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SUMMARY

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SANCTION PRACTICES IN DRUG OFFENCES

The penalties for drug offences were reformed in autumn 2001, whereby the police was empowered to impose fines on drug users. Notwithstanding this, it was not assumed that users would be automatically fined, as one purpose of the reform was to place emphasis on alternative measures. Focus was placed on two particular groups of drug users. Instead of imposing fines, young people would be reprimanded, whereas drug abusers in need of treatment would be directed to treatment. This study examines the practices relating to sanctions in offences involving the unlawful use of drugs.

Continuous Disagreement about the Penalization of the Use of Drugs

There has been a lively debate on whether or not the use of drugs should be criminalized. The use of drugs was made a penal offence through a decree in 1966, when Finland adhered to the 1961 Single Convention on Narcotic Drugs. Since then the rules concerning drug offences have been reformed three times. At each occasion, the question whether it is necessary to punish drug users has been raised. These different reforms and how the rules were implemented, will here be briefly presented.

The 1972 Narcotics Act

When the Narcotics Act was drafted in the early 1970s, there was an animated debate, whether it would be necessary to punish drug users or not. A decision to penalize the use of drugs was arrived at only after several tight votes in Parliament – for example, the Government bill did not contain a proposal for the penalization of the use of drugs. The purpose of the act was to focus on drug dealers, not users. The incentive for penalizing the use of drugs was to foster anti-drug attitudes. The Parliamentary Law Committee's intention was that criminalizing drug use would be a prohibition in principle, demonstrating thereby the limits of acceptable behaviour particularly to young persons. The provisions for waiving measures should be used in cases where persons only have used drugs or kept them in their possession for their own use.

With the waving of measures is meant that a person who is guilty of a penal offence will not be punished. Such a decision can be made at different stages of a criminal proceeding; the police may chose not to conduct a criminal investigation, the public prosecutor may decide to waive prosecution and the judge may decide not to impose a penalty. The waiving of measures is the mildest sanction in the Finnish penal system, whereas the most severe one is an unconditional prison sentence.

After the Narcotics Act (41/1972) had entered into force, it was initially a very common practice to waive measures. In 1972, for example, courts decided not to impose sanctions for 28 per cent of the prosecuted. It was seen appropriate to waive sanctions 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.

The Reform in the 1990s

The penal provisions concerning drug offences were transferred from the Narcotics Act to the Penal Code in the 1990s, as part of a comprehensive reform of penal law. Then again, there was a discussion whether it was necessary to penalize the use of drugs or not. Aspects favouring the

penalization of drug use weighed then heavier, but at this occasion there was a vivid discussion as to what would be the appropriate penal latitude for the use of drugs.

A general principle governing the reform of the Penal Code was to determine the different scales of offences in terms of their degree of harmfulness and dangerousness. Offences are normally determined according to three grades of severity. It was preferred not to proceed along that line in the case of drug offences, as it was feared that it might convey a false signal about decreasing drug control. It was seen desirable to maintain the use of drugs as part of the basic prerequisites for drug offences, whereby the penal latitude extends from fines all the way to two years imprisonment. In the Government bill it was noted that there was no intention to deviate from current legal practices, according to which the use of drugs would normally result in a fine. Furthermore, the waving of measures was strongly favoured at the drafting stage. There was a wish to increase the waiving of measures particularly in cases involving mere drug use, or in cases where the drug user received treatment. A special provision to this end was added to the Penal Code, although the general provisions concerning the waving of measures also cover drug offences.

Rules Concerning the Waving of Measures

The waiving of measures is part of the system of penal sanctions. There are different reasons for favouring this action. The societal resources required for the penal system can be used in an optimal way, when measures are waived in petty crimes. Resources can thereby be directed towards investigating severe crimes and legal proceedings associated with them. In an individual case there may also be exceptional circumstances that would make it inequitable to punish a person. In addition, some other forms of official control may be more appropriate, particularly in the case of a minor offender.

The rules concerning the waiving of measures were reformed in 1991, extending the possibility to waive measures, particularly for public prosecutors. At present, a decision to waive measures may, among others, be based on the pettiness of an offence, the young age of an offender, or the unreasonableness or inappropriate nature of a sanction.

Sentencing Practises in Drug Offences 1994–2000

According to a study of sentencing practises in drug offences, the use of drugs would normally lead to a fine. The number of drug cases in which prosecutors or judges decided not to prosecute or sentence remained quite low. During the years 1994–2000, prosecution was waived in at most one tenth of the drug offences, brought to the attention of the police. It remained very rare that a sentence would not be passed. Among persons prosecuted for drug offences as few as two per cent were not punished.

When prosecution was waived for drug users, the cases normally involved very petty offences. A person who was taken into custody because of drunkenness, had had a couple of pills in his or her pocket that are labelled as drugs, or a young person smoked a marijuana cigarette that was going around in a group. The study revealed that the practice not to prosecute was not uniform. All public prosecutors did not refrain from prosecuting even though the incident constituted a very petty offence. The interviews revealed that some prosecutors practiced some kind of zero tolerance policy, whereby all cases involving the use of drugs had to be prosecuted. Those prosecutors who refrained from prosecuting, had diverging opinions about a number of factors that influence the decision to prosecute, such as what importance to accord the quality of the drug, the place where drug was used, the young age of the user, or his or her willingness to seek treatment. In January 2000 the Prosecutor General sought to introduce uniform practices among the prosecutors by issuing instructions, where a stance was taken on many questions that had caused diverging interpretations.

The Need for a Reform

Waiving punishment in drug offences triggered a certain degree of public debate. By way of illustration, a committee that had considered the prevention of drug use of young people recommended that punishment would be waved for young drug users, as this might be a good way of preventing the marginalization of young people. But there was also opposition against waiving punishment. One central argument was a concern that particularly young people's perception of the border between legal and

illegal behaviour could be blurred. The police took an active part in the discussions and the opposition to waiving prosecution even eventuated in a complaint to the Parliamentary Ombudsman, filed by an elderly constable. Also among the public prosecutors, there was opposition against the waiving of prosecution. In summer 2000 the Finnish association of public prosecutors, Suomen Syyttäjähdistys, presented the Ministry of Justice a proposal to introduce summary penal proceedings for offences involving the use of drugs. In this way questions about waiving prosecution could be avoided, as offences involving the use of drugs normally would be included in the category of offences for which fines were imposed. The Ministry of Justice initiated a reform of the penalty rules in autumn 2000.

Reform of the Rules Concerning the Use of Drugs

In the reform of the rules concerning the use of drugs, new prerequisites were introduced for petty drug offences. Within the prerequisites for drug offences a separate category was introduced for the use of drugs and the possession of drugs or attempt to acquire minor quantities for own use. As the use of drugs may be punished with a fine or a maximum of six months imprisonment, this more narrowly defined penalty scale gives the police a possibility to fine the user in so called summary penal order proceedings. The public prosecutor shall confirm the fine. Thereby offences involving the use of drugs need no longer be handled by District Courts.

Despite the introduction of the summary penal order proceedings, it was considered important that this would not lead to an automatic imposition of fines on drug users. For this reason, it was emphasized at the drafting stage that also alternative measures should be used. Focus was placed on two specific groups. Young people should be reprimanded and drug abusers directed to treatment.

As incentives for the reform of the penalties for the use of drugs were mentioned economizing public resources, more speedy procedures for penal intervention and more uniform practices in the case of waiving prosecution. Resources can be saved when not all petty drug offences need to be handled by a District Court. For its part, the use of summary penal proceedings allows a more speedy penal intervention and enables more uniform practices

among prosecutors. The reform took effect on 1 September 2001 (L 654–657/2001)

Other Penal Rules Relating to Drug Offences

Drug offences are today graded according to three different degrees of severity, according to the seriousness of the offence. Drug offences involve the illegal production of drugs, import, export, transport, distribution and possession of drugs. The sanctions are a fine or a maximum of two years imprisonment. The drug offence is aggravated if it involves very dangerous drugs or a big quantity of them, if substantial financial profit is sought, the offender acts as part of an organized group, the offence causes severe danger for the health or life of several persons, or the drugs are distributed to minors or otherwise in an unscrupulous manner. The penalty is imprisonment from one to ten years. The least severe drug offence, the use of drugs, is presented above. In addition to this, the Penal Code contains penal sanctions for the preparation and promotion of drug offences. (See the Penal Code 50:1–4).

The Role of the Waiving of Measures

Through the reform of the rules relating to the use of drugs, it was made possible to fine the drug user without the case being brought to a District Court. The summary penal order proceedings are intended for handling relatively petty and simple penal cases. For this reason, the procedures are fairly simple and formal. In practice, it is often a police officer that, on his or her own initiative decides to issue a summary penal order.¹ After this the order is given to the suspect for information. If he or she does not oppose the claim, the public prosecutor confirms the order.² The prosecutor shall verify the penal claim written by the police officer. According to the act, the prosecutor may at this point also decide to waive prosecution. In practice, the

¹ According to the act, police or customs officials or other officials carrying out statutory monitoring functions, as specified by law, may issue a summary penal order on their own behalf or on behalf of the public prosecutor.

² In 1994 the confirmation of a summary penal order was transferred to the public prosecutor from the judges who had previously had that task.

waiving of prosecution is very rare, because the public prosecutors confirm practically speaking all summary penal orders as they are presented.

For this reason, the reform of the penal sanctions for drug use might easily have led to a situation, in which the fining of drug users would have become a fairly automatic sanction. As such, this was one of the incentives for the reform, although this was not explicitly spelled out in the motivations. The intention was to tighten the sanctioning practices, as it was seen that drug users got away too easily when prosecution was waived. Some favoured regular fining, as society in this way would demonstrate its negative attitude towards drugs. Also other views were, however, expressed at the law drafting stage. According to them, there were a number of reasons for introducing alternative measures to fines.

Diverging opinions were expressed with varying emphasis at different stages of the law drafting process. The content of an act is finally decided on in Parliament, at which stage particular weight is given the report presented by the Law Committee. After hearing experts the Law Committee came to the conclusion that the reform must not lead to an automatic fining of drug users. There is a particular need for the option to waive further measures, as there are great variations in the practical circumstances, the life situation of the users and their need for treatment. The legal authorities should endeavour to devise effective means for cutting off drug offences, but also other means should be available than merely the imposition of fines. Young people could be reprimanded and drug abusers should be directed to treatment.

The Law Committee took a firm stance on behalf of waiving measures, which put pressure on the law implementers. They had to solve the question how to secure the possibility of waiving measures despite the introduction of the system of summary penal proceedings. For this reason the police and the public prosecutor had to agree together, how to act when offences involved the use of drugs. It was also necessary to cooperate with social and health authorities, so that minor drug users and drug abusers could be given support and directed to treatment appropriate for them.

The Research Task and Material

This study examines the effects the reform of penal sanctions for drug users has had on legal practices in drug offences. The study explores the frequency with which the police has fined users, as well as what kinds of changes have occurred in the practices of public prosecutors and judges. It is of particular interest to assess the use of alternative penal measures, whereby light is shed on the possibility to give a reprimand and to direct offenders to treatment.

The data used is based on legal statistics about penal sanctions, produced by Statistics Finland. In addition to this, separate empirical material has been collected for this study concerning fines imposed through the summary penal order proceedings, decisions not to prosecute and records of drug cases handled by District Courts. With the assistance of the Office of the Prosecutor General all summary penal orders or decisions not to prosecute in drug offence were collected throughout Finland for a period of two years (1.9.2001–31.8.2003). The summary penal orders amounted to 5,030 and decisions not to prosecute to 1,370. Data on sentences given in drug cases were collected in the five biggest District Courts. There were 763 sentences. Furthermore, a number of different experts have been interviewed during the course of the study (among others police officers, public prosecutors, social workers). However, this material will be used in a follow-up study.

Central Research Findings

1. At present, a major part of the drug offences that are brought to the attention of the police involve the use of drugs. After the reform of the offence involving drug use, this offence has occupied space in police statistics (see figure 1). In 2004 the police was informed about close to 14,500 drug offences, out of which 9,200 (64 %) involved the use of drugs. Drug offences that fulfil the basic prerequisites amounted to 4,600 (32 %). There were less than 600 aggravated drug offences (4 %), Statistics thus indicate that the Finnish drug control is fairly much focussed on drug users.³

The figure also reveals that drug offences were in strong increase during the 1990s, but that this increase had slowed down after the turn of the millennium. The development of the drug situation appears similar also

³ This represents 28 offences per 10,000 inhabitants.

when pictured through other indicators. According to several surveys, there was an increase in cases where people were trying out drugs as well as in their use in the 1990s, but an increase is no longer seen. There has also been a decrease in effects caused by drugs, such as HIV infections. Notwithstanding this, drug abusers still face a difficult situation for a variety of reasons.

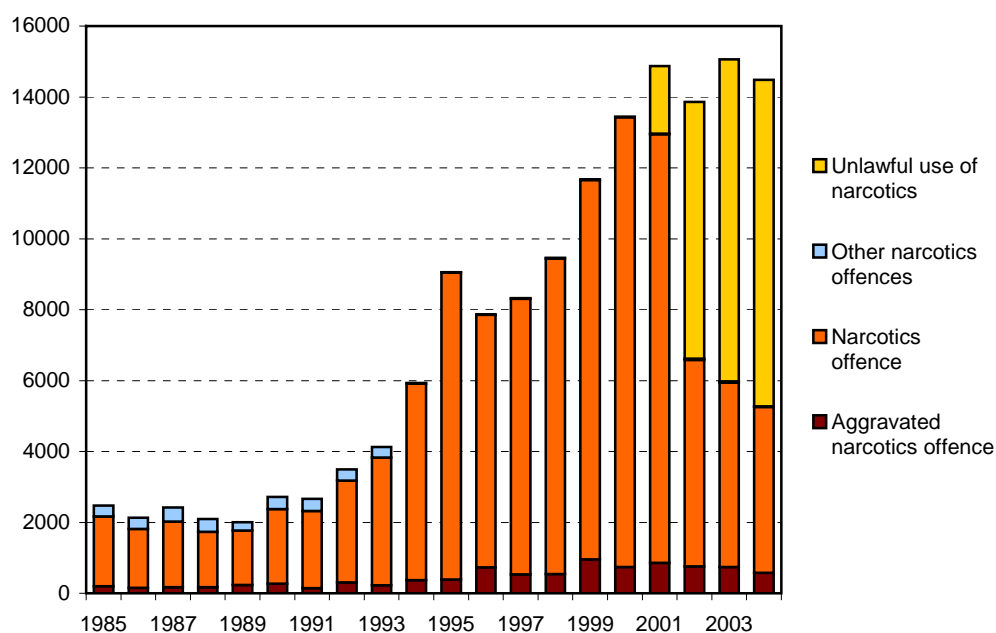


Figure 1 Drug offences brought to the attention of the police in 1985–2004

2. The fining of drug users through summary penal proceedings has become a fairly general practice. In autumn 2001 the police started off by fining users fairly cautiously, but since then there has been a yearly increase in the number fines issued (see table 1). In 2004 the number of fines was 4,420, which implies an increase of seven per cent since the previous year.

Table 1 The number of drug users fined through a summary penal order during the period 2001–2004

	2001	2002	2003	2004
	297	3,103	4,151	4,420
<i>Change %</i>		+944.8	+33.8	+6.5

3. The frequent use of summary penal proceedings has had the effect that the number of drug cases handled by District Courts has decreased. (See figure 2). The figure also shows the kinds of penalties imposed for drug offences. The lowest pillar in the figure shows unconditional prison sentences and the second lowest conditional ones. Then fines are pictured. The highest pillar shows the waiving of punishment.

Fines still constitute the major part of the punishments given in District Courts, even when all drug offences are accounted for (including aggravated drug offences). The reform of the unlawful use of drugs did not bring about any change in this respect, although many petty offences are presently handled outside the courts. The moderate nature of the sanctions is conveyed by the fact that a major part of the drug cases handled by District Courts involve fairly petty offences.

The prerequisites for the unlawful use of drugs are very limited. Consequently, they do not cover all minor drug offences involving personal use. By way of illustration, the import of a minor quantity of drugs or the cultivation of a few *Kannabis sativa* plants intended for personal drugs meets the prerequisites for a drug offence, whereby they should be dealt with by a District Court.

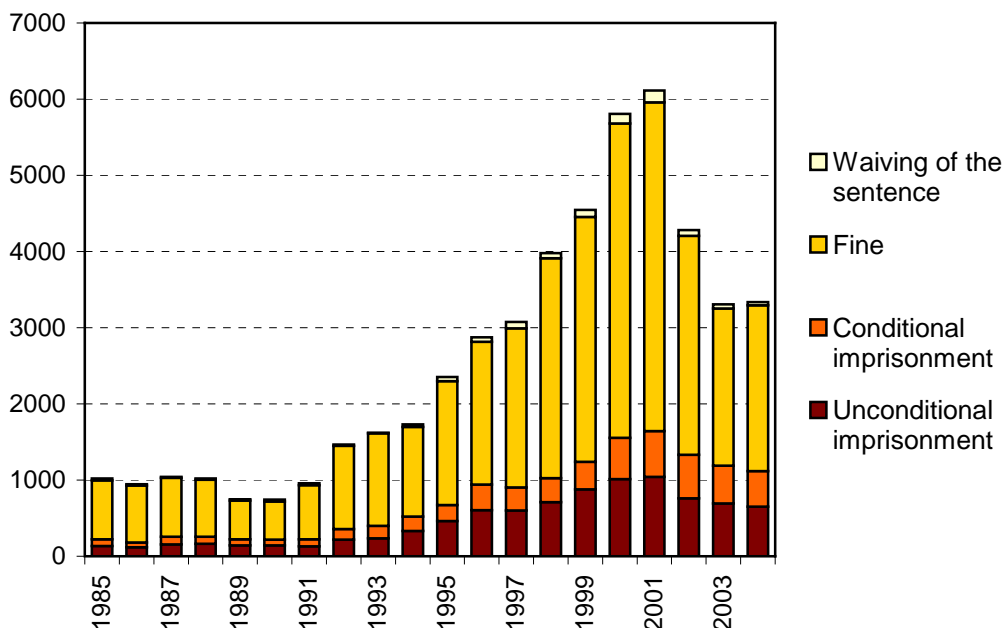


Figure 2 Sentences issued by District Courts in drug offences (Penal Code 50:1–4) during the years 1985–2004. Source: Statistics Finland (principal offences)

4. Offences involving the unlawful use of drugs almost always lead to the imposition of a fine. For the unlawful use of drugs a fine is generally imposed as a summary penal fee. The next most general sentence is a fine imposed by a District Court. The number of instances where measures have been waived is fairly small, but it is even more unusual that an offence has lead to a prison sentence. In 2004 fines were issued in 96 per cent of the cases. The distribution of different types of sanctions was the following: summary penal fees 85 per cent, fines issued by District Courts 11, waiver of prosecution 3, waiver of punishment 0.4 and prison sentences 0.1 per cent.

Table 2 Penal sanctions imposed in cases of the unlawful use of drugs as the principal crime during the years 2002–2004 (%)

	2002	2003	2004
Summary Penal	65.9	82.2	85.3
Fine by the court	24.9	12.2	10.9
Non-prosecution	7.9	4.9	3.3
Waiver of the	1.0	0.6	0.4
Imprisonment	0.4	0.1	0.1
Total	100 (N=4,708)	100 (N=5,051)	100 (N=5,184)

5. There has been a decrease in the number of drug offences where measures have been waived. After the reform of the unlawful use of drugs, the number of decisions both to waive prosecution and punishment has decreased. Particularly in the case of the unlawful use of drugs, non-prosecution has turned out to be very infrequent. The change is an effect of the reform, as the sanctions normally are imposed through the summary penal order proceedings. For a person guilty of the unlawful use of drugs to avoid a fine, the pre-trial investigation should reveal some particular facts that would support a decision not to prosecute. In the case of minors, or in the case where a person expresses a wish to undergo treatment, it is possible that the decision will be to waive prosecution. In addition to this, it should be noted that roughly one fourth of the decisions not to prosecute have been taken for reasons of concurrence, when a person in practice already has been sentenced for other offences to a major punishment.

Decisions not to prosecute involved men to 80 per cent and women to 20 per cent. One third were minors. In the practice of waiving prosecution two new features could be observed; there was an increase in the number of reprimands as well as direction to treatment. If the decision not to prosecute was not taken for these reasons, there were usually some other special circumstances that favoured it. Crime might be a very marginal phenomenon. For example, in some cases foreigners had fallen ill and requested persons close to them to send the medicine they needed to Finland. The postal despatches were stopped because the medicine was classified as a drug. According to the Finnish legislation not even a medicine prescribed by a doctor, may be sent to Finland by post for somebody's personal treatment, if it is classified as a drug. In addition, a decision not to prosecute may have

been favoured by the fact that the foreigners had already returned to their home country. Decisions by a court to waive punishment were generally taken because the accused had initiated treatment for his or her drug problems.

The Use of Alternative Measures to Punishment

The reform of the rules for the unlawful use of drugs aimed at linking treatment and punishment in a new way. In cooperation with other authorities, the Prosecutor General drew up a recommendation about how to proceed with minors and persons in need of treatment. In the following reprimands and direction to treatment are described.

Reprimands

The Prosecutor General recommended that a reprimand occasion be arranged for a young person (15–17 years of age) who for the first time was caught for the use of drugs. At this occasion, the young person would be told in a diverse way about the criminal nature of the use of drugs and how reprehensible it is. The circumstances of the drug users should be investigated and other measures that he or she might need. The public prosecutor would be in charge of organizing the occasion. In addition to the young person, also his or her parents, a representative of the police and social workers would be present. In this way it would be possible to associate the reprimand with measures by social authorities and local control. After the occasion, there would be the option to waive prosecution for the young person who had been reprimanded. The reprimand is intended to be given only once, and would thus not be renewed if the young person is guilty of another offence involving the unlawful use of drugs.

After the reform of the unlawful use of drugs, public prosecutors have started to arrange reprimand occasions. In the data covering decisions not to prosecute, collected for the years 2001–2003, there were close to 250 reprimand occasions (18 % of all the rulings). Among them 80 per cent concerned boys and girls 20 per cent. Young people had generally been guilty of trying or using soft drugs.

According to the decisions, the offence was discussed at the reprimand occasion, reasons that had led to it, the young person's attitude towards drugs, his or her future plans and risks associated with the use of drugs. According to a separate ethnographic study made of the reprimand occasions, the adults used a great variety of ways of convincing the young person about the dangers associated with drugs. The young persons themselves were not very outspoken and the occasion appeared to be quite an ordeal for them. According to the decisions not to prosecute, the young persons often regretted their trials with drugs and assured that they in future would stay away from drugs.

A reprimand occasion was not arranged for all minors, for whom a decision was taken not to prosecute. The decisions revealed that other authorities had reacted on the situation in some way. In some locations there are for example projects involving measures relating to drugs.

Directing to Treatment

When reforming the rules concerning the use of drugs, emphasize was placed on the need to get treatment for drug abusers who become subjected to criminal control. The Prosecutor General induced public prosecutors to make an agreement with different local authorities about suitable arrangements for treatment. Treatment for drug abusers would also have the effect of reducing a renewal of the offences.

The Office of the Prosecutor General has followed up the activities of the public prosecutors through surveys. A major part of the Prosecutor units have reported that they have made an agreement about directing offenders to treatment, but there are very few instances where a decision has been made not to prosecute due to treatment. In the data collected for the years 2001–2003, there were 178 mentions about treatment (13 % of all decisions). 70 per cent were men, 30 were women. Close to half of them were minors. According to the most recent surveys made by the Office of the Prosecutor General, the number of cases involving treatment has shrunk almost to nothing. This raises the question whether the authorities have been attempting to direct drug abusers to treatment in a sufficiently long-term and efficient way. In the follow up of this study, closer attention needs to be paid to questions concerning the direction to treatment.