

Report on the
International Research Project

"Illicit Drugs and Drug Offences

—

New Challenges and Developments for European Criminal Law Politics (IDDO)".

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1. Executive summary and conclusions

This draft report summarizes the results of two years international research project "**Illicit Drugs and Drug Offences - New Challenges and Developments for European Criminal Law Politics (IDDO)**".

The study covered three European countries - Austria, Poland, and Spain. It includes an analysis of the national drug related legislation, and of its implementation and application in practice. It explains national policies for the treatment of substance abuse. Furthermore, it included the evaluation of drug laws and policies by practitioners both from the law enforcement as well as from the treatment sector. It also includes an analysis based on the evaluation of drug addicted offenders undergoing health related measures. The basic presumption of the project can be summarized as follows: The core point of handling drug addiction and drug related criminal delinquency is to take into account that drug addiction is a psychiatric disorder and a chronic disease.

The study supports the application of a treatment oriented approach to drug related delinquency. Comparing Austria, Poland, and Spain, in the latter a clearly treatment oriented approach is applied and strongly supported both by the professionals from law enforcement and the medical sector. Although in Poland and Austria the legal situation is to a certain extend comparable, the application in practice differs broadly. Whereas in Austria there is a strong focus on exit strategies from criminal proceedings for drug addicted offenders, in Poland this rarely happens.

A hindrance to an adequate treatment of drug addicted offenders in practice is the missing co-operation between the judicial and the medical sector. For instance, in Austria, only 11 percent of the judges agreed that lifelong opioid substitution is considered to be an adequate treatment of drug addicted offenders, whereas 79 percent of all physicians and other treatment providers supported this evaluation. In comparison to that in the permissive treatment oriented Spanish system, both 90 percent of the judges interviewed and 85 percent of the treatment providers considered lifelong opioid treatment as an adequate measure. In Poland 39 percent of the public prosecutors, 24 percent of the judges and 75 percent of the physicians and other treatment providers considered a lifelong opioid substitution to be adequate.

The overall results of the project can be summarized as follows:

a. The statistics of drug related criminality depends on the de-/criminalization policy as regards the handling of drugs. Where drug possession or consumption is penalized these behaviour dominate statistics on drug crimes.

→ Statistics are influenced by intensity of controls. Drug crimes pictures a statistics dominated by a high crime clearance rate. Therefore there is a high conviction rate in case of drug crimes.

b. Drug addiction and related criminal behaviour demand for an interdisciplinary co-operation and understanding between the law enforcement/judicial sector and the treatment sector.

→ Whereas prosecutors/judges tend to consider their co-operation with treatment facilities to be sufficient physicians/therapist tend to disagree and to describe the co-operation as insufficient.

→ Raising awareness of the judicial system for medical knowledge needs to be improved. This can be underlined by the fact that only 11% of all Austrian judges/prosecutors responding to the IDDO professionals' questionnaire considered a lifelong opioid substitution to be adequate whereas 79% of all Austrian physicians questioned agreed that this might be adequate. In comparison to that both 90% of all Spanish judges/prosecutors and 85% of all Spanish physicians proved that fact. Taking into account the liberal treatment oriented approach of Spanish drug policies in comparison to the restrictive but alongside treatment oriented approach in Austria this might be interpreted as an indicator that a treatment oriented approach needs sufficient awareness raising also in the judicial sector.

→ The quality of medical/psychological expert opinions in criminal proceedings needs to be optimized. Guidelines and more structured information according to evidence-based results are needed for interdisciplinary understanding.

c. It is important to differentiate between addiction without /with psychiatric co-morbidity versus criminal behaviour.

→ Exit strategies from criminal proceedings towards health related measures have to be provided in all stages of proceedings.

→ Criminalization and law enforcement shall focus on drug trafficking instead of drug consumption. Yet, also in the latter case drug addiction shall be tackled by health related measures instead or besides imposing severe sanctions.

→ The severity of an addiction and of co-morbidities has to be assessed when deciding on criminal charges, on guilt, and on sanctioning if applicable at all.

d. De-penalization of drug consumption will contribute to more efficient approach of law enforcement in drug crimes.

→ Imprisonment is rarely considered to have a preventive effect. Only Austrian judges/prosecutors tend to believe in a individual and general preventive effect of punishing drug consumption.

→ Drug consumption should at least be de-penalized. Administrative sanctioning as they are applicable in Spain for drug consumption in public will be sufficient.

→ De-criminalization of drug crimes is contested according to the study results. Whereas a considerable big group pleads for de-criminalization of 'soft drug', i.e. cannabis, at least others oppose this proposal, mainly but not only those from the judicial sector. It is argued, mostly by jurists, seldom by physicians, that the threat of criminal sanction may contribute to compliance with health related measures. Yet, a broad common sense seems to be that drug consumption should not be punished by prison sentences.

→ Prison sentences typically will be ordered due to drug trafficking offences or due to violent crimes related to drug addiction.

e. Relapses are an integral part of the disorder like in many other chronic diseases.

→ In general relapse should not be considered as failure of health related measures. Whereas judges/prosecutors tend to see the fact that health related measures are already ordered in the past physician oppose that opinion.

f. It is important to strengthen the social environment of drug addicts.

→ A weak social environment is considered to be a hindrance to ordering health related measures instead of punishment. Contrariwise a stabile social environment is deemed to be in favour of ordering health related measures (hrm).

g. A liberal treatment oriented approach is convincing.

→ Whereas 79% of the Austrian prosecutors/judges questioned and 64% of the Austrian physicians/therapists stated to be satisfied with the laws on health ordering health related measures only 15% of the Spanish prosecutors/judges and even only 9% of the therapists/physicians considered the law on ordering hrm to be sufficient. Yet, asked what should be changed Spanish participants agreed that in the already liberal treatment oriented Spanish law possibilities for ordering hrm should be broadened. Opposite to that Austrian judges/prosecutors tended towards a more strict approach and Austrian physicians/therapists answered indefinite. Conclusion can be drawn that an already liberal treatment oriented approach as applied in Spain seems to be convincing both for the judicial and for the treatment sector. In Poland 53% of the public prosecutors, 37% of the judges and only 3% of the physicians and therapists are satisfied with the current legislation on ordering health related measures. Although legislation in that field has been revised during the project implementation period it becomes obvious that not only nearly all practitioners from the treatment sector (97%) but also from the judiciaries (judges 61%, public prosecutors 53%) demand for extending the possibilities to order hrm.

- **Health related measures tackles the problem (drug addiction) at the bottom, whereas imprisonment tackles the problem at the effects.**
- **“Exit strategies” shall be available at any stage of criminal proceedings and not limited only to minor offences.**
- **Law enforcement and sanctioning must focus stronger on drug trafficking instead of drug abuse.**
- **There is a strong need for improving the interdisciplinary co-operation and understanding between the medical and the law enforcement sector.**