PSYCHOACTIVE SUBSTANCES AND CRIMINAL LIABILITY

Theses points of the PhD Thesis

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I. Introduction

The thesis reviews some major questions about the legal control and rules of criminal law concerning the use of psychoactive substances. Furthermore it examines the changes of drug and alcohol policy. Besides the historical overview it focuses on the difficulties that legislators and those who administer the law tackle with.

People long for happiness, that is why many of them use different psychoactive substances. But what is a psychoactive substance? According to my understanding in the first place these are alcohol and drug but I do not deal with medicines which have similar effects. If I mention drug I mean substances which are defined by the Act No. XXX of 2005.

Alcohol and drugs are handled differently in the western civilisation although their effects are often similar. In fact the reasons for this difference are cultural background, economic interests and political intents.

The aims of research:

1. To explore why the judgement of alcohol and drugs shows differences, and how alcohol and drug policy changed.

2. To examine how the legal means of alcohol and drug control have developed in some European countries and in the United States of America.

3. To compare the former and current legal texts of some states from the next points of view: first is the criminal liability for crimes committed under influence of alcohol, second is the involuntary detoxification for alcohol addict perpetrators, third is the public drunkenness, forth is the drink driving, and the last one is drug abuse. During my comparison I focus consistently on the same states however, I mention other states as well which have interesting or exemplary regulations. I review the English, French, German, Austrian, Estonian law and occasionally I refer to Luxemburg, Switzerland and the United States of America.

4. To survey the history of the relevant Hungarian law, the questions and answers of legal practice.

5. To analyse the current Hungarian law and the application of statutory provisions.

The first part of the thesis gives an account of different approaches of drug policies, furthermore the changes of alcohol policies and external influences that determine alcohol and drug policies of the countries, these are the European Union, the WHO and the Drug Conventions of the UNO. I show the moral of the development of drug legislation and alcohol prohibition law through the solutions of the USA.
The second chapter is about the history of regulations of some selected states and Hungary. The first subchapter is an international survey focusing on some major issues. The first is drug and alcohol policy, here is introduced the exciting alcohol control history of England and the USA, then I describe how the state policies are influenced by international drug control treaties. The second topic is the fight against public drunkenness which has long tradition in England and the USA. The third issue is drink-driving and the Scandinavian model. Finally, the drug offences. Combatting against drugs shows extreme examples outside Europe and America.

The second subchapter summarizes the development of the Hungarian criminal law regarding the criminal responsibility for an action committed in a non-compos state due to drunkenness. On the basis of Code Csemegi if a person commits a crime during his non-compos state he is exempted from the criminal responsibility however he has became drunk due to his own fault. In 1948 was adopted a sui generis factum of crime, but the legal practice was dissatisfied because of its lenience. The sui generis factum of crime was amended and completed with intentional actio libera in causa that means the person who becomes drunk in order to commit an offence has the same criminal liability as if he would have been in a compos state.

Public drunkenness was punished by the Code of Contraventions, nowadays it is neither offence nor petty offence.

The comparative survey of current laws can be found in the third chapter. The first subchapter is dedicated to describing how the control of the alcohol production, wholesale and retail trade has reduced. Thus the alcohol supply restricting alcohol policy has lost its strength because of the importance of consumer society and free market.

There are three types of regulations in the civil law tradition concerning crimes committed by a person who is mentally incompetent due to drunkenness. The first solution does not examine why the offender is mentally incompetent, as he is intoxicated he may not be punished. According to the German criminal code if the offender had diminished capacity then under Section 49 the penalty may be mitigated. Before 2003 the court disregarded the mitigation only in one case when the offender had to foresee that he will commit a crime because of his intoxication. As a result of the judgements of courts which have been passed since 2003, the use of section 49 is only a possibility, and it is applicable upon taking into consideration all circumstances.

The second solution prosecutes the mentally incompetent offender due to drunkenness as though he would have been competent. The Hungarian Criminal Code has been following this type of regulation since 1961 so does the Estonian Criminal Code.

The third solution handles the mental incapacity due to drunkenness in a specific way. For instance according to the criminal law of Luxemburg offender is convicted of negligent crime instead of premeditated provided that it is punishable. Some states punish drunkenness. The Austrian law applies the sui generis factum of crime and Switzerland combines it with intentional actio libera in causa.

By evaluating of the current Hungarian law I argue for the sui generis factum of crime because it is compatible with criminal law dogmatics.

Later the thesis explores why the factum of crime concerning the driving under drug influence is inapplicable. It reviews what should be done in the evidentiary procedure in
order that this factum of crime could be applied.
The part including criminal misuse of narcotic drugs shows the difficulties of originating
summons, legal classifications, and evidence in a criminal proceedings.

The fourth chapter summarizes briefly the most important thoughts and the last part is
dedicated to the propositions.

II. Examinations, the method of data-collection, exploration and exploitation of
sources

At the beginning of my research drug crimes were in the centre of my interest then I passed
over on the field of the drink-driving laws. Finally, I studied the criminal rules for
drunkenness.

The data-collection covered the national and the foreign valid law and the former rules.
According to René David’s classification of legal systems the thesis explored the common
law including the law of England and the USA. France was mentioned from the Roman-
Germanic system, I referred to Luxemburg if its special rules made it necessary. Germany,
Austria, Switzerland belong to the Germanic legal system. The criminal law of these states
has to be described because of their strong influence on the development of Hungarian law.
For instance the law of Switzerland served as a model for the Hungarian sui generis factum
of crime in 1948. Furthermore it is worth showing the thorough Swiss regulation
concerning the involuntary detoxification. From the former socialist states I have chosen a
small country, Estonia. Estonia had to tackle both with the change of regime and the
heritage of its Soviet member-state past. In spite of all difficulties Estonia has became an
EU member-state by now, its regulation is similar to the Hungarian regulation from a lot of
points of view and surpasses it in some fields.
The sources of the statutory law were worked up from the viewpoint of history, dogmatics
and comparative law. The social surroundings, the reasons of legislation, the promises and
the ministerial arguments of some acts are shown.
The effectiveness of the statutory law can be pointed out in the light of the practice so I
examined the legal practice as well.
By showing the Hungarian law I intended to make use of my acquired knowledge to solve
the problems of originating summons, legal classification and proof which arose in the
course of practice. The intention of this work is to stop the contradictions between
dogmatics and criminal policy related to intoxicated offenders.

III. Short summary of results, utilization of achievements

The most important conclusions of my PhD thesis can be summed up as follows.
One of the most important aim of regulations is to influence the consumption, but the
criminal law should be the final resort concerning both alcohol and drugs. This is taken into
consideration generally by legislator thus comprehensively established laws are enacted to
control the psychoactive substances. All walks of life is run through excessively with the
drug control laws, nevertheless the alcohol control measures are weak and often not
enforced especially if they interfere with the interests of economy.

Most of the states belonging to the western-civilisation have already formed their alcohol and drug policy, for making this policies they get help from the UNO, the WHO, finally the EU influences its member-states.

By describing the criminal-legal-means I surveyed the solutions of criminal responsibility for an action committed in a non-compos state due to drunkeness in common law and the answers to the same problems which appeared in Roman-Germanic legal system. On the basis of the latter I arrived to that the dogmatics and criminal policy should come to terms with each other referring to crimes committed by an intoxicated person.

The involuntary detoxification for addict perpetrators cannot be omitted, these criminal measure can be applied beside inprisonment of 6 months or longer in Hungary. It is impossible for the addicted detaniee to continue his former lifestyle, that is why it is practical if the addicted inmates are given help in this way even if they do not want to recover. The court may order supervision by probation officer when applies release on parole, release on probation or postpone indictment. In this case the sentence may decree with contribution of the accused that he has to take part in a treatment as a rule of conduct. The above mentioned practice should be applied more often when the accused person is alcohol addict.

It would not be right if criminal law prosecuted public drunkenness in Hungary because of the current legal surroundings of alcohol consumption. On the other hand helpless people must be looked after. This is a basic duty. It is not important that this is a task of the police or others, the main point is that the intoxicated person may be given a suitable treatment even if they need medical intervention.

The aim of drink-driving legislation is to reduce the number of accidents, injuries and fatalities that result from driving in intoxicated state. A successful drink-driving strategy requires frequent and random road checks. Driving under the influence of drug has to be punished. In order to prove this crime, experts should determine the phisical and mental abilities which are required for the safe driving and methods of clinical examination.

*The proposals concerning the Hungarian regulations are the following*

1. Two schedules were established in 2003: the National Strategy of social crime prevention and the National Programme of the Decade of the Health, the part of these relating to alcohol problems should be made well-known. We should speak more about alcoholism and the consequences of the irresponsible alcohol consumption. The aim is to form such a general judgement that gives the same importance to the different addictions. It should lay stress on the enforcement of alcohol-control regulations. As a matter of fact creation of drug-regulations should be kept away from the political and ideological beliefs. It is difficult to realize this because the presence of the political influence is a universal phenomenon.

Furthermore the drug control regulations should be made easier to survey and should be coordinated with the Criminal Code. The Parliament was requested to do this by the decision 54/ 2004 (XII.13) of Constitutional Court.
2. There are two large groups of punitive sanctions which have curing nature relating alcoholic and drug addict perpetrators. One of them is the involuntary intoxication beside imprisonment of 6 month or longer (this may be imposed on the alcoholic only). The other is the circle of cases, when supervision by probation officer is ordered and the rules of conduct are the courts reaction to the addiction. The judicature has wide scope of movement of which should be exploit more. For instance the currently effective Penal Code makes it possible that when the drug addict offender may not be diverted, the court prescribes treatment for the drug addict as a rule of conduct under the supervision by probation officer during his probation or suspended imprisonment (if the offender consent to it of course). It is possible too, that - on the analogy of the postponement of the indictment which is applicable in certain cases of drug abuse – the public prosecutor prescribes the treatment for the alcolol addict offender beside the postponement of the indictment.

3. Concerning crimes committed by a person who is mentally incompetent due to drunkness my opinion is that it is not necessary to avoid the principle of culpability, and it is unacceptable to disregard the absence of criminal capacity. The factum of crime of 1948 should have been developed according to the demands of the criminal policy. For example: any person who puts himself into the voluntary intoxication and in consequence of this he commits a crime shall be punished for misdemeanor offense. The act may be qualified more severe if the result is more severe, that means the offender should call account for felony if the ground offence is a felony too. In this case it should apply the range of punishment in the course of sentencing. If more offences are committed during the same intoxication, it should be taken the range of punishment of the ground offences and the sentence should follow the rules of accumulation. I would like to stress that the ground of the calling to account the dangerous intoxication, the committed „ground offence” is the result and the more serious cases and their range of punishment should adjust to the seriousness of the ground offence. These rules would be applicable if the criminal capacity exists before getting drunk.

The criminal capacity is included in all concept of culpability as a precondition or as a component of the concept. Wherever the dogmatics and the concept of culpability will develop the criminal capacity should be examined. The proposal above serves for the aim that offender may be punished only if he has criminal capacity.

4. Since the Article 188 of Hungarian Criminal Code was amended (1998), it punishes not only the driving under influence of alcohol but any person who drives under the influence of other substances which reduce the driving abilities. In case of drink-driving the Scandinavian solution proves to be good (the prescribed level of 0,08%), but there is not a standard level concerning the other substances which reduce the driving abilities, therefore difficulties arise during the evidentiary procedure. Different kind of drugs have different symptoms and there is not a standard level below that the driver is always incapable of driving the vehicle. In other words if the act wants to punish the driving which is undertaken in spite of the driving abilities are reduced by involuntary drug intoxication, the 1998’s modification is inapplicable.

Experts suggest two solutions. One of them is the zero tolerance. Actually that means that the driver is guilty and punishable when the blood samples analysis indicate drug, but in
this case it should examine the problem of the double impeachment for drug consumption. The other approach insists on that the presence of drug is not enough, the offender should be under the influence of substance, so it requires the impairment of driving ability too. It would make the criminal process easier if experts determine the basic phisical and mental abilities that required for the safe driving and methods of clinical examination in order to prove the crime, in addition the different illegal substances should be manifested from the body fluids.

5. In the following I sum up the essential proposals concerning drug abuse. First of all the legal practice needs a permanent regulation. The judicature should omit to sum the quantities of drugs which had been consumed by the offender. In fact the perpetrator does not remember often, that how much drug he had consumed. Furthermore, who takes drugs for long time without becoming addict, loses the possibility of diversion, therefore adding up of consumed but never-at-the–same-time-existed drugs is unacceptable.

It should accept that criminal conducts which are placed in separate articels, may not be drawn into a natural union provided these were commited not in respect of the same drug. In this way the court may not qualify the act as supply of a considerable quantity of narcotic drugs when the perpetrator supplied a small quantity of one type of drug and cultivated considerably quantity of other drug. It should establish two counts of miseuse of narcotic drugs.

If a drug-addicted person’s act qualified as miseuse of narcotic drugs of Articel 282/B, for example a drug-dependent person sells drug in a school he will be punished not under Articel 282/C but under Articel 282/B.

Referring to Articel 282/B the act should apply the former solution, so unambiguous wording would be the following: the act is qualified as aggravated miseuse of narcotic drugs, if the person over the age of eighteen involves a person under the age of eighteen, or if narcotic drugs are transferred into the possession of such person in consequence of the commission.

Utilization of the achievements

In the different stages of data-collection several publications has been issued since 2002. The results of the research were utilized in my essay written to the National Drug Focal Point in 2004, which title is: „The survy of the special demands of data-collection concerning the diversions on the basis of the international practice”.

The chapters of the thesis concerning alcohol policy and criminal responsibility for an action committed under the influence of alcohol was made on the grounds of the results of the third sub-project of research referred to below. The title of the research - which was sponsored by the National Research and Technological Bureau - was: „The complex examination of the criminological problems concerning alcohol consumption” („Pigmalion Project”, identification number: 5-052-04) The title of the third sub-programme is „The role of the alcohol in violent and disorderly conducted crimes”.

In the future I can use my knowledge during my practice.

IV. Publications closely related to the thesis
1. „Some questions as provided for by constitutional law connected with drug abuse” Law Studies of Phd Students at the University of Miskolc, editor: István Stipta, University of Miskolc, Deák Ferenc PhD School of Law, publisher: Bíbor Kiadó, Miskloc (2002) pp. 191-218

2. „The American prohibition” Forum of PhD Students volume of studies, University of Miskolc, Deák Ferenc PhD School of Law, Miskolc (2002) pp. 68-73


4. „Criminal procedures concerning drug offences on the basis of decisions made by the European Court of Human Rights” Forum of PhD Students volume of studies, University of Miskolc, Deák Ferenc PhD School of Law, Miskolc (2003) pp. 88-93

5. „Drugs and criminal law in the European Union and the Member States” Law Studies of Phd Students at the University of Miskolc, editor: István Stipta, University of Miskolc, Deák Ferenc PhD School of Law, publisher: Bíbor Kiadó, Miskloc (2003) pp. 119-156

6. „Fight against drug on international level” Law Studies of Phd Students at the University of Miskolc, editor: István Stipta, University of Miskolc, Deák Ferenc PhD School of Law, publisher: Bíbor Kiadó, Miskloc (2004) pp. 71-95 (in English)

7. „Driving under the influence of alcohol and drug in the Member States of European Union” Law Studies of Phd Students at the University of Miskolc, editor: István Stipta, University of Miskolc, Deák Ferenc PhD School of Law, publisher: Bíbor Kiadó, Miskloc (2005) pp. 143-165

