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SUMMARY

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CRIMINAL CONTROL OF DRUG USERS

In this doctoral thesis the criminal control of drug users is analysed. The focus of interest lies on the drafting of laws, their interpretation and application. The control of drugs differs in a decisive way from the control of other toxic substances, as drugs fall under penal regulation. In Finland all drug-related activities have been criminalised, including the use of drugs and the possession of small quantities of drugs for own use.

Discussions about drugs have ordinarily been flavoured by moral indignation, and even by a feeling of panic that an atmosphere approving of drugs would spread. Attitudes towards drugs have been highly emotional and fearful. This can also be seen when analysing societal decision-making. One can still talk about drugs as “the good enemy”, as phrased by Nils Christie and Kjetil Bruun. During the past 12 years there has been a change of emphasis in drug policies, whereby attempts at remedying drug problems no longer solely rely on criminal control. In the Drug Strategy of 1997 harm reduction was put forward as one solution to increased drug-related problems. Among others, needle exchange programmes and substitution treatment became established. Notwithstanding this, drug policies have simultaneously developed in two different directions. Although a number of measures aimed at reducing harm have become established practices, this has been paralleled by stricter repressive control.

Continuing Disagreement about the Penalisation of the Use of Drugs

There has been a lively debate on whether or not the use of drugs should be criminalised. The use of drugs was made a penal offence through a decree in 1966, when Finland adhered to the Single Convention on Narcotic Drugs. Since then the rules concerning drug offences have been reformed three times. This research is built around these three legislative projects. The drug act passed in 1972, at the height of the first drug wave, triggered

a dispute about the necessity for criminalising drug use. In the 1990s the rules concerning drug offences were reformed as part of a comprehensive reform of the penal code (Chapter 50 – Narcotics offences (1304/1993)). At that stage the question about the severity of the penalties for drug use stirred disagreement. In the third reform where new prerequisites were introduced for petty offences, (654–657/2001) agreement was hard to find on suitable sanctions for the use of drugs.

During the work on each reform opposing views were advanced regarding the need to criminalise drug use, and also whether it would serve a useful purpose. From a legal point of view it is hard to justify the criminalisation of drug use. The penal system is not used to force people to adopt a healthy life style. It is, furthermore, a general tendency to strive to use penalties sparingly and to avoid paternalistic rules. Equally, it is generally known that the criminalisation of drug use causes harm, as being subject to control may cause more harm to people than drugs do. In this thesis colourful statements about drugs made by Members of Parliament are conveyed from Parliamentary debates. Time and again, when a bill is passed, widely opposing views have had to be accommodated, and the end result has always been a compromise. The use of drugs has been criminalised, but at the same time it has been emphasised that the rules concerning waving punishment should be applied to drug users.

To Wave Measures

The waiving of measures is part of the penal sanctions system. It can be seen as the mildest measure among criminal sanctions, whereby a person who has committed an offence avoids a penalty that the legal authorities would otherwise impose. This decision may be taken during different stages of the criminal procedure either by the police, the prosecutor or the judge. In drug-related crimes the legislator has given the implementers a permissible extent of interpretation as to what kind of sanction to impose on the drug user. In this research an investigation was made of how the sanction practices were shaped.

In legal science it is seen as an ideal that the legal order is coherent and without internal contradictions. Approached from the perspective of sociology of law, this research reveals that law does not present itself as a totality that strives towards consistency and coherence, as different agents present conflicting recommendations for interpretation and deliberately take diverging decisions. This became very clear in the analysis of how the practices of waving measures were shaped.

The analysis reveals that the police over decades have been quite unwilling to apply the rules concerning the waving of measures in criminal cases involving drugs. The police have considered it important to intervene in drug users' activities. The analysis of police practices showed that the prohibition of drug use has also been quite effectively implemented. The control of drugs has focussed on catching drug users. Statistics on drug offences is to a major part made up of cases involving drugs for own use.

The historical analysis conducted in this thesis reveals that waving punishment has always been a very sparsely used sanction for drug offences. During the 1960s–1980s the prosecutor also shared this position, generally held by the police, as there were very few cases where prosecution was waived. In the early 1970s courts waived punishment fairly frequently. It was then seen appropriate to waive sanction for minors and petty drug users. Gradually the practice became more severe and drug use would normally result in a fine. It is assumed that the change in legal practises might be due to an increase in the age of drug users, but also to more rigorous attitudes towards drugs among judges. Since then waving punishment remained a marginal phenomenon.

Not until the 1990s did the waving of measures in criminal drug cases become more frequent. This was due to a change in prosecutors' practices, as they increasingly waived prosecution for petty drug offenders. Through the reform of penalties for drug offences in 2001, the police was empowered to impose fines on drug users. After this reform sanctioning practices became more severe. While it became commonplace to fine drug users, there was simultaneously a considerable decrease in decisions to wave prosecution. Presently a minor fine is ordinarily imposed for the use of drugs, through a summary penal order proceeding.

The Significance of Prosecutors as Decision-makers in Criminal Policy Matters

To apply the rules concerning drug offences involves legal interpretation. Legal interpretation has traditionally been made by a judge. However, in this research the question of legal interpretation is approached from the prosecutors' perspective in order to highlight prosecutors' changed status regarding the consideration of sanctions. An effect of most reforms introduced during the 1990s, is an increase in the role of prosecutors as decision-makers in matters involving criminal policy. The role of prosecutors is thereby not solely confined to prosecuting in court, as they have been given important new tasks. In the context of legal science this is

an interesting phenomenon. There has been a discussion, whether prosecutors now have assumed the role of a judge when they independently take decisions on questions pertaining to the consideration of sanctions. This implies decisions about sanctions such as waiving measures, as well as decisions about a penalty imposed through a summary penal order proceeding. Both are central when analysing sanctions imposed on drug users. Therefore there is a particular need to wave measures in criminal drug cases, the reasons for which are advanced in this thesis.

Through the 2001 reform of drug use the police was given the possibility to fine drug users through a summary penal order proceeding. This poses new challenges for the consideration of sanctions, as the use of alternative measures to criminal ones has been emphasised. Instead of a fine, juvenile users should be reprimanded and drug abusers in need of care should be directed to treatment. This research reveals that after the reform of drug use the sanctioning practices have, notwithstanding, become more severe.

The Problems Involved in Considering Sanctions

In practice, the summary penal order proceeding does not favour an independent assessment by the prosecutors, as the prosecutor will ordinarily confirm a fine proposed by the police. In the Finnish legal system, the possibility to have a summary penal order examined by a court largely serves as a legal guarantee for a suspect, if the suspect wishes to make use of this possibility. In practice, this possibility is, however, very seldom used. This research reveals that due to the summary penal order proceeding, the drug user loses in practice the possibility to receive a decision about waving measures. The drug user equally loses the benefit of a combined penalty in certain cases of multiple offences. This being the case, particularly drug abusers will bear the brunt of the problems inherent in the system, as they might continuously be fined through a summary penal order proceeding. They are thereby deprived of the merits of a combined penalty as separately imposed fines are bigger than if they were handled together, either in a summary penal order proceeding or in court.

It was, for a long time, possible to convert all unpaid fines into imprisonment if the drug abuser, due to a weak economic position, was unable to pay the fines. In the process of converting unpaid fines into imprisonment, there is neither consideration about the offences behind the conversion, nor is the question raised whether there should have been a combined penalty for the offences. After the introduction of a reform in 1

October 2008, fines imposed through a summary penal order proceeding can no longer be converted into a prison sentence (578/2008).

Contradictory Policies

During past years the criminal sanction system has been in a state of turmoil, where a new kind of balance has been sought between the generality of penalties and individual prevention. More attention has been paid to the offender, which can be seen in the development of new sanctions such as community service and juvenile punishment. It is hoped that the new sanctions will be more effective in preventing recidivism than a prison sentence. Special preventive traits are accentuated in regard to offenders abusing drugs. In the present simplified procedures it is, however, in practice difficult to make a proper consideration of the sanctions. This research reveals a tension between the penal rules and those of the criminal procedure. On the one hand, emphasis is placed on a more diversified consideration of sanctions, allowing more attention to be paid to special groups, such as drug abusers. On the other hand, there is a wish to reduce the number of full-scale court proceedings by different lighter procedural measures, both in an attempt to cut down on administrative functions, and likewise in the name of efficiency. Because of the wish to use increasingly simplified procedures assigned to increasingly lower levels of legal agent, it is very difficult to take account of individual preventive measures when considering sanctions. In a committee report presented in 2007, it was proposed that in petty crimes the power to impose fines would be assigned solely to the police.

A Need for Contract Treatment

There are several meeting points between treatment and punishment. It is possible to waive measures in petty drug offences if the offender seeks treatment. In some cases seeking treatment may have an impact on a decision whether the penalty should be a suspended sentence or imprisonment. Treatment may be a part of community service or a juvenile punishment. In practice the most decisive change has occurred at the stage of implementation of penalties, as there has been a considerable increase in drug rehabilitation in prisons in the 1990s. In 2002 The Ministry of Justice presented a proposal about a new sanction called contract treatment, whereby an offender with drug problems could, with his or her consent, be

sentenced to treatment instead of prison. Contract treatment could be one alternative sanction worth trying out for a drug abuser who has committed several offences.

About the Empirical Data Used in this Research

In this research a variety of material has been used in studying the law drafting processes: committee and working group reports, bills, statements made by different Parliamentary committees, as well as records of discussions by Members of Parliament in session.

Extensive empirical data has been used to investigate the legal implementation practices: statistical data for the years 1967–2006, as well as court records and interviews with officials. The documentation has been gathered in two phases. At the first phase, all decisions not to prosecute in drug offences given in 1997 (N=677) were gathered, as well as a sample of drug penalties delivered by five District Courts (N=510). At the second phase, all waivers of prosecution in drug offences delivered in Finland during the period 1.9.2001–31.8.2003 (N=1,370) were gathered, and also samples from five District Courts about decisions in drug offences delivered during the years 2002–2003 (N=763). For the period 1.9.2001–31.8.2003 data was gathered about all cases involving the use of drugs handled through the new sanction system, summary penal order proceeding (N=5,030). Also the interview material was gathered in two phases. During the years 1998–1999 interviews were made with six police officers, eight prosecutors and seven District Court judges. During the years 2004–2008, 18 police officers and 10 prosecutors were interviewed. Most of the interviewed were specialised in drug offences.