

Title: Criminal legislation of drug abuse

Author: Mgr. Markéta Tukinská

Supervisor: Prof. JUDr. Jiří Jelínek, CSc.

Abstract:

Drug abuse is a worldwide problem. The production and illegal trade of drugs is the domain of international organized crime. Illegal weapon trade and human trafficking often follow these activities. The drug abuse means serious threat for the society. It doesn't mean danger only for the drug addict, who is suffering from health problems, which are following the addiction, family and friends alienation, financial problems and losing its place in the society, drug addicts often need medical care, they commit crimes to earn money, because they are unable to do it legally, and they are often carrying and spreading lots of infectious diseases. It's not only the people living on the fringe of society who become drug users. Due to the very rapid lifestyle, consumerism, desire for experiences, which are more intense, even managers who want to be more efficient at their work or young people desiring the amusement are becoming drug users. We should not forget the most famous and abused drug – alcohol. The real danger of this drug is in the social tolerance of drinking alcohol and also its abuse, because not to drink is abnormal for our society. It is not so rare to see on the news that the youth was found drunken after Saturday evening party in need of immediate medical assistance. There are plenty of celebrities, who are facing the alcohol dependence. Currently the abuse of various pills (as hypnotics or anti-depressants) is spreading. Modern man wants the instant solution for all his problems and the magic-pills are offering such solution. The danger is increasing in case of combining pills and alcohol together. Nootropics are almost unexplored and potentially dangerous substances contained in many energy drinks and food supplements.

The society is searching for many ways to prevent the drug abuse. Many schools are offering precautionary lectures to their students, drug addiction treatment centres can be found in most of the cities. Precautions are unfortunately not enough to prevent the society from drug-threat so in the most severe cases the criminal justice system has to intervene.

This thesis is composed of six chapters. Chapter one is contains the historical

introduction to the phenomenon of drugs in the society, the types of drugs and the list of most frequently abused drugs.

This thesis focuses on the criminal legislation of drug abuse. As mentioned above drug abuse represents the worldwide problem. That's why the chapter focused on the criminal legislation contains also the overview of international drug control treaties that gave the framework for national drug control law. The European drug legislation is also included in this chapter. Some terms used in the national law are nowadays defined by this EU legislation so the legislation itself is becoming more and more important. The thesis contains also the historical overview of criminal legislation relevant to the state territory of the Czech Republic from its creation until today. This part contains the actus reus of drug crimes and also other legal institutes related to drug abuse such as insanity, protective treatment or security detention.

The more in-depth view is given to the Act No. 140/1961 Coll., the Criminal Code (Trestní zákon), which was valid for more than 40 years till 31<sup>st</sup> December 2012 and according to the principle of non-retroactivity it should be used in many criminal cases committed before 1<sup>st</sup> January 2010. Each section is followed by relevant case law that helped to interpret these sections and knowledge of these case laws is essential for practical application of sections.

The main point of this chapter is the Legislation Act No. 40/2009 Coll, the Criminal Code (Trestní zákoník) that came into force 1<sup>st</sup> January 2010. The definition of drug („addictive substance“/„návyková látka“) is the same as was in the Act No. 140/1961 Coll. Some experts criticized this term because addiction is not the main characteristic of addictive substance. The term was preserved because there was no problem in his application.

In the common part of the Criminal Code we can find the institutes of protective treatment, security detention or the release from punishment for the drug-abusing offenders. The very interesting question is: „How to judge the insane offender who committed the crime and who came into the state of insanity with help of addictive substances „in another way“?“

In the special part of Criminal Code we can find a list of crimes concerning the drug abuse. In the Chapter IV (Crimes against the family and children) section 204 is the crime „Giving alcohol to the child“, Chapter VII (Crimes against the public order), Division 1 (Crimes of general endangerment) section 274 – „The endangerment under the influence of addictive substance“, section 283 -

„Unauthorised production and other handling of narcotic and psychotropic substances and poisons“, section 284 - „Possession of narcotic and psychotropic substances and poisons“, section 285 - „Unauthorised cultivation of plants containing narcotic or psychotropic substances“, section 286 - „Production and possession of articles for the unauthorised production of narcotic and psychotropic substances and poisons“, section 287 - „Spreading of drug addiction“. Regarding the fact that this Criminal Code is in the power for more than two years it was possible to show some problems that are connected to its application. In connection with section 283 there is the issue of scale of committing this crime („substantial scale“, „significant scale“ or „large scale“). Problems are also connected with the linguistic expression of the norm in the section 285. This regulation should affect the unauthorised cultivation of plants containing narcotic or psychotropic substances but the purpose for which the plants are cultivated is not written in this norm. That's why there also exists an interpretation that says that in case of cultivation of plants for obtaining the narcotic or psychotropic substance for one's own use this action should be evaluated as the attempt to commit crime as per section 283. This interpretation is not in accordance with the aim of the legislation as expressed in the explanatory memorandum to the Act No. 40/2009 Coll. The thesis is also dealing with the way the legislator defines the crime by using section 289 which is giving the authorisation for the government to stipulate some characteristics of these crimes in a decree. The crime defined in section 360 - „Inebriation“ is also connected to the drug abuse.

Regarding to the fact that the Act No. 418/2011 Coll., on The Criminal Responsibility of Legal Personalities came to the force 1<sup>st</sup> January 2012 this legislation is also mentioned in the thesis.

The thesis contains also the criminal legislation of abuse of drugs of Slovak Republic and France and the comparison with Czech legislation is made.

Chapter three illustrates the approach of the general courts to these types of crimes according to the experience of author who is advocate. To show the approach to decision-making by first instance and regional courts the real cases are used.

The separate issue is the punishment for drug crimes perpetrators and the question whether the judges are using all alternatives of punishments with respect to the rule that imprisonment is the punishment „ultima ratio“. Chapter four illustrates summary punishments that were imposed on the drug-crime perpetrators and also

discusses the suitability of each form of punishment.

Chapter five looks at jurisprudence of higher courts in relation to various crimes.

There is also the actual case law made by Supreme Court of Czech Republic and Constitutional Court.

Chapter six is dealing with the possibility of legalization of drugs or at least the „soft-drugs“.

Keywords: criminal law, drugs, drug abuse, punishment