

III.3. DECRIMINALIZATION OF THE ILLICIT POSSESSION OF SMALL QUANTITIES OF DRUGS AND THE SUSTAINABLE REDUCTION OF DRUG CONSUMPTION

ENDLESS DEBATE

Recently, a growing number of states have decriminalized the illicit possession of small quantities of drugs for non-distribution purposes. Discussions are taking place on this matter in various countries. Arguments for and against the decriminalization of such acts are relevant now and are likely to be relevant in the future. A clear understanding and evaluation of these arguments is critical for national parliaments to make reasonable and sustainable decisions in line with the represented values.

In victimology, the use of drugs is referred to as one of the types of “crimes without victims” where an immediate victim of the crime is absent, and the society is the main victim of the crime. Victimless crimes, such as drug use or driving while under the influence of alcohol, are under debate in various countries. The criminalization, prevention and control of such acts depend on the maturity of society and politicians, the prevailing criminological approaches, the perception of the damage and risks, the existing relationship between the individual and society and the prioritization of freedom, health, responsibility and security. There are many arguments for and against the criminalization of such acts, and unequivocal decisions are hardly possible in the social sphere.

“The statements by member states at the UN General Assembly Special Session (UNGASS) on the world drug problem in 2016 show that countries are significantly divided on a number of topics central to drug policy reform” (Csete and Wolfe 2017, p. 91). Approaches in individual EU member states are so different that a common EU drug policy is hardly possible (Blickman 2014, p. 16).

Despite the abundance of research and scientific publications supporting the need to decriminalize the illicit possession of small quantities of drugs for non-distribution purposes, modern drug policy is primarily based on the prohibition of such substances in most states (Kammersgaard 2019, p. 346).

Many states have decriminalized the illicit possession of small quantities of drugs for non-distribution purposes. However, some states are introducing stricter liability for such acts. For

example, the Danish Parliament adopted a zero-tolerance policy in 2004 and reintroduced penalization of the possession of illicit drugs for personal use after 35 years of depenalization (Houborg *et al.* 2020, p. 1).

Liability for possession of small amounts of narcotic or psychotropic substances for personal use has been tightened in Lithuania since 2017. Until 2017, double regulation existed in Lithuania, where liability for the possession of small amounts of narcotic or psychotropic substances for personal use was proscribed both in the code of administrative offenses and the criminal code. From 2017, with the entry into force of the new Code of Administrative Offenses, administrative liability for the possession of small quantities of narcotic drugs or psychotropic substances for personal use was abolished. Thus, offenses that could formerly be qualified as violations of the administrative law acquired the status of only criminal offenses from 2017.

The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) publishes reports by the Member States on the existing legal regulation on drugs. According to EMCDDA data of June 16, 2022, the possession of a small amount of illicit narcotic substances for personal use was criminalized in 18 (67%) European Union countries: Austria, Belgium, Bulgaria, Cyprus, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Lithuania, Luxembourg, the Netherlands, Poland, Romania, Slovakia and Sweden. Some of these countries had exceptions in the criminal prosecution, depending on the type and quantity of the drug or characteristics of the person. Possession of a small amount of illicit narcotic substances for personal use was not criminalized in 9 (33%) European Union countries: Croatia, Czechia, Estonia, Italy, Latvia, Malta, Portugal, Slovenia and Spain (EMCDDA 2022)

Possession of narcotic or psychotropic substances is a criminal offense in the Republic of Lithuania (in June 2022) and has always been qualified as a criminal offense during the years of independence (from 1990). The illicit possession of small quantities of drugs or psychotropic substances for non-distribution purposes is criminalized in Article 259 (2) of the Criminal Code of the Republic of Lithuania and may be punished by community service, a restriction of liberty order, a fine, or arrest (no custodial sentences).

In 2020, the governing parties of the newly elected Parliament of the Republic of Lithuania took the initiative to decriminalize the illicit possession of small quantities of drugs or psychotropic substances for non-distribution purposes, with a view to transpose liability for such acts to the Code of Administrative Offenses. Lithuania had numerous discussions, parliamentary deliberations and public campaigns on the decriminalization of such acts. One of the main arguments for decriminalization, heard frequently in the media and in the explanatory note to the draft decriminalization law, was that the refusal to apply criminal liability for the possession of small quantities of drugs or psychotropic substances for non-distribution purposes will prevent people from experiencing custodial sentences and other risks associated with limitation of their liberty (The Seimas of the Republic of Lithuania 2021a, p. 5). However, imprisonment for such criminal offenses is not provided for and cannot be applied in Lithuania.

In the third and final stage of consideration of the amendment to the Law of November 11, 2021, the Parliament of the Republic of Lithuania refused to approve the proposal to decriminalize the possession of small quantities of drugs or psychotropic substances where the holder has no intention to sell or otherwise distribute them (The Seimas of the Republic of Lithuania 2021b,

p. 8). All of this shows that the arguments for and against decriminalization of such acts are relevant now and are likely to be so in future – not only in Lithuania, but in other countries as well. It is important to analyze the arguments of the opposing groups, which could ground decisions by members of parliaments of different countries. When enacting or amending laws, parliaments refer to the results of research and public opinion, evaluate various factors and the impact of changes on individuals and the society, consider the interests of various social groups and the society and follow the values recognized by the electorate.

The arguments of the supporters and opponents of decriminalization of such acts and the results of scientific research are examined here. The aim is to answer the question of whether the decriminalization of such acts sustainably reduces drug consumption and threats and harm to both society and the environment.

Decriminalization here is understood as “de jure removal of criminal sanctions for the possession of drugs for personal use” (Stevens *et al.* 2019, p. 31).

ARGUMENTS FOR AND AGAINST DECRIMINALIZATION

This discussion focuses primarily on arguments against the decriminalization of illicit possession of small quantities of narcotic substances for non-distribution purposes as they are rare in recent scientific publications, the majority of which are intended to justify decriminalization.

Is drug abuse a health problem?

Supporters of decriminalization argue that drug abuse is a health problem (Csete and Wolfe 2017, pp. 91–94) and therefore control instruments must be humanistic, i.e., aimed at helping rather than penalizing addicts. Criminalization automatically means the persecution of addicts, and drugs are used by hundreds of millions of people around the world. The overwhelming majority of individuals who use illicit drugs do no significant harm to other people. The Portuguese National Strategy for the Fight Against Drugs, adopted in 1999, was grounded on the values of humanism and pragmatism (Gonçalves *et al.* 2015, p. 199).

Advocates of criminalization claim that decriminalization has little to do with humanism, and that drug abuse is not just a health problem: it is irresponsible behavior and poses a serious danger to the individual and the society, for which drug addicts must be held accountable. Specialists warn about the risks of drug use and negative effects to the user and the society. Drug addicts are aware of the consequences and liability, but choose to ignore the warnings and head down the path that can lead to addiction. Drug users expect that they will never develop addiction and will be able to quit at any time. However, the doses and substances that were previously enough gradually become insufficient. A stronger drug is needed to achieve the same effect. Finally, the addiction gets out of control and comes to the point of needing a dose at any cost. This aspect distinguishes drug trafficking from all other criminal activities in terms of dangerousness. The danger is far greater than for conventional crimes such as theft or violation of public order. When it develops into an

addiction, drug use leads to other crimes (theft, robbery, etc.) committed in order to obtain the required dose at any cost. Therefore, drug abuse is not just a health problem – it is also a criminal problem, as the addiction does not repeal the addict’s legal capacity. Before becoming addicted, a drug user can hardly be considered to have a medical condition. It is therefore critical to prevent drug use as early as possible and as strictly as possible before the user becomes fully addicted. It is important to create a social environment (including criminal liability along with other preventive measures) where drugs are perceived as a gross evil, with potentially very bad consequences, so that nobody has the temptation to even try them. Without attempting to use drugs, there is no chance to become addicted.

Depending on the situation, drug users and addicted people need medical treatment, social, psychological and/or material assistance. Such treatment or assistance is funded by the public purse. On the other hand, drug addicts owe the society for their education, health care, security, public infrastructure, social, cultural, and other services. Like ordinary citizens, they are expected to work and pay taxes to the national budget to allow the state to fund pension schemes, education, health care, etc. Instead of contributing to the state budget, drug users become dependent on state support themselves. Can we call this humanism? Does humanism exclude responsibility and tolerate harm? If someone violates the norms of conduct, acts in a dangerous manner, and causes harm to their surroundings, the state’s reaction cannot be limited to just providing assistance. Such a reaction is unacceptable; it would violate the sense and principles of justice. As consistent advocates of non-committal assistance suggest, we should abolish all criminal law and give the wrongdoer, who commits dangerous and harmful acts, everything that they want in the expectation they will stop acting so. Humanism is about perceiving the harm suffered by society, mitigating the harm, understanding responsibility and acting in a responsible way. Humanism is such that, under certain circumstances, we impose suspended sentences, probation or even exemption from criminal liability. Humanism also involves the fact that, apart from prosecuting and punishing offenders, we also help them to rehabilitate, reintegrate into society and deal with addiction. Humanism is inseparable from the sense of duty and responsibility for one’s acts.

Proponents of decriminalization emphasize that drug use is often predetermined by a traumatizing experience, desolation or social exclusion. Therefore, instead of punishment, we should tackle the social problems that create conditions favorable for drug use.

Supporters of criminalization, on the other hand, argue that similar social factors predetermine not only drug abuse, but any criminal conduct as well; however, we punish those who engage in criminal behavior. Most individuals punished for criminal offenses commit offenses because of the social conditions they live in. Social factors are decisive. The social environment is not always the free choice of the individual – it is often predetermined by the place of birth, the parents, their social opportunities and attitudes, education, income, etc. However, unfavorable conditions are never an excuse for criminal conduct. Where there is a choice of behavior, there is also a responsibility for the choice leading to harmful dangerous consequences. This is one of the key aspects of the concept of criminal justice.

The impact of criminalization on the availability and use of drugs

Based on the conducted research, supporters of decriminalization claim that criminalization has no impact on the availability and use of drugs (King and Mauer 2006; Grucza *et al.* 2018; Červený *et al.* 2017). Therefore, criminal liability for the illicit possession of small quantities of narcotic drugs for non-distribution purposes is an excessive measure.

Proponents of criminalization point out that some studies show no effect of decriminalization, while others (Miech *et al.* 2015; Mgebrishvili *et al.* 2021) reveal that decriminalization of drug use and possession increases their availability and consumption. Other studies (Hughes and Stevens 2010; Williams and Bretteville-Jensen 2014) show that decriminalization leads to increases in use among some groups of users (adults) and leads to decreases in use among other groups (adolescents). Debates on the legalization of the use of cannabis for entertainment imply that this contributes to the increase in the use of cannabis (World Health Organization 2016).

In 2001, Portugal decriminalized the use/possession of small quantities of drugs. In 2001–2007, the prevalence of lifetime and last 12 months use of almost all illicit drugs in Portugal increased (Hughes and Stevens 2010, p. 1007). This increase was observed in all age groups older than 19 years. In 2001–2007, the prevalence of lifetime use of any drug in Portugal among people aged 15–64 increased 58% (p. 1007). Of course, decriminalization is not necessarily the only reason for this increase. Between 2000 and 2005, the estimated prevalence of intravenous drug use in Portugal decreased from an average of 3.5 to 2.0 users of intravenous drug per 1,000 population aged 15–64, or from 2.3–4.6 to 1.8–2.2 (p. 1006). The number of drug-related deaths in Portugal fell in 2002 compared to 2001, but increased between 2001 and 2008 (p. 1015).

The results of meta-studies (Scheim *et al.* 2020; Melchior *et al.* 2019) on the effects of decriminalization are also ambiguous, with some showing an increase in drug use and some showing no significant effect. Generally, in the social sciences, the impacts of processes and phenomena are very difficult to measure, because their effects may not necessarily appear quickly, but over a long period of time. People's attitudes towards behavior are inert. Because of this inertia, the impact may not be visible in studies that measure effects over a short period of several years. Tens or hundreds of various factors are acting simultaneously. The same factor in combination with other factors may encourage a crime in one situation and preclude a crime or have no effect in another situation or in combination with different factors. Therefore, decriminalization may have specific effects in certain countries and completely different effects in other countries. We can never be sure that decriminalization will universally have the same effect on drug use as it has in Portugal.

Various studies on the impact of stiffer penal policies show that tougher penalties for the most grave and violent crimes have little or no deterrent effect (Dölling *et al.* 2009; Ghasemi 2015). However, meta-analyses of such studies show that penalties have the greatest deterrent effect in cases of non-serious, non-violent criminal offenses and administrative offenses (Dölling *et al.* 2009; Ghasemi 2015). The offenses we are discussing here are exactly of this kind, and therefore the deterrent effect of strict criminal liability is very likely to be effective in their case. Criminal laws have a limited deterrent effect on violators. Only some people avoid committing criminal acts in view of criminal liability (i.e., they understand the illegal nature and harmful effects of such acts or avoid being punished). It is exactly those people that criminalization has an effect upon.

Arguments based on studies (Hughes and Stevens 2010) comparing similar countries maintaining different decriminalization policies without estimating complementary factors, such as drug prevention and control policies or social assistance and medical treatment, are debatable in terms of methodology. For example, decriminalization of the possession of drugs can be followed by stiffer prevention of drug use and stronger control of drug distribution. Arguments (King and Mauer 2006; Grucza *et al.* 2018) referring to specialist opinions (albeit closely related to the problem under discussion) based on the statistics on seized drug quantities, arrests or criminal investigations, are also debatable. For example, the growing number of criminal offenses related to the illicit possession of small quantities of narcotic drugs or psychotropic substances for non-distribution purposes was used in Lithuania to ground a conclusion that stiffer liability for such offenses is inefficient (The Seimas of the Republic of Lithuania 2021c). Administrative liability was abolished on January 1, 2017, leaving only criminal liability enforceable.

However, only a very small proportion of real crimes is recorded. The registered crime rate alone or changes in the number of arrests is insufficient to evaluate the actual changes in the crime rate. For example, only around 2.7 percent of cases of illicit possession of narcotic drugs or psychotropic substances for non-distribution purposes were registered in Lithuania in 2016, compared to the numbers based on the data of public opinion polls.

Calculations are made as follows: In 2016, the prevalence of drug use among respondents aged 15–64 in Lithuania was 3.1% (Drug, tobacco and alcohol control department 2017). At the beginning of 2016, Lithuania had 1,916,284 inhabitants aged 15–64 in total (Statistics Lithuania 2016). This shows that around 59,405 inhabitants used drugs in Lithuania during the last year ($1,916,284 \times 0.031 = 59,405$). However, only 1,590 criminal offenses of illicit possession of narcotic or psychotropic substances for non-distribution purposes were registered in Lithuania in 2016 (Informatics and Communications Department under the Ministry of the Interior 2017), or 2.7% of the cases compared to the data by public opinion polls. The calculation did not take into account repetitive cases and the applicability of administrative liability along with criminal at that time.

The registration of offenses associated with drugs and psychotropic substances is highly dependent on police activity and available resources. Usually, there are no victims who can report the crime to the police because the immediate victim is the drug user. In general, the registered crime rate is more likely to reflect the activity, available resources and opportunities of the police to register and investigate crime than the actual crime rate, changes in which are not necessarily reflected in the registered numbers.

When dealing with issues of scientific justification of criminal policy, it is not enough to rely solely on the official crime statistics and it is necessary to refer to complex data on drug use and distribution, obtained from regular representative public surveys and other sources at the same time. It is important to find out what proportion of the population has used drugs (it is not appropriate to criminalize acts that the majority of the population commits), how widespread the distribution of drugs is and how these indicators change over time. If these indicators of drug use and distribution increase over a long period of time (this seems to be the case in Lithuania), especially if the official crime rate statistics approve this increase, it means that the applied prevention and control measures fail to stop the spread of drug use. In such a case, the application of criminal liability as an instrument of last resort (*ultima ratio* principle) is justifiable.

It is well known in criminology that effective prevention and control of criminal conduct requires the application of complex measures – as many instruments as possible, targeting as many different types of factors as possible – since the number of factors is massive. Particular importance must be given to the strongest factors. Inhibition or elimination of a single or several criminogenic factors by introducing a single or several instruments may be ineffective, as many other criminogenic factors will remain effective. The supporters of criminalization argue that the complex, harmful and dangerous issue of drug trafficking must be tackled by the application of all possible preventive and control measures, including criminal penalties. As an instrument of last resort, criminal liability extends upon those who ignore other preventive measures. If the prevention of drug use is successful, then criminal liability is not required; it is applied only in rare cases. It is not consumption, but possession that is punished. In addition, drug use and the drug trade are interrelated. Distribution requires demand (consumption), and consumption requires distribution. Therefore, by preventing consumption, we are likely to prevent the distribution and production of drugs and ensure a cross-cutting effect. Having introduced criminal liability, we cannot ignore measures of prevention, treatment and social assistance. All of these measures must be introduced concurrently. In Lithuania, criminal liability for the possession of drugs is intended to apply and applies along with the application of preventive measures and treatment. The prevention of health-affecting drug use is a key issue. Criminal liability is not and cannot be a substitute for prevention, treatment and assistance measures.

Harm-reduction policy

Proponents of decriminalization tend to rely upon a harm mitigation strategy. The main objective of the harm reduction policy is not to cut down on drug use, but to reduce drug-related negative effects. Instead of punishing, they suggest to reduce the harm suffered by drug users and the society. Punishment does not automatically reduce the damage. Decriminalization of drugs reduces the number of drug-related deaths (overdosing, fatal infections, etc.). Research shows that drug-associated social harm has lessened after decriminalization of the possession and use of illegal drugs (Gonçalves *et al.* 2015).

Advocates of criminalization agree that decriminalizing drugs can potentially reduce the harm caused by drugs to the user. However, decriminalization fails to reduce the prevalence of consumption, and therefore consumption-associated problems (medical treatment, social assistance, etc.) are left to the public. There are numerous medical studies that reveal the harm of various illicit drugs – such as cannabis, one of the least harmful and most prevalent drugs (Wilkinson *et al.* 2016). The damage constitutes the essence of the concept of illicit narcotic drugs. For example, narcotic and psychotropic substances are defined in Lithuania as natural or synthetic substances included in the register of controlled substances, approved by the Ministry of Health, the harmful effects or abuse of which result in serious health disorders manifesting in mental and physical addiction and grave adverse effects on human health (The Seimas of the Republic of Lithuania 2021d). Because of the damage to health, these substances are banned by the state. Damage and consumption are interconnected. If there is no consumption, there is no damage. Prevalence, intensity and changes in consumption are therefore important subjects of drug policy.

There are many ways to reduce drug-associated damage, but one of the most reliable is to reduce the overall level of drug consumption. Criminalization hampers the overall level of drug use by restricting legitimate use, increases the non-monetary cost of consumption and makes drug use expensive (Weatherburn 2014). The non-monetary cost of consumption includes the risk of arrest, the possibility of police harassment, the risk of assault by other drug users who want to steal their stash, and the risk of violence from dealers who want to enforce payment of unpaid debts (Weatherburn 2014).

It is difficult to determine the exact extent to which social harm is caused by narcotic drugs (Lievens *et al.* 2017). Some researchers conclude that there is no conclusive evidence on the results of cannabis legalization (Fischer *et al.* 2020). Cost-benefit assessments contain many loopholes and render no clear answers (Shanahan and Cyrenne 2021). Other researchers conclude that it is impossible to say which policy is the most effective in minimizing drug-associated harm because the harm is very versatile and individual users are very different (Weatherburn 2014).

Supporters of decriminalization argue that criminalization incurs significant additional costs upon the criminal justice system (Moore 2005). Decriminalization of criminal offenses associated with the illicit possession of drugs for non-distribution purposes would also help reduce the costs of criminal investigations and criminal trials incurred by the criminal justice system.

Supporters of criminalization suggest opposing arguments. Research shows that \$1 spent on drug treatment in a penitentiary institution saves \$6 (Welsh *et al.* 2012). No doubt, the police, the public prosecutor's office, the judiciary and penitentiary institutions would benefit from decriminalization of drugs. It is in the interest of these institutions to reduce their workload. However, when making a decision, we have to consider its possible consequences. Lithuania has already been in a similar situation. On January 1, 2015, Lithuania decriminalized petty theft where the amount of loss suffered was €38–€114, qualifying the wrong as an administrative offense. What were the consequences? The police may choose to ignore such thefts as the investigation of criminal offenses is given higher priority than administrative offenses.

According to the supporters of criminalization, disclosure and investigation of crimes associated with narcotic drugs and psychotropic substances should be a high priority for the police, adequate to the potential harm and seriousness of such offenses. Such acts should not be qualified merely as health problems, which can be tackled by medical treatment, assistance and prevention alone. In addition, we need to know the exact capacity of treatment, assistance and prevention systems to provide quality services. In Lithuania, for example, the provision of such services faces many problems in terms of scope and quality.

Proponents of criminalization argue that fines imposed for criminal offenses associated with the illicit possession of drugs for non-distribution purposes would allow at least partial recovery of the costs incurred by the state. It would be logical that, as far as possible, society would not pay for the inappropriate behavior of individuals, the damage they cause, the danger they pose, and the assistance and other services provided to them, but they themselves would also pay indirectly at least partially. Of course, a large proportion of drug users have very limited opportunities to pay the fine. It would therefore be appropriate to share the experience of other countries such as Germany (Jehle 2019), where a fine is imposed in the form of so-called day units. If the convicted fails to pay the fine, it is replaced by a penalty of imprisonment for the number of days equivalent to

the imposed fine. The imprisonment may also be converted into community service. The application of criminal liability for criminal offenses associated with the illicit possession of drugs for non-distribution and the introduction of a system of penalties like that in Germany would ensure the inevitability of criminal liability, which is not the case in a situation where such acts are decriminalized and are subject to administrative liability. If a person fails to pay an imposed administrative fine in the absence of personal property and/or funds (Article 676 of the Administrative Code), the fine cannot be changed into arrest or imprisonment, and community service is only possible with the consent of the offender. Attending programs/courses of prevention, early intervention, medical treatment or rehabilitation may only be ordered with the consent of the offender (Article 30 of the Administrative Code). Thus, administrative liability in the form of an administrative penalty, prevention of drug addiction, medical treatment or rehabilitation can be easily avoided.

Proponents of decriminalization refer to assertions that a criminal record can adversely affect one's potential future income and career opportunities (Fagan and Freeman 1999).

On the other hand, a criminal record has a deterrent effect, as supporters of criminalization argue. Potential offenders also avoid committing criminal offenses because a criminal record may undermine their future prospects. Negative effects manifest not only in the criminal record itself (damage to the reputation), but also in the need to take part in court proceedings. The least serious criminal offenses, such as the illicit possession of small quantities of narcotic drugs or psychotropic substances for non-distribution purposes, should entail judicial proceedings, but should not result in a criminal record. This is now the case in Lithuania.

Proponents of decriminalization refer to the popular argument, well-known in criminology, that social problems should preferably be tackled by means other than criminal penalties, because the latter often cause more harm than benefit. Criminal liability has a significant side effect – stigmatization of individual citizens and the problematic rehabilitation of the sentenced. Criminalization of drugs contributes to the social exclusion of drug users, puts them at risk of losing their jobs and hampers the allocation of public funds necessary to deal with drug-related damage.

Supporters of criminalization agree that social problems are better dealt with by reference to measures of a non-criminal nature; however, the alternative measures are sometimes insufficient for solving certain problems. When preventive and control measures fail to prevent the spread of drug use and drug-related harms, severe punitive measures should be applied, while understanding the adverse side effects and introducing measures to minimize the latter. This provision extends not only on the case of drug trafficking, but also on dealing with any other criminal offenses. Criminalization incurs additional costs on the criminal justice system, but prevents the consumption of drugs and drug-related harms. Criminalization also acts as a guideline for social behavior. Criminalization conveys the message that wrongful acts are unacceptable, dangerous, harmful to society and punishable by law.

According to supporters of decriminalization, prohibited drugs are more expensive, so it is logical to assume that criminalization pushes the expenses of drug addicts up and encourage them to commit crimes in order to afford drugs (Weatherburn 2014).

Those in favor of criminalization agree that the average price of illicit drugs in Portugal decreased between 2001 and 2008 following the decriminalization of the use/possession of small quantities of narcotic drugs in Portugal (Hughes and Stevens 2010). However, they notice that there are other

factors as well. Lower prices of drugs increase the availability of and access to drugs and, consequently, the risk of addiction. Drug addicts are always at risk of losing their income, leading, as a consequence, to them committing crimes in order to afford a dose.

Environmental protection and sustainable development

Supporters of decriminalization claim that counter-narcotics policies can work in opposition to policies intended to protect the environment and enable sustainable development. The areas of land needed for the cultivation of narcotic plants are often created by the destruction of forests, which are crucial to the sustainability of the world's ecosystems. However, the destruction of narcotic plants in their growing areas causes even greater damage to ecosystems, as the plants and ecosystems in those areas are destroyed. As a result of such anti-narcotics methods, the cultivation of narcotic plants moves to other, more remote, isolated places, where the forest is destroyed and narcotic plants are grown again. Due to this displacement effect, the fight against narcotic cultivation further contributes to deforestation. The eradication and prohibition of narcotic plants pushes drug growers into remote areas that are havens of biodiversity, including national parks and nature reserves. The presence of violent criminal organizations in protected areas can discourage park rangers from visiting them and weaken their protection. (Malinowska-Sempruch and Rychkova 2015, pp. 12, 15–16).

On the other hand, the cultivation of narcotic plants and the production of narcotic substances pollute the environment. The more narcotic substances are grown, produced and consumed, the greater damage to the environment. Damage includes clear-cutting of forests, destruction of plant and animal habitats, ecosystem pollution and unsustainable water use. Toxicification of the environment includes the improper or illegal usage and disposal of fertilizers, pesticides, and chemical compounds used in the production of drugs. The usage of illegal fertilizers and pesticides in illicit crop growth results in the poisoning of wildlife and the indirect toxicification of watersheds. The cultivation of some narcotic plants (such as marijuana) requires a lot of water, which leads to unsustainable use of it. Indirect effects of drug production include biodiversity loss, ecosystem degradation, theft, violent crime, drug addiction, drug enforcement and treatment costs, and government destabilization. Preventive, not reactive, actions must be implemented to stop the production of illicit drugs in their initial stages before ecosystem injury occurs (Burns-Edel 2016, p. 11). The cultivation of non-narcotic plants can also be harmful to the environment. Instead of narcotic plants, it is better to grow plants that are necessary and useful for people and that do not cause so many negative consequences.

Losses or benefits for organized crime?

Proponents of decriminalization emphasize that the criminalization of drugs promotes the development of the black market. “The drug market is a major source of income for organized crime groups (OCGs) in the EU, with a minimum estimated retail value of €30 billion per year” (EMCDDA

and Europol 2019, p. 13). Legalization of the use, production and trade in drugs would obliterate the main source of revenue for organized crime. Prohibition of the production, distribution and use of narcotic drugs creates favorable conditions for illegal income from organized crime.

However, decriminalization of the possession of illegal narcotic substances for non-distribution purposes does not eliminate the conditions for organized crime to profit from illegal drugs, as supporters of criminalization argue. As long as these offenses remain illegal (subject to administrative liability rather than criminal liability), the conditions for organized crime to benefit from drug trade remain favorable. Moreover, decriminalization of such offenses and their qualification as subject to administrative law create better conditions for the distribution of illicit drugs, since the possession of drugs incurs no criminal liability, and the purpose of distribution is difficult to prove. Decriminalization of the illicit possession of narcotic drugs for non-distribution purposes increases the number of drug users, at least within some groups. The more consumers there are, the greater the demand and the greater the probability of addiction is. Organized criminal groups do their best to take advantage of this. It is in the interest of organized crime to maintain high levels of drug use prevalence, intensity and addiction. Organized crime would be unable to benefit if potential users refused to use or even try drugs. The possession of narcotic drugs for non-distribution purposes may be fully legalized. This would reduce the potential for illegal gains from organized crime as drugs could be obtained legally. However, organized crime would still have opportunities to benefit from drugs by trading at a lower price than legal dealers. Organized crime would be able to profit from illegally sold drugs, much like it profits from smuggled cigarettes or arms. Even if we manage to completely eliminate the possibility of profiting from drugs, organized crime is likely to lose only one source of revenue – the drug market. Thus, organized crime is likely to survive. The question is whether it is worth destroying one of the revenue sources of organized crime by means of total legalization of drugs at the cost of likely growth in drug use and drug-related harm to individuals and society.

Criminalization, human rights and social solidarity

Proponents of decriminalization argue that drug use is the right of an individual. Hughes and Stevens (2010) emphasize that decriminalization is for reasons of human rights, social solidarity and acknowledgement of the failure of punitive policies. Nations recognize rights to citizenship and limit interference by the state in the private lives of citizens. Decriminalization does not inevitably lead to rises in drug use. The choice to decriminalize is not simply a question of the research. It is also an ethical and political choice of how the state should respond to drug use. Decriminalization of illicit drug use and possession does not appear to lead automatically to an increase in drug-related harms. Nor does it eliminate all drug-related problems, but it may offer a model for other nations that wish to provide less punitive, more integrated and effective responses to drug use. We need to stop talking about drugs as if they are a moral evil – the problem of drug use is highly exaggerated.

Proponents of criminalization argue that there are no rights without duties, except for natural rights and cases when a person cannot yet have duties – when they are very young, etc. Help and

medical treatment is rendered to the addict by the community, which uses public funds to support a person who has been warned about the potential harms and consequences of drug use but acts contrary to the warning. This raises a question of values, namely – what is more important: the rights of an individual or the interests of the society? In making their decisions, politicians must take into account and consider the needs not only of the individual, but also of the society. An individual is definitely supposed to exercise the right to use drugs, but the society, in its turn, has the right to punish such individuals for the harm caused to the society.

CONCLUSIONS

Various studies suggest contradictory arguments for decriminalization of the possession of small quantities of narcotic drugs for non-distribution purposes. There are no solid grounds to argue unequivocally that the decriminalization of such acts is necessary until the proportion of drug users in the state has reached a critical threshold when the criminalization of such acts becomes inappropriate due to their high prevalence.

Decisions on criminalization or decriminalization may be predetermined by the values supported by the legislator as to what is more important: freedom of individuals, opportunities to enjoy life to its full, and society's responsibility to deal with subsequent problems; or enforcement of criminal liability against individuals who cause danger or damage to the society.

The use of narcotic drugs negatively affects and endangers both the individual and the society. Decriminalization of the illicit possession of small quantities of drugs for non-distribution purposes does not solve the problem of reducing drug use. Studies show that decriminalization can result in both the stability of or an increase in consumption of individual substances in individual groups of users.

Decriminalization is for the benefit of organized crime as it is only likely to increase the number of users and improve opportunities for the drug trade.

The examined research results and the arguments of the supporters and opponents of criminalization do not give grounds for concluding that decriminalization of the illicit possession of small quantities of drugs for non-distribution purposes is a sustainable solution that reduces drug consumption, threats and harm to the society and the environment.

The choice between criminalization and decriminalization of the illicit possession of narcotic drugs for non-distribution purposes is not just a research-based decision. It is, at the same time, a political and value-based decision made by the legislator.

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