

## DRUG CRIME SEGMENT EUROPEANIZATION<sup>1</sup>

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**Abstract:** Drug crime is clearly increasingly organized especially in trade and production of narcotic and psychotropic substances. Individual members states of the European Union including the Czech Republic and also legislation pervading transnational or national planes, is trying to take the most effective legal means to combat the cited crime. Legal regulations, detection and investigation of that crime must also exhibit certain specifics with regard to their nature. The current legal regulation of drug crime in the Czech Republic is thus intertwined independently with international, EU, but also the national plane. The author in his paper describes to the readers an Europeanisation treatment of drug offenses in the Czech legal order in accordance with the requirements imposed on it by the European Union and international law. She also focuses on its sufficiency—where indeed the legal instruments are blended, wherein it is possible to find flaws. She also reflects the current legal situation in the Czech Republic. She presents to the readers current problems, especially identifying ranges of drugs and related difficulties consequential for the criminal practice.

**Keywords:** Drug criminal activity, drug offenses, European Union, International Law, United Nations, legal regulation

### I. INTRODUCTION

The problems associated with the drug use currently affects all developed nations. An organised crime is becoming more and more common reality that is multiplied in the context of the ongoing globalization. The drugs are thus turning to be one of the most profitable “business” items. Whatever the attitude of society to the issue of any substance abuse could be, drugs are the reality that cause significant problems. The reason is they do not affect only their users but they are also frequently linked with associated crime, directly or indirectly, and unfortunately can influence every single person in today’s world.<sup>2</sup>

The crucial role in the drug problem plays beside repression undoubtedly a question of prevention. Prevention is the main way how our society is trying to prevent drug use.<sup>3</sup> The question of prevention plays a vital role especially among the most vulnerable group of potential users - adolescents. It is this group of people that is necessary to be focused on because they are the main objective of the whole structure of organized crime.

An indispensable role in preventing these phenomena is taken by the means of criminal law. These should in this area act strictly repressively. Repression should be oriented both on the most dangerous form of drug-related and organized crime, drug traffickers, drug manufacturers, as well as to all those involved in the drug distribution to the ultimate end user. The use of means of criminal repression to end users is considerably problematic. Here, on the other hand, especially education and again prevention play a crucial role.

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<sup>2</sup> For comparison, see MAREŠOVÁ, A. *Drogy a česká vězeňská populace v kontextu drogové scény a trestněprávní legislativy*. Praha: Institut pro kriminologii a sociální prevenci, 2003, p. 7.

<sup>3</sup> Closer to the preventive function of criminal law, see for example in detail KRATOCHVÍL, V. a kol. *Trestní právo hmotné. Obecná část*. Praha: C. H. Beck, 2009, p. 16.

In the opinion of the World Health Organization from the year 1969 the drug is characterized as any substance that, when injected into a living organism may modify one or more of its functions. The cited concept is broad, as it even includes e.g. alcohol, but it is held by many authors dealing with the issue. However, this definition is not well acceptable for the purposes of this paper.<sup>4</sup> The better option is the definition from the Act no. 167/1998 Coll., Addictive drugs, which is more systematically focused on the criminal law. The term “drug” is here treated as a narcotic or psychotropic substance. Only in this way it is possible, in a legal sense, to understand this concept in relation to the wording of the constituent elements specified in the provisions § 283 to 287 of the Law Nr. 40/2009 Penal Code, as amended (the “Penal Code”)<sup>5</sup>.

The Penal Code (effective from 1st Jan, 2010), which is the most recent substantive law governing inter alia, the area of drug offenses, was created by the legislature in a legal vacuum. Built on its predecessor it respects not only constitutional norms but also international obligations which the Czech Republic is bound to and which especially in a drug crime prosecution, play quite a significant role<sup>6</sup>. The aim of this paper is at least informatively to point out various international and EU legislation in the area of drug crime and their interpenetration into Czech legislation.

## II. INTERNATIONAL LEVEL

Currently, the unification of any national legislation of single countries in the field of drug crime in an international context happens mainly via various international treaties. An important milestone was that on 10<sup>th</sup> Oct, 1947 when the Protocol of 1946<sup>7</sup> came into force and whose main objective was to transfer narcotics control policy (and psychotropic) substances into the scope of the United Nations (hereinafter “UN”). With this intention the UN Commission on Narcotic Drugs, abbr. CND) was also created in 1946. Currently, the international drug control system is based on three conventions. It is the 1961 Single Convention on Narcotic Substances<sup>8</sup> along with Annexes which form the lists of drugs divided into four groups<sup>9</sup>, the Convention on Psychotropic Substances of 1971<sup>10</sup> and the UN Single Convention against illicit trafficking of Narcotic and psychotropic with substances<sup>11</sup>

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<sup>4</sup> ČÍSAŘOVÁ, D., SOVOVÁ, O. a kol. *Trestní právo a zdravotnictví*. Druhé, upravené a rozšířené vydání. Praha: Orac, 2004, p. 153.

<sup>5</sup> In detail the individual facts of cases see ŠÁMAL, P. *Trestní zákoník II. § 140 až 421. Komentář*: 2. vyd. Praha: C. H. Beck, 2012, pp. 2860–2906; NOVOTNÁ, J. K rozsahům spáchání drogového trestného činu podle § 283 trestního zákoníku, pohled na současnou soudní praxi. *Bulletin Národní protidrogové centrály*: 2011, Vol. 17, No. 2, pp. 13–17.

<sup>6</sup> Explanatory Report to § 284 Penal Code. Available from: In: ASPI [Legal Information System]. Wolters Kluwer ČR [cit. 20. 12. 2014].

<sup>7</sup> Similar, equally important international legal instruments are also the Protocol of 1948 and the Protocol of opium from 1853.

<sup>8</sup> The Decree Nr. 47/1965 Coll., as amended. The Czech Republic did not fully agree with this Treaty, mainly with the parts relating to reporting of statistical data. The cited Convention includes also the Protocol on its changes of 1972, which focuses on the need for treatment and rehabilitation of drug addicts.

<sup>9</sup> The first group consists of e.g. cocaine, opium, morphine and a number of synthetic drugs. The authors, however, dealt with the unification of fragmented legislation and the extension of the control system.

<sup>10</sup> The Decree no. 62/1989 Coll., as amended. Via the Convention are to introduce new types so-called Psychotropic substances, e.g. amphetamines, hallucinogens, sedatives, etc.

<sup>11</sup> The Notification no. 462/1991 Coll., as amended. As the title suggests, it is an attempt to capture the Convention involving narcotics trafficking and prevent the legalization of profits from their illegal sales.

of 1988. To each of the conventions belong also later accepted protocols and amendments. The above cited agreements, among other things define the general measures that should be taken by Member States. These include criminal sanction of intentional act in the form of growing, production, manufacture, possession, offering, distribution, purchase, sale, procurement, import and export of narcotic drugs and psychotropic substances. Any modifying of these measures in each country is completely up to their legislative procedures.<sup>12</sup>

In the Czech Republic the above mentioned Single Convention on Narcotic Drugs became binding on 27<sup>th</sup> April 1965 when introduced in Ministry for Foreign Affairs decree no. 47/1965 Coll. This in particular applies to control the cultivation of plants used for extracting the drugs (cannabis plant, coca bush and opium poppy). It also applies to substances being manufactured synthetically. It also contains a set of measures regarding restrictions on the cultivation, production, trafficking and consumption of these substances and a list of individual drugs and their preparations in its supplement. This convention united the current complex international adjustment consisted of a large number of contracts without any internal coherence, which caused unpredictable and undesired complications. Art. 36 of the Convention is significant in terms of impact on the national legislation of the Czech Republic, which includes a commitment to criminal prosecution of cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery, brokerage, sending, transit, transport, import and export of drugs. These acts would be considered a criminal offense if they were inconsistent with the provisions of the Single Convention and committed intentionally. This Convention also orders Contracting Parties to impose acts in the form of culpability involving the negligent conduct within the scope of individual facts of the offense. This approach is seen also in Art. 37 of this Convention which enables the Parties the possibility of the seizure and confiscation of drugs. Art. 33 obliges parties not to allow possession of drugs without legal permission. Art. 22 addresses the issue of the ban on the cultivation of opium poppy, coca bush or cannabis plant. It does not prohibit their cultivation, leaving it to individual states to assess whether the situation on their territory requires a blanket prohibition. Art. 28 states that if cannabis is cultivated for the cannabis production or cannabis resin, then the parties are obliged to take measures to prevent abuse of the leaves of the hemp plant, or illicit trafficking. The above provisions do not apply to the cultivation of hemp for industrial and horticultural purposes.<sup>13</sup> Art. 3 of the Convention allows flexibility to change the list of drugs controlled by the Convention, without requiring the consent of the individual states. Adding any other substances into the list is decided by the International Commission on Narcotic Drugs established within the Economic and Social

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<sup>12</sup> However, this actually leads to different control systems handling especially cannabis. From the absolute prohibition through depenalisation even to decriminalization of the use and possession for personal use.

<sup>13</sup> According to § 24 of the law on addictive substances the absolute prohibition of the cultivation of the coca bush is applied in the Czech Republic. However, it is allowed to grow so-called Hemp, which must not contain more than 0.3% THC. At the same time there is an obligation to report to the competent customs authority where hemp is grown on a total area greater than 100 m<sup>2</sup>. Cultivation of plant species and varieties of cannabis containing more than 0.3% THC without permission is forbidden in the Czech Republic and it is not even given a general exemption from such purposes as research and treatment.

Council of the United Nations. For supervising the issue the International Bureau for Narcotics Control Board was established.

In 1972, the Single Convention was supplemented by Additional Protocol, which was ratified by Czechoslovakia in 1988 and promulgated by the Federal Ministry of Foreign Affairs under No. 458/1991 Coll. This document responded to the need for prevention in the field of drugs and introduced the need for treatment of drug addicts. Art. 36 of the Single Convention was completed with the requirement that penalized persons addicted to narcotic substances in addition to conviction and punishment can be healed and socially reintegrated into society.<sup>14</sup> At the same time Art. 22 of the Single Convention was expanded on demand of the confiscation of all illegally cultivated plants with the exception of a small quantity that is needed for research and scientific purposes. In terms of criminal procedural this additional protocol was meaningful in terms of simplification of procedures within the legal relations with foreign countries (now an international judicial cooperation).

The vital document of international control of the synthetically produced substances is the Convention on Psychotropic Substances of 1971 (hereinafter referred to as the Convention on Psychotropic Substances), published by the Ministry of Foreign Affairs Decree no. 62/1989 Coll., with effect from 11<sup>th</sup> Jan 1989. It extends the international control in areas of synthetically produced sedatives, stimulants and hallucinogens. Its attachments are divided into four lists of psychotropic substances. It sets the control mode for the substances listed in Schedule I, for the other refers to national control measures.<sup>15</sup> Art. 22 establishes criminal liability, which is in the contrary to the law or regulations adopted by national legislation to implement the obligations of the Convention. In the area of criminal law at the same time introduces the possibility of detention or seizure of psychotropic substances. Art. 20 deals with prevention. It obliges parties to take measures to prevent the abuse of psychotropic substances, to ensure early detection of their use, as well as treatment, education and rehabilitation of affected persons. A flexible system of changes in the list of psychotropic substances was in principle taken from the above mentioned Convention. The authorities deciding whether the substance should be added into the list of controlled substances are identical with the authorities designated by the Single Convention.

Another important document is from 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (hereinafter the 1988 Convention). For the Czech Republic based on the document of the Federal Ministry of Foreign Affairs no. 462/1991 Coll., effective from 2<sup>nd</sup> Sept. 1991 as a response to growing international drug trade. In terms of criminal law it applies in particular to the procedural aspects of international cooperation. It establishes a comprehensive legal framework for cooperation between the parties especially in terms of extradition of drug traffickers and monitoring agents. It facilitates the international cooperation based on mutual legal assistance. In terms of material crim-

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<sup>14</sup> As to the Swedish proposal the question of prevention (article 38) concerning measures against drug abuse, treatment, education and rehabilitation was reconsidered. To do this, comp. CHROMÍK, A. Švédská právní úprava drogové kriminality a její účinnost. *Trestní právo*. 2008, Vol. XII., No. 1, p. 36.

<sup>15</sup> HRUŠKA, J. Mezinárodní historické mezníky a východiska v boji proti drogové trestné činnosti. *Trestní právo*. 2009, Vol. XIII, No. 2, pp. 11–12.

inal law Article. 3. 1, 2, is crucial requiring the parties to consider such crimes as intentional acts which are directly listed there.<sup>16</sup> The contribution of the Convention of 1988 lies mainly in the introduction of precursors control, with visible efforts to limit their availability and prevent their evasion into illegal areas.<sup>17</sup> This became the first international document regulating the handling of certain precursors of synthetic substances.<sup>18</sup>

The drug-related crime currently exceeds more and more borders of single countries and thus becomes an important part of international organized crime. The common, single aspect and intention of the above mentioned contracts is to protect public health.<sup>19</sup> Therefore, the UN Commission on a regular basis (usually twice a year) decide on the inclusion of additional (new) substances in the list of psychotropic substances.<sup>20</sup> The Member States are then required to implement changes to their national law. However, currently there are skeptical voices, whether those international agreements in terms of content and extent are appropriate and necessary. However, there is a question, owing to the increasing Europeanization, but also individualization of legislation of individual states, whether it would not be better not to expand their annexes but rather let their adaptation to individual states.<sup>21</sup>

The distribution of drugs and drug use is a major problem and currently the whole world is intensively coping with it. There is a large number of United Nations bodies, from the UN General Assembly as the supreme authority, through the Economic and Social Council, to the genuinely independent bodies set up specifically for the Control of Narcotics that are involved in trying to find any possible solution. In 1997 it was in Vienna where on the draft of UN Secretary-General the United Nations Office on Drugs and Crime (United Nations Office on Drugs and Crime, UNODC abbr.) was established.<sup>22</sup> UNODC is mandated to assist individual Member States in the fight against drugs, crime and terrorism through their regional offices. It also aims to assist States in the ratification and implementation of international instruments. It is closely linked to other authorities supporting the fight against drug-related crime, such as Commission on Narcotic Drugs or individual programs, such as The United Nations Control Programme. These organizations shall submit an annual report on the situation and development in the field of a drug mar-

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<sup>16</sup> Under the Convention on Narcotic Drugs and the Convention on Psychotropic Substances It is necessary to qualify as crime - the production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, transit, import and export of any narcotic and psychotropic substances and also the cultivation of opium poppy, cocaine bush or cannabis plant for the manufacture of drugs, as well as encouraging and abetting such an act, as well as participation in a conspiracy for the purpose of these acts.

<sup>17</sup> BUDINA, Z. Problematika právní úpravy nedovoleného obchodu s omamnými a psychotropními látkami. *Kriminalistika*. 1996, Vol. XXIX, No. 1, p. 63.

<sup>18</sup> HRUŠKA, J. Mezinárodní historické mezníky a východiska v boji proti drogové trestné činnosti. *Trestní právo*. 2009, Vol. XIII, No. 2, pp. 12–14.

<sup>19</sup> According to the preamble of the cited contract the parties are “kept worrying about the physical and moral health of mankind”.

<sup>20</sup> With the reference to the UN Convention was from a historical perspective e.g. in 1997 adopted an amendment to the penal law prosecuting drug possession for personal use, although according to some interpretations of the Protocol to the Convention of 1988, this measure was not binding for the signatory states.

<sup>21</sup> When signing, ratifying or acceding to the Single Convention on Narcotic Drugs the participating states had the right to temporarily allocate e.g. the possibility of smoking opium or chewing coca leaves, which were at that time in some states a usual part of everyday life for local residents.

<sup>22</sup> Available from: <https://www.unodc.org/>.

ket – The World Drug Report – from which each candidate can find out what is the current state of the field of drug-related crime and fight with it.

In addition to binding treaties adopted within the UN bodies and dealing with drug issues there are also so-called Political Declarations. Unlike conventions, however, these documents declare only recommendations which are not binding for the member states. Their implementation is therefore completely up to national governments.

The fact that the distribution of drugs and drug use is a major problem which is the current society intensively coping with, declares that a number of United Nations bodies, from the UN General Assembly as the supreme authority, through the Economic and Social Council, to the genuinely independent bodies set up specifically for the Control of Narcotics are involved in finding any suitable solution. In 1997 it was in Vienna where on the draft of UN Secretary-United Nations Office on Drugs and Crime (UNODC abbr.) was established. UNODC is mandated to assist individual Member States in the fight against drugs, crime and terrorism through their regional offices. It also aims to assist States in the ratification and implementation of international instruments. It is closely linked to other organs supporting the fight against drug-related crime, such as Commission on Narcotic Drugs or individual programs, such as The United Nations Control Programme.<sup>23</sup> These organizations shall submit an annual report on the situation and development in the field of a drug market – The World Drug Report – from which each candidate can find out what is the current state of the field of drug-related crime and fight with it.

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### III. EU LEGISLATION

The European Union (“EU”), which is an important supranational authority, through its authority constantly seeks to unify legal constituent elements of various crimes, including the drug ones<sup>25</sup>. These efforts resulted in EU Council Framework Decision 2004/757/JHA, which laid down the basic provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking. These requirements relate only to the most serious crimes. The actual penalties for possession of narcotic drugs and psychotropic substances for personal use or consumption sanction are left to the discretion of individual states. If we wanted to deal with the modification of drug-related crime on European level in detail, this article would include a very large list of individual legal acts

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<sup>23</sup> Even the UNODC and the related individual bodies are about 90% funded by voluntary contributions of member states (governments) and governmental organizations.

<sup>24</sup> Compare *Zaostřeno na drogy. Mezinárodní spolupráce v oblasti protidrogové politiky – Česká protidrogová politika jako součást globálního a evropského prostoru.* [Focused on Drugs. International cooperation in the field of drug policy – Czech drug policy as part of a global and European space.] 2005, No. 4, pp. 1–4.

<sup>25</sup> ŠTABLOVÁ, R., BREJCHA, B. a kol. *Drogy. Vybrané kapitoly.* Praha: Policejní akademie České republiky, 2005, p. 33.



issued by the EU<sup>26</sup>. But for the purposes of this text it is essential to draw attention to current and practical documents valid in the EU and the Czech Republic. They're called Drug strategies or Action Plans. EU and the Czech Republic set up in them the main goals for certain periods. Their linking idea should be the effort of a really effective coordination both at the EU level and its Member States.<sup>27</sup> The Czech Republic has currently established the National Drug Policy Strategy for the period 2010 to 2018<sup>28</sup>. It is followed by a more detailed Action Plan of the National Drug Policy Strategy for the period 2013 to 2015<sup>29</sup>. In line with its long-term goal the strategy is defined in four basic principles:

- 1 to reduce an experimental and occasional drug use, particularly among young people,
- 2 to reduce the level of the problematic and heavy drug use,
- 3 to reduce potential risks associated with the drug use for individuals and society,
- 4 to reduce the drug availability, particularly for young people.

Therefore defining specific objectives, tools and activities to achieve strategic objectives and priorities of drug policy for the near future should be the role and content of three consecutive three-year action plans for the period of the strategy validity. However, all these documents are heavily criticized by the public for its lack of detail<sup>30</sup>.

Among the most important current documents relating to the current topic of drug crimes, resp. some of their questions, belongs the one of the so-called drug precursors. As a respond to the amendment of EU modification<sup>31</sup> the Czech Republic adopted a completely new Act. 272/2013 Coll., On drug precursors, which is effective from 1st Jan 2014. It brings significant changes in several important ways. It completely moves the issue of drug precursors from the law on addictive substances<sup>32</sup> into a completely separate law. It provides a separate list of narcotic and psychotropic substances in the form of the sub-legal act. There are new definitions of terms<sup>33</sup>, it describes in detail the process of issuing

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<sup>26</sup> As an example there is possible to state the EU Council Regulation (EEC) No. 302/93 of 8<sup>th</sup> Feb 1993 on the establishment of the European monitoring center for drugs and drug addiction, OJ L 036 of 12<sup>th</sup> Feb 1993, p.1; EU Council Decision of 28<sup>th</sup> Sep 2000 on the results of an agreement between the European Communities and the Kingdom of Norway on the participation of Norway in the work of the European Monitoring Centre for drugs and drug addiction, OJ L 257 of 11<sup>th</sup> Oct 2000, p. 23 etc.

<sup>27</sup> Based on the wording of Drug Strategy EU 2005–2012 (EU Drugs Strategy). Available from [http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/combating\\_drugs/c22569\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/combating_drugs/c22569_en.htm).

<sup>28</sup> The full text is on

[http://www.drogy-info.cz/index.php/pomoc\\_a\\_podpora/protidrogova\\_politika/narodni\\_strategie\\_protidrogove\\_politiky\\_na\\_obdobi\\_2010\\_az\\_2018](http://www.drogy-info.cz/index.php/pomoc_a_podpora/protidrogova_politika/narodni_strategie_protidrogove_politiky_na_obdobi_2010_az_2018).

<sup>29</sup> Available from: <http://www.vlada.cz/cz/ppov/protidrogova-politika/strategie-a-plany/akcni-plan-realizace-narodni-strategie-protidrogove-politiky-na-obdobi-2013-az-2015-104714/>.

<sup>30</sup> See, e.g. addictologists' opinions available from <http://www.adiktologie.cz/cz/articles/90/Drogova-politika>.

<sup>31</sup> Regulation of the European Parliament and Council (EU) no. 1259/2013 of 20<sup>th</sup> Nov 2013 amending Council Regulation (EC) no. 111/2005, and setting the rules for the monitoring of trade conc. drug precursors between the Community and third countries; Regulation of the European Parliament and Council (EU) no. 1258/2013 of 20 Nov 2013 amending Regulation (EC) no. 273/2004 on drug precursors.

<sup>32</sup> Law no. 167/1998 Coll., on addictive substances and amending certain other acts, as amended.

<sup>33</sup> One of the most concise definition of the precursor drug it is a precursor to the final stage of chemical substances (drugs). The term direct (immediate) precursor is usually used for precursor, which is the last step to the final form of the product (e.g. ephedrine is a precursor in the manufacture of methamphetamine). The definition is available from the website [http://www.drogy-info.cz/index.php/info/glosar\\_pojmu/p/prekurzor](http://www.drogy-info.cz/index.php/info/glosar_pojmu/p/prekurzor).

licences concerning the use of addictive substances, bans the export, import and transit operations and in particular the obligation to declare (this agenda is in charge of the specialized Inspectorate of narcotic and psychotropic substances of the Ministry of Health)<sup>34</sup>.

In addition, it expands on the question of the disposal or destruction of precursors specific conditions. In this context, the author would like to make comment dealing with the current and problematic issue and disposal of narcotic drugs and psychotropic substances, including precursors. Although § 10 of Act no. 167/1998 Coll., On addictive substances, as amended, the above cited newly effective law on precursors, as well as the rules of the administrative law<sup>35</sup> include measures of handling the substances, the question is whether the current codification is really sufficient. Especially in the case of storage and disposal of individual substances that were not provided in accordance with that legislation, but comes from committing illegal crimes.

In practice, it often happens in everyday life that the criminals get rid of drug residues in nearby countryside (in streams, in sewer system or at the so-called saving illegal dumps) and contaminate the natural environment. They commit an administrative offense or a misdemeanor, according to the wording of the relevant legislation.<sup>36</sup> They are often not convicted, or punished. There is a negative impact of such actions on the environment and it is the state that has to deal with it because the state has not only a duty but also an interest in protecting public health and natural resources.

#### IV. CURRENT ISSUES

More detailed treatment of the contentious issues of contemporary legislation Czech Republic on drug crime – the determination of the so-called ranges of drugs, i.e. interpretation of the concept “quantity greater than small” for narcotic and psychotropic substances and products containing them<sup>37</sup> and poisons is stated by the Supreme Court in the Decree of 9<sup>th</sup> April 2014<sup>38</sup>. The single qualifying characters of the ranges for drug offenses enshrines the provisions of § 283 et seq. Law no. 40/2009, Coll., Penal Code, as amended (hereinafter the “Penal Code”)<sup>39</sup>. In connection with an entirely new opinion and a brief interpretation made by the Supreme Court, it is necessary to draw attention to a few basic points covered by the Criminal Division in the context of its focus. Extensive genesis of defining the notion of so-called. Ranges, was concluded by issuing the finding of the Constitutional Court of the Czech Republic on 23 July 2013 file Pl. CC 12.13. Follow-

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<sup>34</sup> Literature and presentations provided to participants in the seminar “Drug-related crime”, organized by the Judicial Academy on 26.–28. 3. 2014 in Kroměříž.

<sup>35</sup> In particular, the Act no. 500/2004 Coll., The Administrative Code, as amended, Act no. 181/2001 Coll., On waste, as amended, implementing regulations and internal acts of police authorities, for example. ZPPP 26 / 2011, on drug crime.

<sup>36</sup> TOŠNAROVÁ, H. Likvidace OPL. *Bulletin Národní protidrogové centrály*. 2014, No. 1, pp. 14–17.

<sup>37</sup> Under the terms of § 283, § 284, § 285 of the Penal Code.

<sup>38</sup> The full text of the statement of the Criminal Division of the Supreme Court of 13<sup>th</sup> March 2014 sgn. Tpjn 301/2013 is available from: [www.nsoud.cz/](http://www.nsoud.cz/).

<sup>39</sup> Specifically, in a larger content – § 283 par. 2 d), par. 3 d) § 284 par. 3, § 285 par. 3, § 286 par. 2 c) of the Criminal Code; In a significant range – § 283 par. 2 c) § 284 par. 4, § 285 par. 4, § 286, par. 2 b) § 288 par. 2 c), para. 3 c); In a significant range – § 283 par. 3 c) Penal Code.



ing him chairman Criminal Division considered it is necessary to unify the Court's jurisprudence on the issue of interpretation of the concept that in practice there are no (other) possible contradictions in his interpretation. In this regard were therefore expressed the following legal phrases:

*"I. To meet the objective of possession for own use within the meaning of § 284 par.1, 2 Penal Code it is sufficient to hold in any way a narcotic or psychotropic substance or poison for themselves illegally without the obligation to have it at the spot. The possession "for personal use" means the determination of that substance for personal consumption, i.e. exclusively for the perpetrators of this crime and no one else. However, it must be the holding of such substances in quantities exceeding the dose required for the holder (according to its degree of dependence), as holding only one dose of drug users prior to use is not the adverse possession, but just so-called "consumable possession".*

*As "the quantity greater than small" within the meaning of § 284 paragraph. 1, 2 Pen. Code is generally considered the amount of possession of a narcotic or psychotropic substance or poison that in multiply way - as to threats arising for life and human health from the harmful effects of individual substances – exceeds the normal dose of habitual user.*

*Approximate values that specify "quantity greater than small" for narcotic substances, psychotropic substances and products containing them are listed in the appendix to this statement. In reaching conclusion concerning fulfillment of this feature should be taken into account the following facts – e. g. whether it was a "beginner" user or a user in an advanced stage of addiction, possibly other factors affecting the level of threat to life or health.<sup>40</sup>*

*II. For substances listed in § 1 of Decree no. 467/2009 Coll., which for the purposes of the Penal Code sets out what is considered poisons and what amount is greater than small for narcotic drugs, psychotropic substances and items containing poisons as amended by Government Regulation. 4/2012 Coll., and in Appendix 1 to this Regulation, the "quantity greater than small" is considered to be the amount of poison that, based on current scientific knowledge, after a single or repeated taking can cause damage to health.*

*III. If the amount of narcotic and psychotropic substances found at the offender, who had such a substance for his own use, does not reach "more than a small amount", it will be considered together with the other statutory elements as the offense on the field of protection against alcoholism and other addictions – § 30 par. 1 j) of the Act no. 200/1990 Coll. on offences, as amended, as they illegally owned "narcotic or psychotropic substance in small quantities for their use."<sup>41</sup>*

From the above cited opinions the following consequences should be noticed. In particular, in relation to the procedure of prosecution it will be possible to be based on the

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<sup>40</sup> Cited opinion is indeed a new document in this case, but the Criminal Division in it goes mainly by Annex Nr. 2 of the Government Regulation Nr. 467/2009 Coll., As amended by Government Regulation. 4/2012 Coll. and eg. case of 27<sup>th</sup> February 2013 sgn. 15 Tdo 1003/2012.

<sup>41</sup> Statement of the Criminal Division of the Supreme Court on criminal conduct unauthorized cultivation of cannabis plants for the purpose of its further distribution, see sgn. Tpjn 300/2014, available from: [www.nsoud.cz/](http://www.nsoud.cz/).

methodological guidance of the Supreme Public Prosecutor's Office of the Czech Republic from 7<sup>th</sup> Jul 2010 file 1 SL 110/2010, or alternatively, also from the standpoint of the National Anti-Drug Centre of Czech Republic Police and Security Policy Department of the Ministry of Interior from 11<sup>th</sup> March 2010. The type of substance or poison – according to the severity of the health and social impacts and the potential consequences, the quality of an effective amount of substance in a specific amount of the substance are probably the main attributable criteria taken into account when assessing enforcement authorities in criminal proceedings. In this context, also the intensity of harm that was done and the number of affected persons. In consideration should be also taken the financial amount (even if only implied) and the length of time dealing with substances or toxins. Always, however, it will be necessary to take into account the specific circumstances of the way the crime was committed. It will be interesting to watch a legal practice in an effort to determine or clarify the definition of very broad terms such as – “ordinary consumer” and their “normal dose”<sup>42</sup>. This task, however, is introduced and established by the Supreme Court law practice with which the bodies active in criminal proceedings (and in result the Supreme Court itself) will have to deal with. However, it is important to note that in such a rapidly evolving (changing) and constantly adapting area, which drug-related crime certainly is, it is very difficult to establish a fixed boundary, where the legislature, resp. authorities active in criminal proceedings, could comply with all rules of criminal procedure. The question of whether this path is correctly set and chosen or not, can be answered in the future only via practical experience and its description of current problems, or individual drug offenders' inventiveness.

## V. CONCLUSION

Whether from the international, European or national point of view, (not only the legal one), but also from the point of view of ordinary citizens are both drugs and crime seen as interconnected and closely related social pathologies, which need to be consistently dealt and fought with. Moreover it is necessary for this fight to find the best ways and tools. The EU Member States, including the Czech Republic, tries to take the most effective legal means to combat the crime. Their tasks, however, are not easy<sup>43</sup>. The problem is that the media view is currently largely narrowed down to a clash of defenders of two rather extreme and completely opposite positions. The first one – an attempt on legitimizing all or at least some types of drugs<sup>44</sup>. The second one – considers zero tolerance towards the drug use, accompanied by a strong repressive way<sup>45</sup>. The difficult situation is also proved by the trends emerging currently in the EU, which tend mainly to the absolute prohibition and

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<sup>42</sup> Literature and presentations provided to participants in the seminar “Drug-related crime”, organized by the Judicial Academy on 26.–28. 3. 2014 in Kroměříž.

<sup>43</sup> See ZEMAN, P. Drogy a kriminalita – komplikovaný vztah se závažnými důsledky. *Kriminalistika*. 2014, Vol. XXXVII, No. 1, pp. 1–9.

<sup>44</sup> Various civic associations, for example. <http://www.legalizace.cz/>;  
<http://www.adiktologie.cz/cz/articles/detail/90/4949/Chceme-o-tom-mluvit-Evropska-petice-sbira-podpisy-obcanu-keri-chteji-legalizovat-konopi-a-regulovat-trh-s-nim>.

<sup>45</sup> Typically, state, and through them also the National Drug Headquarters.

due to depenalization of certain negotiations lead to complete decriminalization (especially in the case of cannabis)<sup>46</sup>. These issues must be considered not only in terms of “black and white” parameters. The legislature (multinational organization) is there continually confronted, via legislative changes, with many other problems – in particular, the inventiveness of manufacturers and drug users. The Czech law in this area is often compared with foreign adaptations mainly in the question of whether it would be beneficial to set statutory rules and mandates in the way to include the whole group of banned substances (e.g. differing phonetically only in prefix) and not just one particular substance. The main role of legislators, the law enforcement authorities in criminal proceedings (or higher courts themselves), is the fact to prevent the Czech legislation from becoming exceptional that it will gradually determine “small amount of drugs until it becomes the smallest in the world”<sup>47</sup>. What the procedure and the development of legislation will be in the respective area, shows only time in connection with the criminal law practice.

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<sup>46</sup> HRUŠKA, J. Mezinárodní historické mezníky a východiska v boji proti drogové trestné činnosti. *Trestní právo*. 2009, Vol. 14, No. 2, pp. 7–16, p. 14.

<sup>47</sup> See Vendula Běláčková opinion on the Aktuálně. cz. Available from: <http://nazory.aktualne.cz/male-a-mensi-mnozstvi-drogy-az-bude-nejmensi-na-celem-svete/r-8ccf38fac61a11e388a00025900fea04/>.