Its employees may therefore be presumed to have a sufficiently comprehensive overview of the monitored issue from the perspective of a police body.

⁶ Under legally-stipulated conditions, the relevant customs authorities have the status of a police body (Section 12 paragraph 2 of the Code of Criminal Procedure), inter alia in proceedings on crimes consisting of the import, export or transit of narcotic and psychotropic substances.

⁷ Staff from the Czech Probation and Mediation Service were not included among respondents due to the hitherto almost negligible proportion of cases concerning drug-related crime or "crime perpetrated for the purpose of obtaining a drug" in all cases solved by the Probation and Mediation Service – for more on this see Trávníčková I., Zeman P.: Possibilities of Criminal Justice in Drug Policy I. IKSP, Prague 2007 p. 9.

The criminal files relating to the offence pursuant to Section 187a of the Criminal Code predominantly concerned less serious offences consisting in the possession of drugs in an amount that was found to be larger than small. In some cases, the facts suggested that the offenders did not possess NPS solely for their own needs; the law enforcement and judicial bodies nevertheless did not investigate this possibility further in criminal proceedings. Only a very small part of offenders - drug users - had been in contact with any of the organisations providing treatment or care for addicts. This also applies basically for offenders from the analysed sample of files in cases relating to crimes pursuant to Section 188 and Section 188a of the Criminal Code.

The first part of the questionnaire research among experts from the criminal justice system involved in the drug issue focused on the development and assessment of the Czech drug scene.

Experts presented their experience and opinions regarding the rate of drug-related crime registered and not registered over the last 10 and 5 years, with most of them believing that drug-related crime is still growing, albeit only slightly in recent years, according to the prevailing view of judges. One of the characteristics of this crime is latency, which is an important factor in drug-related crime. Experts counted among the main reasons relating to latency the fact that drug-users do not see themselves as victims, or injured parties, but on the contrary cover up for the offender. It is also often an activity of organised crime, which is characterised by the sophisticated fashion in which crime is perpetrated. In this respect, experts were asked to give a prognosis for the consumption of individual types of drugs and the reasons for their consumption. Experts do not expect any major fluctuations in future trends of consumption for individual types of drugs as they foresee rather a consolidation of trends in drug use in the EU. All groups of experts were consistent and relatively thorough in their comments on the reasons for the accessibility of drugs in the Czech Republic, both from a societal perspective (changes in the drug market, prevention) and obviously with regard to the possibilities offered by legislation and criminal sanctions in prosecuting drug-related crime.

Specialists from the National Drug Squad and customs officials were almost unanimous in their description of the problems involved in seizing drugs in the Czech Republic due to the important recent changes that have particularly affected this area. From the same groups of experts we obtained interesting information on the perpetrators of drug-related crime currently operating in the Czech Republic, as well as on projected future developments. A disconcerting finding is the view of experts who believe that there will be an increase in the number of offenders among juveniles and young adults of Czech nationality. In their opinion, the greatest increase can probably be expected among members of socially more vulnerable strata and individuals of Roma ethnicity. These experts also expect increased involvement in the production, distribution and trafficking of NPS among foreign nationals who have been engaged in this form of crime hitherto, and also do not rule out the increased involvement of Russian-speaking offenders (who until now have mainly specialised in what is termed “money laundering”), Turks, who have direct access to heroin sources, and also citizens from Israel and the Jewish ethnic group who have a strong financial background.

The satisfaction of respondents with the state of Czech anti-drug legislation differed among the individual professional groups, with judges providing generally the most

favourable assessment, whereas employees of the National Drug Squad and the prison service were as a rule the most critical. The mentioned shortcomings in legislation included aspects relating specifically to drug-related crime (lenient sentences for drug offences...), as well as general problems in our criminal law (complicated procedural regulations, the inapplicability of results of certain acts from pre-trial proceedings for purposes of evidence in proceedings before the court etc.). From their answers it was apparent that respondents clearly recognise the indivisibility of good quality legislation and its adequate application.

Respondents were generally positive in their appraisal of the development of criminal law as it pertains to the detection and prosecution of drug-related crime. They appreciated that in this area our legal system is also gradually introducing internationally-acknowledged and proven standards and provisions. They expressed their satisfaction with the wording of the definitions of drug-related offences, although they see a definite problem in the current interpretation of the element of drug-related crime resting in obtaining a particular benefit. They would consider the most appropriate form for defining the quantitative elements of the facts of drug-related offences relating to their extent or size to be their direct quantification in an interpreting provision to the Criminal Code. Respondents across the professional groups considered the severity of sentencing for drug-related crimes to be appropriate or lenient. It was confirmed that, despite the undoubted influence of the Supreme Court's case law, certain interpretational ambiguities still persist in the legal qualification of cultivating cannabis plants without an ascertained intention to distribute the substance further. Respondents were more negative in their attitude to any categorisation of drugs for purposes of criminal law according to the degree of risk to health and society connected with their use; National Drug Squad officers, public prosecutors and customs administration staff were particularly strong in their opposition.

Certain professional differences were apparent for some individual aspects of legislation where various solutions present different demands on individual professional groups. An example was the reaction to the need to provide a precise transcription of conversation in an official report on the recording of telecommunications traffic, with only judges wanting this to be mandatory (entirely understandably). Respondents were extremely supportive of the new criminal procedural provisions affecting mutual legal assistance with foreign countries.

The issue of drugs in prisons was also covered. Experts from the prison service, public prosecutors and judges estimated the rate of drug abuse in prisons for juveniles, women and men, and the popularity and scale of penetration of individual NPS in them. The same groups of experts also proposed measures to restrict the penetration of drugs into prisons. Experts from the prison service assessed existing programs, or the conditions and possibilities that prisoners can make use of during their imprisonment to fight drug addiction. They assessed the idea of placing offenders in what is termed drug-free zones, existing tests of convicts' urine and the possible introduction of substitute treatments for heroin (or opiate) users while they serve their sentence. Respondents had not yet reached a uniform opinion on the idea of placing prisoners in a drug-free zone; the majority (66%) rejected the introduction of substitute treatment during the prison sentence.

The selected professional groups were generally positive in their assessment of each other when it came to the activity of individual criminal justice system bodies with regard to tackling drug-related crime. Respondents nevertheless found certain shortcomings in the work of other branches, both of a systemic nature (lack of personnel and material resources etc.) and in the level of work performed by individual persons (underestimating the gravity of the

drug problem, lack of consistency in clarifying all the circumstances of criminal activity etc.). It is encouraging to note that in all monitored cases the assessment of cooperation between the various branches of the criminal justice system in detecting and prosecuting drug-related crime was more favourable than average, i.e. that respondents were generally satisfied with the degree of cooperation. There were understandable differences in views on the competences of customs authorities in criminal proceedings on drug-related crime, which customs officials themselves indicated as being unsatisfactory, indeed pointlessly limited compared with the powers of the police. Nevertheless, respondents from both professional groups assessed positively the cooperation between customs authorities and the police in detecting and investigating drug-related crime.

Translated by: Marvel s.r.o.