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Law as Instrument of Drug Abuse Control — the Polish Experiences *

Prawo jako instrument kontroli nad narkomanią — doświadczenia polskie

1

Drug addiction became a social problem in Poland as late as about twenty years ago. Before the sixties, i.e. before the World War II and many years after its ending, it was exclusively a medical problem. At that time, cases of the drug abuse were very rare.¹ The considerable growth of the number of cases reported by the medical and police sources took place as late as on the turn of the sixties. However, discovery of a new phenomenon and an official confirmation of its existence mean that the phenomenon existed earlier. Hence, it might be presumed that it was the truth regarding the drug addiction as well. Anyway, the drug addiction is a relatively new problem in Poland, contrary to the situation in other countries. The evolution of the said phenomenon might be divided into the following stages (or periods) whose delimitation is only estimated.²

* The paper presented at the Xth International Congress of Criminology in Hamburg in 1988.

¹ See e.g.: M. Malinowska: *Kim są polscy narkomani? (Okiem socjologa)*, „Magazyn Monar'85”, p. 26; J. Malec: *Epidemiologia narkomanii w Polsce*, [in:] *Narkomania — znakiem czasu*, Warszawa 1988, 75 ff.

² See here first of all: T. Hanausek, W. Hanausek: *Narkomania, Studium kryminologiczno-kryminalistyczne*, Warszawa 1976, p. 45 ff; T. L. Chruściel: *Co to jest narkomania*, [in:] *Narkomania — znakiem czasu, Informacje, oceny, alternatywa*, Warszawa 1983, p. 20; S. Flasiński: *Aktualne problemy zwalczania narkomanii*, „Problemy Praworządności” 1983, nr 11, p. 23 ff; A. Grabowski: *Narkomania i przestępczość jej towarzysząca w latach osiemdziesiątych*, [in:] *Problemy narkomanii, Materiały konferencji naukowej, Część I*, ed. J. Malec, Warszawa 1985, p. 36; J. Solarski: *Zapobieganie narkomanii przez organy MO województwa krakowskiego*, [in:] *Problemy narkomanii, Materiały konferencji naukowej, Część II*, ed. J. Malec, Warszawa 1985, p. 125 ff; C. Cekiera: *Toksykomania*, Warszawa 1985, p. 78 ff; B. Ślusarczyk: *Z problematyki zjawiska narkomanii*, „Studia Kryminologiczne, Kryminalistyczne i Penitencjarne” 1986, No. 17, p. 73; A. Koziół: *Wąchacze, sportowcy i ćpuny*, Warszawa 1986, p. 12 ff; Malec: *op.cit.*, p. 82.

The first stage started probably in the middle sixties and lasted up to 1969 or 1970. It was characterized by the manifest animation of the youths' interest in the toxic substances. In that period, drugs grew rapidly into fashion owing to the influences from abroad and gradually became widespread. That fashion appeared in connection with the subculture of hippies, as well as with the youths' movements directed against the establishment, and with the existence of other informal groups. Those initial events of the abuse of toxic substances consisted in taking the diverse kinds of them, including many substitutes, owing to the scanty availability of the regular drugs and to the lack of familiarity with them. On the other hand, the so-called hard drugs had been rarely used, so the drug abuse of that time led to the dependence neither easily nor frequently.

The second stage began in 1969–1970 and lasted up to 1973–1974. During that period, a number of the registered cases of the first-time or initial medical assistance given to the patients diagnosed as drug dependents grew (from 309 in 1969 to 1437 in 1973). The drugs coming from the drug-stores, different institutions of the medical service, laboratories, store-houses, and also from the factories played more and more considerable role in that regard. The illegal gathering of drugs from those sources was comparatively easy and widespread. For that reason, at the beginning of the seventies, a number of administrative and organizational measures had been taken to make the availability of the stupefying drugs more difficult.

In that period, the number of crimes connected with the drug addiction and registered ("ascertained") by the Civic Police grew rapidly (from 32 in 1970 to 1599 in 1973). That growth of the registered cases resulted — as is to be evaluated — not only from the development of the very phenomenon, but also from the more active attitude of the police leading to the more frequent detection of such crimes and to the higher clearance rates.

The introduction of the tighter control over circulation of drugs, and particularly of the new types of medical prescriptions caused that obtaining the stupefying substances gradually became more difficult. Hence, had the drug abuse been restrained by the end of that period? Let us see, how the situation in the next period developed. That period is to be delimited by the years 1973–1974 and 1978–1979. Its features were a negligible increase, stability, and even a certain drop of the three principal (at least in Poland) statistical determinants of the level of the phenomenon discussed, namely the numbers of: admissions to the medical establishments of the drug dependents, registered crimes connected with drug addiction, and the addicts registered by the Civic Police.

The severe limitation of availability of the stupefying substances contained in medicines resulted yet in looking for other sources. As we believe, it could be estimated that much more substitutes — by comparison with the previous period — had been used, as well as many diverse medicines that did not contain the

stupefying or psychotropic substances. Such medicines could be prepared, blended, connected with alcohol and substitutes etc. In such a way, stupefying became much more harmful, for the more toxic substances were being applied.

Simultaneously, at the beginning of that period, the event of a fundamental meaning to the drug abuse in Poland took place, namely, the youths discovered the stupefying characteristics of poppy and the way the production of opium derivatives at home is possible. That discovery led to the production, by the end of the seventies, of the so-called "Polish" or "Gdańsk" (a city in Poland) heroin.³ In such a way, the opium derivatives — hence, the "hard" narcotic drugs leading immediately to dependence — became the drugs the Polish addicts normally came into the first contact with. That way of acquisition of the derivatives of opium became rapidly the main, and the least expected source of the narcotic drugs. A regular production of the bulk of such substances by the addicts themselves is a phenomenon unknown in other countries. Since the middle seventies, the drug addiction had to be widened in such circumstances once again.

That widening had been recorded in the statistics covering the next period (1979–1984) — the six years that preceded directly coming into force of the Drug Abuse Prevention Act of January 31, 1985. The numbers reflecting the three statistical determinants of the phenomenon discussed were as follows: admissions to the medical establishments for the first time grew from 1412 in 1979 to 2564 in 1984; a number of the addicts registered by the police from 7995 in 1979 to 15249 in 1984; a number of the registered crimes connected with the drug addiction from 1313 in 1979 to 3984 in 1984.⁴ The patterns or ways of the narcotic drug abuse had not been basically changed in that period for the pattern shaped in the previous one — based on the widespread use of the home-made opium derivatives — had been consolidated.

Similarly to the situation in other countries, the narcotic drug abuse in Poland takes place first of all amongst the juveniles and in schools. The data gathered by the educational authorities prove that the highest index of students who declare contacts with the stupefying substances (12.4 per 10,000 students in 1983) is attached to the vocational schools. In the secondary schools of general education that index is lower (9.0). The contact with drugs occurs also in the primary schools (6.3 in 1983).⁵

³ See first of all Koziol: *op.cit.*, p. 23 ff; also see: F. Chrobok: „Polska heroina” w świetle ekspertyzy toksykologiczno-sądowej, [in:] *Symposium — Narkomania w Polsce, 16–17 X 1981*, Częstochowa 1982, p. 18 ff; O. Schulz: *Badanie preparatów produkowanych nielegalnie z maku lekarskiego*, [in:] *Problemy narkomanii, Część II*, p. 138; J. Małec: *Administracyjne i karne metody przeciwdziałania narkomanii w Polsce*, „*Problemy Praworządności*” 1988, No. 2, p. 12.

⁴ According to data of the Ministry of Public Health and the Ministry of Interior.

⁵ See here: B. Głowacka: *Charakterystyka narkomanii wśród młodzieży szkolnej oraz organizacja opieki profilaktyczno-wychowawczej nad młodzieżą zagrożoną narkomanią*, [in:] *Problemy narkomanii, Część I*, p. 25 ff; Małec: *Epidemiologia narkomanii...*, p. 76 ff; Ślusarczyk: *op. cit.*, p. 75; *id.*: *Przyjmowanie środków odurzających przez młodzież szkolną w Warszawie*, [in:] *Problemy*

Determination of the number of narcotic drugs users, either dependent or having contacts with the stupefying substances is extremely difficult, for up to now, the methods of research leading to the univocal conclusions have not been elaborated — not only in Poland. Just the different estimations are being made — consequently, conclusions are different too.

It is unquestionable that in Poland the number of addicts was considerably growing throughout the period discussed. The rates of that growth had surely been similar to those of the determinants presented. Before the enactment of the Drug Abuse Prevention Act, such estimations had been made quite frequently. We shall cite some of them as the examples. It was estimated that in Poland, in 1982, about 150,000 persons took — systematically or from time to time — the stupefying substances.⁶ In 1983 the number of drug addicts who needed a prompt assistance had been estimated at 40,000; the number of the casual takers strongly jeopardized by the dependence at 200,000, and the number of persons jeopardized by dependence at 500,000.⁷ Regarding 1984, it has been evaluated that roughly 30,000 — 35,000 persons had been dependent or needed the medical treatment, some 120,000 had been jeopardized, i.e. were taking drugs regularly; and, as many as 460,000 came into contact with the narcotic drugs.⁸ According to another source, about 30,000 — 40,000 persons had been dependent on at least "average" level, and, totally, some 250,000 persons had been dependent or jeopardized by the dependence.⁹

The numbers referred to above — though different and not based on the same criteria — undoubtedly point out the fact that the extent of the phenomenon, measured by means of numbers of persons involved in different ways in the drug addiction, had been large before adoption of the Act of 1985, hence, the problem was a quite serious one — not only from the medical point of view but also from the social one. Moreover, the phenomenon developed spontaneously in only a dozen years or so.

The "Polish specialty" of that phenomenon consists on the home manufacturing of the hard narcotic drugs out of poppy and often with other substances added. For cultivation of poppy had been common and unlimited, the access to narcotics was practically unrestricted. It should be mentioned that the drugs made of poppy are particularly dangerous ones, owing to their strong toxic

narkomanii, Część II, p. 148 ff; *id.*: *Przyjmowanie środków odurzających przez młodzież (komunikat z badań)*, [in:] *Polska 2000, Zagrożenia społeczne i warunki oraz środki ich przewyżczenia, Część I*, Wrocław 1986, pp. 132 ff.

⁶ See M. Staniaszek: *Uzależnienia lekowe wśród dzieci i młodzieży*, [in:] *Narkomania — znakiem czasu...*, p. 23.

⁷ See T. Kowalewicz: *Monarowski model przeciwdziałania narkomanii*, „*Chrześcijanin i Współczesność*” 1984, No. 6, p. 22. See also Koziół: *op.cit.*, pp. 77–78.

⁸ See Malinowska: *op.cit.*, p. 27.

⁹ M. Trzecińska-Łabędzka: *Przestępstwa popełniane przez młodocianych w związku z używaniem środków odurzających*, [in:] *Problemy narkomanii, Część II*, p. 164.

characteristics. It is also believed that they cause the rapidly developing dependence and destruction. Initiation using the derivatives of opium distinguishes Poland from other countries where an escalation from soft drugs to the hard ones is most typical. The next feature is — despite of the preponderance of derivatives of opium-taking the different types of stupefying substances either simultaneously or subsequently, following the contingencies. The manufacturers of the narcotic drugs are, first of all, the users themselves. They also distribute those substances if the product exceeds their own needs. Hence, the characteristic feature is that the same person is a manufacturer, distributor (trafficker) and user at the same time.¹⁰

2

The phenomenon of the drug abuse, on the turn of the seventies and eighties, had been recognized as so widespread and dangerous one that the government undertook measures aimed at coordination and intensification of the counteracting actions which had been previously dispersed. In July, 1981, the Council of Ministers elaborated the "Program of the activities of State agencies concerning prevention and control of the narcotic drugs abuse". It was assumed in the Program that the development of drug addiction would be stopped by the end of 1983, and, over the next years, considerably slowed down.¹¹ Simultaneously, the social movement against the drug addiction was developing. First of all, the "Youths' Movement for Counteracting Drug Abuse" (MONAR) should be mentioned, as well as the "Society for Drug Addiction Prevention", "Polish Psychiatric Society", and religious unions, especially the Catholic Church and the Adventists of the Seventh Day Church:

Perceiving, and — what is more important — the due appreciation of the scope of the phenomenon, resulted in undertaking the further measures by the

¹⁰ See here also eg.: S. Redo: *Narkomania, Aspekty prawnokarne i kryminologiczne*, Toruń 1979, p. 91 ff; Kowalewicz: *op. cit.*, p. 23; Cekiera: *op. cit.*, p. 210; *id.*: *Z badań nad etiologią i subkulturą narkomanii*, „Studia Kryminologiczne, Kryminalistyczne i Penitencjarne” 1983, No. 14, p. 40 ff; Ślusarczyk: *Z problematyki zjawiska...*, p. 73; Grabowski: *op. cit.*, p. 36 ff; T. Hanausek: *Niektóre problemy taktyki zwalczania przestępczości związanej z narkomanią w Polsce* [in:] *Problemy narkomanii, Część I*, p. 55; U. Jankowska, Z. Ostrowska, J. Świeczyński: *Środowisko warszawskich narkomanów, wybrane problemy*, [in:] *op. cit.*, p. 79 ff; E. Andrzejewska: *Narkomania w Polsce*, [in:] *Alkohol, narkotyki, tytoń, Skutki demograficzne w Polsce*, Warszawa 1986, p. 126 ff; A. Bielewicz: *Charakterystyka epidemiologiczna rozpowszechnienia nadużywania środków odurzających i psychotropowych na podstawie statystyki służby zdrowia, Trendy w obrazie demograficzno-społecznym populacji osób uzależnionych od leków psychotropowych w latach 1974–1985*, Instytut Psychiatrii i Neurologii, Warszawa 1986; T. L. Chruściel, M. Łabędzka-Trzecińska: *Nadużywanie i zależność od środków odurzających i leków psychotropowych w Polsce*, „Studia Kryminologiczne, Kryminalistyczne i Penitencjarne” 1987, No. 18, p. 120.

¹¹ See text in: *Narkomania — znakiem czasu...*, p. 120 ff.

government. In 1983, the control of the poppy cultures has been introduced and drafting of the new regulation initiated. Poland had — at that time — no legal regulation concerning drug abuse control. In November, 1983, the draft law¹² had been elaborated and submitted to the public discussion. On July 19, 1984, the bill had been introduced to the Diet and adopted as the Drug Abuse Prevention Act on January 31, 1985.¹³

As we can see, the Act had been drafted and adopted very promptly taking into account the fact that an official "discovery" of the phenomenon took place as late as in 1980-1981; not till the Program of July, 1981, had been issued the works over diagnosis of the phenomenon was recommended. Those efforts obviously were being undertaken in an unfavourable social and political situation (since the adoption of the Program to the decision on drafting the law). Hence, the draft had been prepared without the background of a complex research over drug addiction and social problems connected with it. That issue had been pointed out for many times by the press and during the discussions held in the commissions of the Diet. The question was being asked, whether or not the Act — prepared so promptly — would be, since the beginning, defective and requiring amendments, particularly owing to the lack of resources of medical services necessary for its enforcement. In connection with the dynamic structure of the phenomenon, proposals had been put forward to adopt the act as a provisional one — for three or four years — in order to gather experiences and introduce the proper modifications.

The reasonableness of those objections would be difficult to oppose, for the discussion within the commissions of the Diet revealed the lack of many relevant and basic bits of information about the drug addiction and related problems. However, it seems that the decision on adoption of the Act was not an erroneous one. It should be regarded rather as a choice of the much lesser of two evils, for the existence of the phenomenon, its danger, and the need for a legislative framework to counteract it were beyond any doubts. A maintenance of the legal *status quo* and waiting for the full diagnosis would hinder the effective preventive actions. Moreover, a complex legal regulation compels authorities to act more intensively, hence, may appear to be a factor stimulating the activities of the State and its agencies. Hence, we believe that the adoption of the Act was a beneficial event though that evaluation is to be accompanied by the full awareness of the fact that the Act is not perfect. The need to obtain a diagnosis of the phenomenon — despite of the flow of time — still exists. The Act, with its current wording, may be considered just as a first step towards the legal regulation of the prevention of drug addiction.

¹² See draft text in: „Rzeczpospolita” of 13 XII 1983.

¹³ Dziennik Ustaw 1985, No. 4, item 15 and 1985, no 15, item 66.

3

The Act of 1985 was devised — according to the official declarations — to realize the so-called prophylactic and therapeutic model of prevention.¹⁴ Whether it is true — is a question to be answered when the penal provisions are discussed. The Act puts stress on assurance of the effective coordination of actions undertaken by the administrative authorities and social organizations, with emphasis laid on the promotion and using of the activity of the society.

The interinstitutional links and collaboration between the different government departments are to be assured through the central financing of the activities connected with the prevention of drug abuse. A special Fund for Prevention of Drug Abuse has been set up and subjected to the Minister of Health and Welfare Matters. The fund is being fed from the central budget up to the sums equal to one per cent of those coming from the sale of alcoholic beverages, as well as out of other sources.

The controversial issue, a lot of moral objections has been voiced to, was feeding the Fund out of resources gathered through the sale of alcohol, hence, prevention of the dependence using profits gained from another dependence, also very dangerous one. The opinion yet prevailed that such a solution offers a real chance to acquire the means needed to the preventive activities. After all, that argument cannot be denied.

The act includes a set of definitions of the basic notions connected with drug addiction, where the terminology elaborated by the World Health Organization and adopted in international documents on the stupefying and psychotropic substances was used. In particular, the drug addiction has been defined as "a permanent or periodical taking, for the non-medical purposes, of the stupefying or psychotropic substances or their substitutes, resulting in the possibility of dependence or the dependence itself." The definitions of stupefying and psychotropic substances have also been included, as well as those of a substitute, addict and a person jeopardized by the dependence. The Act introduced the principle of the strict control over the stupefying and psychotropic substances, as well as imposed the detailed rules that govern manufacturing, conversion, importation and exportation, transit, wholesale and retail, storing, possession and applying of the stupefying and psychotropic substances.

The provisions of the Act mainly concern the dependents. However, the prophylactic and educational measures regarding persons jeopardized by the

¹⁴ See here eg.: J. Broł: *Podstawy prawne zapobiegania narkomanii*, „Państwo i Prawo” 1985, No. 6, p. 23 ff; H. Popławski: *Problematyka karna w ustawie o zapobieganiu narkomanii*, „Nowe Prawo” 1987, No. 4, p. 53 ff; Ł. Korozs: *Zapobieganie narkomanii w świetle polskiego ustawodawstwa*, [in:] *Problemy narkomanii, Część I*, p. 175 ff; A. Krukowski: *Zapobieganie narkomanii wśród młodzieży w świetle ustawy o postępowaniu w sprawach nieletnich i ustawy o zapobieganiu narkomanii*, [in:] *ibid.*, p. 215 ff; Malec: *Administracyjne i karne...*, p. 9 ff.

dependence have also been included. The principal questions — regarding the dependents — deal with a medical treatment, rehabilitation and readjustment — carried out, first of all, by the public health services. Such activities may also be undertaken by the social organizations, the Church or other religious unions, as well as the individuals, if a permission by the Minister of Health and Welfare Matters is granted to them.

The treatment is voluntary, except minors and those who violated the law. Moreover, the administrative agencies have been obliged to provide the addicts with any type of an assistance, such as that regarding employment, housing, financial matters. All the medical benefits and those connected with rehabilitation or readjustment being delivered by the public health services are free of charge.

4

The "specialty" of the Polish drug abuse requires to pay particular attention to the problem of cultures of poppy (first of all), and of hem, for it is — according to the experts' opinion — a central problem of the prevention of drug addiction in Poland.

In Poland, where cultivation of poppy for one's own needs is deeply seated owing to the culinary preferences, the poppy has always been cultivated first of all in the small fields by the farmers, or on the small pieces of ground belonging to non-farmers. The commercial cultures exist too, based on the system of contract deliveries of agricultural produce. The number of farmers who cultivated poppy off the system of contract deliveries in 1984–1985 has been estimated at about 600,000–700,000, and, a total area of cultures — according to the not precise governmental estimations — at roughly a dozen or twenty thousand of hectares. At that time (1984) the total product exceeded the national needs at about 60%; the area was twice larger than the needs, and, the produce of poppy straw was many times larger than the needs of the pharmaceutical industry.¹⁵

Hence, the necessity of statutory regulation of that problem was obvious and urgent one. An introduction of a total ban of cultivating poppy was possible — some other states did it recently. But, in Poland, that question was very controversial one and often dealt with emotionally. It is not an exaggeration to state that the parliamentary discussion on the prevention of drug abuse had been overwhelmed by "the problem of poppy" to the detriment of other issues that were equally important. Eventually, the solution has been adopted aiming at a gradual limiting of the cultures of poppy, and, the total liquidation has been scheduled at most until 1990.

¹⁵ See information of the Ministry of Agriculture, *Biuletyn* No. 1292/VIII Kad., p. 12; also *Brol: op. cit.*, p. 28.

The poppy may be currently cultivated according to the three sets of legal provisions: by an individual or an organizational unit following the permission given by the competent administrative agency of basic level and the contract on purchasing of agricultural product; by the research institutes, higher schools, botanical gardens, seed science enterprises and the Center for Research over the Cultivable Plants, if the culture is foreseen by a statute of a given unit; by the farmers on the pieces of ground up to 20 m² after permission given by the competent administrative agency of basic level and on the condition that the poppy straw will be sold to the "unit of socialized economy" or will be destroyed. The Regional People's Council has a power to introduce a ban of the last type of cultures for a definite period in case of particular danger of the drug abuse in the locality. Hence, on the date of coming of the Act into force, any other culture became illegal and banned — including the small gardens that do not belong to the farmers.

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Let us present the penal provisions of the Act. The system of those provisions has been developed by comparison with the former one. According to the presumptions declared by the legislators and then confirmed during the legislative procedure, the Act of 1985 is expected to realize the prophylactic and therapeutic model of counteracting the phenomenon discussed. Such presumption results in the need of considerable differentiation of both the scope and statutory integrity of penalization. On the one hand, the severe provisions directed against the manufacturers and traffickers are to be adopted, for they should be prosecuted and severely punished. On the other hand, repression should be limited, and even abandoned regarding the addicts or those jeopardized by the dependence. The therapeutic and prophylactic measures, limitation of availability of drugs, as well as the broad actions of social policy and education are to be undertaken in that regard.

Such a picture seems to be quite clear, however, only in situation in which the users, manufacturers and dealers are different persons. Such "clear" situation exists nowhere; it is the case especially in Poland where manufacturing of drugs and trafficking by the addicts themselves is particularly common.

Bearing in mind that fact, we shall discuss the penal provisions mainly from the point of view of penalization of the behaviour of addicts themselves. Let us start, however, from the description of the depenalization introduced by the Act. At least three types of the addicts' behaviour have been depenalized, so the Act made the scope of penal responsibility of addicts narrower. Firstly, the punishability of illicit possession has been abolished, for no provision embodies such features of a criminal deed as "possesses", "stores", etc. Secondly, the

punishability of taking drugs together with another person has also been abolished. Thirdly, using and trafficking the substitutes is not punishable now because all the provisions refer exclusively to stupefying or psychotropic substances. The substitutes have not been covered by the penal provisions of the Act at all.¹⁶ It is not necessary to add that those changes promote the therapeutic and prophylactic model of prevention of the drug abuse. The scope of penalized typical behaviors of addicts or those jeopardized by the dependence has been substantively narrowed.

Let us review now the penal provisions of the Act. The provision of art. 26 penalizes the illicit harvesting poppy lactescence or straw, resin or herb of cannabis. The offenders covered by art. 26 shall always be differentiated. On the one hand, farmers or other owners of pieces of ground shall violate the purely administrative rules without any malicious intent; on the other hand, both the farmers and the said owners shall violate the rules in order to introduce those derivatives of the plants considered to the illicit circulation, and, finally, the addicts themselves — the last group is not expected to be the dominant one. The addicts and those jeopardized by the dependence shall prevail among the persons who steal the poppy lactescence and straw or the stupefying or psychotropic substances — the behaviour also covered by art. 26 of the Act.

Art. 27 penalizes the illicit manufacturing of the narcotic drugs or psychotropic substances or conversion of those substances or the poppy lactescence or straw — also in large quantities and in case of the production on a commercial basis. That provision covers the vast majority of addicts for they are the perpetrators of those deeds most frequently. The addicts themselves produce the large quantities of drugs because the group of addicts exist that produces the substances discussed not only to satisfy their own needs or those of their acquaintances but also to obtain means to provide for their families. The personal benefit may concern a vast number of cases of the typical behaviors of youths' and addicts' subculture.

Art. 28 threatens by a penalty the manufacturing, storing, selling or buying of the devices whose features witness that they can be used to the illicit manufacturing or converting of the intoxicants, as well as adoption of other devices to the same end. Hence, the preparatory acts have been standardized as a *delictum sui generis*. Also that provision — in the light of the "specialty" of Polish drug addiction — penalizes, first of all, the deeds of the addicts themselves.

Art. 29 concerns smuggling of the stupefying or psychotropic substances. The article — owing to its construction (the basic type, the type of aggravated circumstances, and the "less serious" type) — makes possible to differentiate the

¹⁶ Decriminalization of the illicit possession of narcotics has been claimed since many years. See eg.: Redo: *op. cit.*, p. 91 ff; Z. Hołda: *Przestępstwo używania środków odurzających w towarzystwie innej osoby*, „Nowe Prawo” 1974, No. 10, p. 1303 ff.

responsibility for acting exclusively to get profits (the large-scale or professional smugglers), or for smuggling of moderate quantity of drugs by the addict who wants to gain profits in order to satisfy his/her needs resulting from the dependence or to obtain the personal profits.

The similar "three-type" construction has art. 30 that penalizes the illicit sale of drugs or poppy straw or lactescence. Also in that regard the addicts themselves are the most frequent perpetrators.

The most controversial provision is that embodied in art. 31. According to that provision providing another person with an intoxicant or inducing him/her to take it is punishable. Yet, such behaviour is typical for the addicts, hence, the provision establishes the responsibility of the addicts themselves.

The last penal provision has been embodied in art. 32 that foresees the responsibility for giving an intoxicant to another person, making the accession easier, or inducing to take a drug in order to obtain financial or personal profits. Also that provision penalizes the typical addicts' behaviour. The reason is the "personal profits" have been introduced as equal ones to the financial profits. Such alternative leads to covering the entirely different deeds by the same provision.

The review of crimes presented¹⁷ above shows us that the extensive sphere of deeds typical for the addicts in Poland has been penalized. Despite of the abolition of punishability of storing intoxicants without a due authorization and of taking them in presence of another person, the legal situation remains that places the addicts amongst criminals, with all consequences resulting from that fact. That situation is even worse owing to the penal provisions other than included in the Act.

Now, possession of the intoxicants is prohibited; they are subjected to forfeiture despite of the fact that such possession is not a criminal offense. However, the addicts use — most frequently — substances that have been acquired contrary to the law (stolen, obtained under false pretences, manufactured illegally). Hence, the crimes of receiving of stolen property are being committed by the addicts in that way.

All those facts mean that — according to the Polish law — only in few cases the addict is not simultaneously a perpetrator of an offense prosecuted *ex officio*, or, at least, of a petty offense. Nearly each addict who possesses such a substance

¹⁷ See also: A. Gaberle, M. Ostrowska: *Prawo karne wobec narkomanii (Uwagi na tle ustawy z 31 I 1985)*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 1985, No. 4, p. 114 ff; id.: *Kara pozbawienia wolności a zapobieganie narkomanii*, „Palestra” 1986, Nos. 5–6, p. 66 ff; A. Klimowicz: *Rola prawa karnego w zwalczaniu narkomanii*, [in:] *Symposium — Narkomania w Polsce*, p. 75 ff; P. Zakrzewski: *Problem karania młodocianych narkomanów (toksykomanów)*, „Nowe Prawo” 1982, Nos. 5–6, p. 5; id.: *Zjawisko narkomanii w Polsce a projekt ustawy o zapobieganiu narkomanii*, „Nowe Prawo” 1984, No. 6, p. 76; Malec: *Administracyjne i karn...*, p. 23 ff.

had to pass the borderline between the penalized and not penalized spheres of humane behavior.

Hence, if we go back to the question asked earlier: whether or not the Act realizes the therapeutic and prophylactic model of counteracting the phenomenon discussed, the answer — in the light of the scope of penalization of addicts' behavior — would be not positive. That formalistic, rigorous and clearly repressive model of the legal regulation obviously can be modified by practice (of prosecution first of all) that may be more or less rigorous. There are signs of the right approach to that problem for, e.g., the addicts are not prosecuted for receiving stolen drugs.

6

However, the scope of penalization is not the only one determinant of a model of counteracting the drug addiction. The second one is a way of reaction — according to the law — to the deeds committed by addicts or the persons jeopardized by the dependence. That reaction may be — generally speaking — twofold. It may be similar to that applied in case of ordinary criminals (suspects, accuseds, convicts) or, it may be adjusted to the fact that the addicts are ill and require rather assistance, treatment and care than the repression.

The second approach is difficult to be brought about for it requires to use the different instruments and facilities; it is complicated and expensive. Moreover, it is impossible to ignore — even within that model — the penal elements of reaction, hence, that embodying the protective function. For that reason, the second model makes possible a wide variety of solutions ranging from the therapeutic function to be protective and repressive ones. An ideal solution does not exist in that regard that seems to be perfectly understood by the authors of the Convention of 1971 on psychotropic substances.

In comparison with the possibilities of different treatment established by that convention, the Polish solutions are too moderate. The Act foresees three special situations concerning exclusively the addicts convicted for the criminal offenses connected with using of the stupefying or psychotropic substances. Namely, if such person is sentenced to deprivation of liberty conditionally suspended, a duty to undergo the medical treatment and rehabilitation at a proper medical establishment is to be imposed, and a supervision is obligatory, too. In case of a prison sentence, the court may place such a convict in the proper medical establishment before the sentence is executed with the further possibility of giving up the enforcement of the sentence. An obligatory character of such a treatment is particularly reinforced by the fact that the subordination to the therapeutic regimen is the basic premise of giving up the execution of the penalty imposed.

The limitation to setting up the alternative measures consisting in the compulsory treatment confirms the evaluation of the sphere of penalization; the Act — despite of the declarations — actually has not introduced the therapeutic and preventive model. We pass by the issue of actual value of a compulsory treatment of the drug addiction. The Act does not contain such measures as possibilities to provide the persons jeopardized by the dependence with an assistance; to discontinue the proceedings (or another form of diversion) instituted against the addicts or the persons jeopardized by the dependence; to provide an assistance instead of a penalty or another penal measure with particular attention given to medical treatment and rehabilitation of addicts. The last condition: treatment of the addict-offender as an alternative of either sentence or prosecution should be devised in such a way that the element of coercion was limited as far as possible.

Those evident lacunae in the substantive legal provisions of the Act cause that no provision exists which could impose on the court (or another body of adjudication) a duty to take into account between that fact and violation of the law. Instead, the Act includes a very strict set of penal threats; the prison penalty is dominant and included in each sanction. Only 5 (out of 14) statutory sanctions allow to impose the limitation of liberty or a fine instead of prison penalty. In four instances deprivation of liberty is the only one sanction, and, in five ones, both the prison penalty and a fine; it is a clear mistake when the addicts are concerned.

Moreover, the Act does not contain processual provisions that would establish a special procedure to be followed in cases the addicts are involved in. There is no legal norm that would impose on the court the duty to appoint an expert in case of suspicion that the accused is a drug addict or a person jeopardized by the dependence.

7

The conclusions concerning the model of counteracting drug abuse introduced by the Act are as follows. Regarding the persons jeopardized by the dependence and taking just the substitutes, the provisions of the Act have the prophylactic, educative and therapeutic character. However, there are only a few such persons for the vast majority of addicts take different types of substances simultaneously. Regarding the persons jeopardized by the dependence (it is the most numerous group) and dependent ones, if they commit criminal offenses the repressive model prevails, for many typical addicts behaviours are penalized, hence punishable; the proper exceptions are not foreseen by the Act. It would not be an exaggeration to say that if the actions undertaken by the agencies of prosecution were more intense and the provisions of the Act were strictly

enforced, the addicts would be one of the dominant groups convicted by courts. Surely, the intention of legislators — either declared or real ones — was different.

8

The Act was — as we stated before — necessary but issued without a proper preparatory work. It seems that the Act is useful; anyway, the three-year term of being in force does not prove its noxiousness (also such possibility was to be considered), or, from the point of view of the drug abuse prevention — it is not quite indifferent. The last would mean that the adoption of the Act would be only the false decision aiming at creation of the impression that something was done about that problem. We based our positive evaluation of the Act on the fact that its adoption brought about the different activities which could contribute to the drug abuse control. However, it does not mean that the Act does not need some important amendments, especially regarding its penal provisions.

STRESZCZENIE

Narkomania jako zjawisko społeczne pojawiła się w Polsce stosunkowo późno, bo dopiero w połowie lat sześćdziesiątych. Wcześniej istniała jako problem tylko medyczny. Do połowy lat osiemdziesiątych narkomania stała się zjawiskiem wyraźnie zauważalnym, co było rezultatem jej wyraźnego wzrostu w latach siedemdziesiątych. Polska narkomania ma swoją specyfikę, polegającą przede wszystkim na tym, że opiaty uzyskuje się domowym sposobem ze słomy i mlecza makowego. Bardzo często producentami są sami narkomani, co sprawia, że stosunkowo częściej niż w innych krajach są oni uwikłani w proces wytwarzania oraz sprzedaży narkotyków. Do r. 1985 problematyka zapobiegania narkomanii nie była przedmiotem kompleksowej regulacji prawnej. Dopiero ustawa o zapobieganiu narkomanii z 31 I 1985 r. zawiera taką regulację. W ustawie wprowadzono istotne ograniczenia dotyczące uprawy maku oraz obrotu słomą makową. Nie zdecydowano się jednak na całkowity zakaz uprawy maku. W odniesieniu do narkomanów w ustawie starano się wprowadzić tzw. „lecniczo-profilaktyczny” model postępowania z nimi, jednakże nie został on wprowadzony dość konsekwentnie. Widać to szczególnie w postanowieniach karnych ustawy; na ich podstawie każda niemal osoba uzależniona od narkotyków może być pociągnięta do odpowiedzialności karnej za zachowanie typowe dla narkomańskiej podkultury. Zaproponowano rychłe podjęcie prac nad nowelizacją ustawy, którą oceniono jako akt bardzo potrzebny, ale wymagający już teraz licznych zmian.