Prosecutors on the Seesaw

– Surveillance and Evidence of Supply-side Drug-related Crime in Hungary –

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The rapid changes of the drug scene and the drug market can be followed by criminal jurisdiction and law enforcement only with considerable delay, resulting in a reactive legal policy and legislation. By the time a change in the legal environment can be felt in the legal practice further changes become necessary as those in the drug market have made even the latest legal regulations and legal practice obsolete. How far can law enforcement and criminal jurisdiction be forced to tolerate this Catch 22 situation? Whereas legislators aim at the control of the drug market, this very market is continuously changing as a result of the changes of the legal environment and the legal practice, practically as an unwanted after-effect. The process looks like a latin dance step: quick-quick-slow, quick-quick-slow. Rapid changes on the drug market are followed by slow criminal political responses, then come rapid changes on the market in the field of distribution and product development, followed by the slow reaction of the institutions in the criminal justice system. In this way, the tug-of-war between the drug market and the market of criminal jurisdiction becomes similar to a tumbler. Both seek optimal balance but the realization of this balance would, after all, not serve the interests of either of them. The present study intends to interpret the impact of the system of criminal jurisdiction on the drug market through the results of a study into the effectiveness of the criminal justice system implemented in 2013.

Keywords: reactive legal policy; operative data collection; drug market

Introduction

Trafficking in drugs is today an illicit business that deals with the production and distribution of a commodity producing one of the highest profits on the market. I firmly believe that its major difference from legal trade is that due to its illegitimate nature the production and distribution of this commodity takes place under different market conditions and involves different ways of enforcing one's interests in economic life. However, the macro-level behaviour of actors both on the demand and the supply side does not differ much from that of those on legal markets.

National drug policies are, however, still dominated by a criminal political approach. We still believe that with higher expenditures on law enforcement, the suppression of the drug market will be more successful. And we are still unable to get rid of the theory that interprets the demand and the supply side as 'independent sectors' and 'institutionalized approaches'.

The entry of new psychoactive substances on the drug market should lead to new strategies and approaches in drug policy, since traditional drug policy and its tools to reduce supply are today not merely insufficient but definitely unfit for use.

Wolfgang Götz, director of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) said the following on drug trade in Brussels:

> 'We are facing a growing challenge to the way we protect our citizens from drug trafficking and the collateral damage that it brings with it. […] Synthetic substances are becoming a more significant problem on both the European and international drug markets. Here we are increasingly playing a game of cat and mouse with drug producers. Our successes are met with new strategies and we are struggling to keep up with developments.' (Götz 2012)

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On 7 December 2012, the Council of the European Union adopted Resolution 17547/12 on the drug strategy of the EU for the years 2013–2020.[1] Mike Trace, who was director of the EMCDDA in 2001–2003 and participated in working out this drug strategy said the following about the draft:

> 'I think we should be at a stage now where we need to be brave enough to say we are working to the wrong objectives. In fact we are framing them wrong. There is nothing wrong with reducing supply or demand, but as overarching objectives for a Drugs Strategy I think we have framed them in the wrong way … supply and demand reductions are laudable goals and should be a key part of what we are trying to achieve, but because we have held them as what I would call the fetish of drug policy, we have misdirected a little bit of our thinking.'[2]

I agree with Mike Trace that the drug problem and consequently the strategy dealing with it can no longer be interpreted as two-pole phenomena divided into a demand and a supply side. In fact, they never should have been, though the health aspect of the problem, especially the protection of drug addicts, and the development of control on the part of the criminal control and the related problems justified or at least accounted for the dual or polarized interpretation. However, despite the best intentions, it was probably due just to the struggle with the current trend of criminal policy that 'strategic thinking got diverted' (just like drug users in the criminal procedure – from seeing the phenomenon or the social problem as it is, namely, as a single market with a demand and a supply side where the behaviour of actors on both sides are closely correlated.

The actors on the actual markets are not criminals and victims, vicious dealers and poor drug addicts but buyers and sellers, the behaviour of whom on the market is governed primarily by utilitarian interests. Let us just think about the reason why a person buys a packet of cigarettes, a bottle of wine, a bar of chocolate, a new app game or a smartphone, and about the motivations of the producers and the sellers. Are the latter vicious dealers as well?

Let us examine briefly the theory of utilitarianism in this respect. It is the invention of Jeremy Bentham and Stuart Mill, whose theory maintains that the people's actions are governed by the pleasure principle. Their aim is to maximize pleasure and minimize pain. (Christie 2001). Consequently when deciding what to do, people rationally consider the subjective effectiveness of their actions. Utilitarianism is one of the basic principles of liberal economics. Extrapolating this to the drug market we find that both sellers and buyers are interested in the exchange of goods that takes place without any internal or external coercion. One of the parties gives something to the other that he needs. They have to agree on the price, and if they both find it reasonable the act gives satisfaction to both. In this case they both are happy, everyone comes off well and even makes profit. This means that the drug market will prosper as long as sellers will be able to supply the goods demanded by buyers at a price they can afford. And this is what basically makes the criminal control of drug-related behaviours extremely difficult.

Having no other means of social policy suitable for dealing with the problem, the society empowered criminal jurisdiction to do so and preferred the methods of criminal policy in suppressing the drug market. It has to be noted, however, that the system of criminal jurisdiction is in itself, by its very nature, unsuitable for suppressing an illicit economic activity which is functioning and is so wide-spread just because it satisfies an existing demand in the society despite the prohibitions, while the common consent on control is lacking and a maximum of excess profit can be realized much faster than on any other market.

In this context, criminal law with its penalties is unable to serve even its basic functions in general and special prevention.

The European strategies of approaching the drug problem are determined, at least in most member states, by individual 'fetishized' segments of the drug market (Mike Trace) rather than concentration on the whole.

It belongs to the sphere of scientific research to pose questions. We ask, therefore, why is it so? Besides the drug market, it is to the interest also of the institutional market of the authorities aiming at the definition of the problem and at dominating the means of its solution to maintain the status quo. One can see here two markets clashing and mutually influencing each other. They exploit each other and fight against each other but even this contributes to their mutual strengthening. On the one hand, there are the clashing markets of drugs and social institutions created for handling the former, and on the other hand, there are the clashing systems of the competent state and social organizations qualified to manage the phenomenon (i.e., the market of social welfare and health care and that of the market of criminal justice system).

The tools of criminal justice have already been applied successfully also for the management of social and even of health issues. Whenever the system of social policy sizes up and interprets a social problem wrongly and gives disfunctional answers (mostly when cultural problems are treated as social ones), i.e., when the measures and institutional systems destined for solving the problem cause more harm and social cost than the profit they make and the advantage gained by them, the problem is usually delegated to the legal system with an elegant sweep of a magic wand. When the latter similarly fails to handle the phenomenon and produces a similar disfunctional mechanism as the system of social institutions, the problem and the behaviour in question gets simply decriminalized and delegated back to the social management or the health care system. Just like in a game of tennis, advantage always lies with the server also in the case of social institutions and the various branches of social policy. Although they should cooperate in handling social, economic, and political problems, the drug problem included, those institutions that assume a greater role in it receive higher state support. Consequently, they can become more influential and will be able to give preference to their own activities, their own sector, i.e., their own market. They become, therefore, interested in maintaining the existing structure of the problem and the structure of handling it, as it is this structure that makes profit for the sector in question.

State expenditures on fighting the drug market depend on subjective social reactions to the problem, on social and/or institutional fears in connection with the phenomenon, and on the GDP of a country. The distribution of the funds by sectors is, however, often decided by sector and lobby interests.

Research results

The question arises, what interests can the persecution of trafficking in drugs serve, what latent functions can this activity have? How far can criminal law be effective and applicable in this struggle? What indirect effects can the application of the relevant legal regulations have, i.e., how does the legal practice relate back to the drug market? Is there a unified procedure at all? Is there at least relative legal security? These are the questions I intended to answer by conducting a research in the course of which I studied the documents of 457 proceedings of supply-side criminal offences in Hungary initiated within the past five years and selected at random, as well as by conducting a nation-wide survey of the experience and opinions of prosecutors acting in such cases.[3]

The research results clearly confirm that besides the protraction of procedures and the problems concerning expert examinations, the investigation phase, and international cooperation in connection with supply-side drug offences, it is mostly the difficulties of producing evidence that pose the greatest challenge for criminal jurisdiction. The present study intends to demonstrate the anomalies of law enforcement and criminal jurisdiction in

connection with supply-side drug offences via the major findings concerning the collection of data and information in Hungary, applied in the course of covert and general investigations necessary for proving a case.

The difficulties of producing the necessary evidence stem partly from the relationship of the phenomenon to be controlled and criminal justice, partly from the interactions of the legal authorities (the quality of their cooperation and communication, as well as the differences in their interpretation of law). The police and the legal professions have little influence on the former but they could rationally target improving their cooperation and communication, as well as a unified interpretation of the law.

Supply-side drug-related offences are difficult to prove both in continental and common law countries, the fundamental problem being that in these cases there are neither denunciators, nor offended parties asking for the authorities' help. Therefore, the detection of such crimes is mostly possible only through operative data collection by law enforcement agents. Making such information 'open' does, however, not necessarily mean that it can be used by prosecution during a procedure. As it is the data procured by operative investigation, during arrest, and the first interrogation of the suspect that are the most decisive in these procedures, prosecutors have very little opportunity to obtain further conclusive evidence during the prosecution phase.

The interviewed prosecutors were to evaluate on a scale of five the difficulties of evidence, of the classification of such cases, of their role as prosecutors, of cooperation with the investigative authorities, of obtaining information from the police, and of exercising control over investigation.

The following table shows the average results and the deviations from them.

Table 1

How difficult do you find the activities below in procedures concerning supply-side drug-related offences[4]

Activities	Average	Deviation from average
a) classification	3.2	0.8
b) production of evidence	2.2	0.7
c) obtaining information from the police	3.4	1.1
d) acting as public prosecutor in court	2.8	1.0
e) cooperation with police in clandestine data collection	2.8	1.2
f) supervision of investigation	2.9	1.0

The lowest average and the greatest consent between the respondents could be seen in the case of evidence. Even the most experienced public prosecutors acting in drug offences find it difficult to prove drug-related crime on the supply side.

This phenomenon can be attributed basically to the anomalies of covert investigation and to the level of communication and cooperation between the police and prosecution during covert investigation. Namely covert investigation and capture largely determine the classification of the case and the process of finding and using evidence. Obtaining conclusive evidence is mostly possible prior to arrest. Later it is highly difficult and accidental. Consequently, in such cases the contents of the procedure stand or fall on investigation and arrest.

This means that the problems concerning demonstrability evidenceable go back basically to the monopolization of data and information obtained during investigation by the investigative authorities. The problems concerning investigation similarly go back to this fact

as the investigative authorities are practically independent and uncontrollable entities as regards clandestine data collection and the data themselves, and are exclusive owners of all information. The Police Act (Para 1, Article 63 of Rtv.) makes clandestine data collection possible for the police for the purposes of crime prevention and investigation and makes it possible for prosecutors and judges to become acquainted with classified contents (see Para 5). It is, however, all in vain if the investigative authorities do not inform prosecutors even about the existence of clandestine data collection or inform them about it at best when open investigation is ordered.

As *Géza Finszter* and *Ádám Mészáros* established,

> '…in a covert investigation without supervision by a prosecutor there are no guarantees for a person not being accused groundlessly or a perpetrator not being able to avoid being punished, or a person not becoming a victim of provocation. The fulfilment of these requirements can be expected *de lege ferenda* only if a legal solution which makes it clear that covert criminal investigation can be executed only by persons or institutions having investigative powers. The regulation thereof belongs to the jurisdiction of the Code of Criminal Procedure.' (Finszter and Mészáros 2010)

I think, the present legal environment does not make the social control of operative criminal investigation possible, which has a great impact not only on legal security but also on the principle of legitimacy.

I agree with *Finszter and Mészáros* in that 'the social function and sole legitimate purpose of the clandestine collection of data for the purposes of law enforcement can be preparation for the administration of justice', i.e., the detection of phenomena and preparation for investigation. As it has already been mentioned, the present legal environment makes it possible for prosecutors to know the whole material collected by clandestine intelligence in order to make the charge grounded as a precondition of legitimacy, it still does not really facilitate the activity of prosecutors in the cases in question. These materials are, in fact, customer-supplied materials, which enforces the reactive role of the prosecutor in the proceedings once again.

Information procured by operative data collection establish and determine the direction of open investigation and also of the classification of a case to a great degree due to the fact that the applicability of these informations as evidence later on in the course of a procedure gets definitely decided in the operative phase and during the arrest. Once investigation gets out to the open, there is hardly any possibility for obtaining conclusive evidence any more.

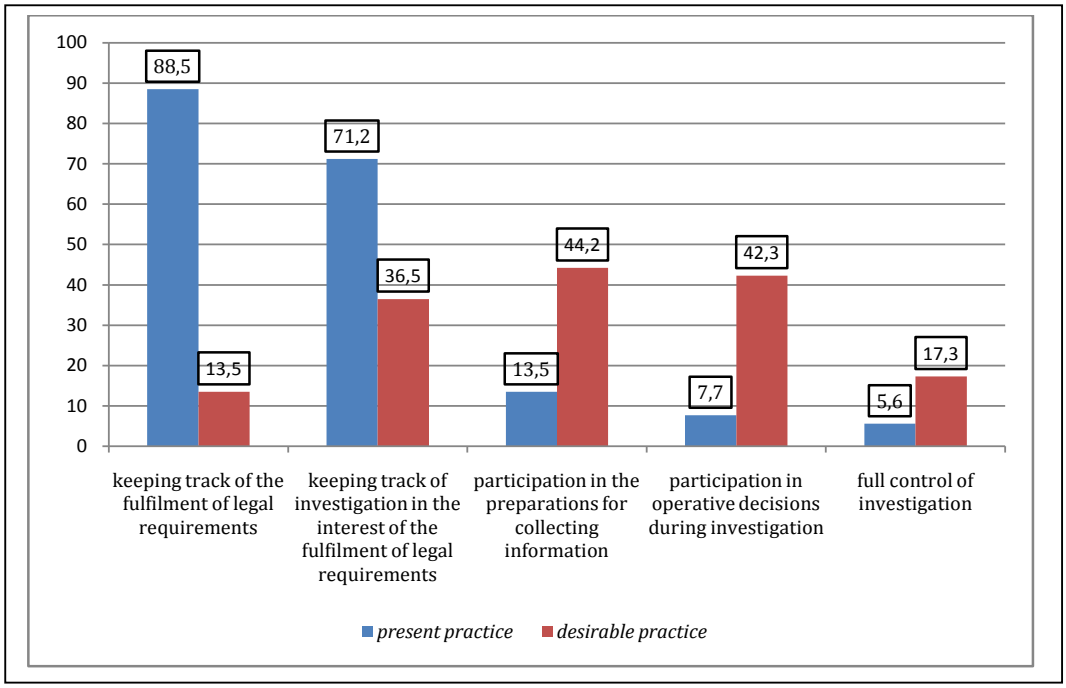
It seems that in the cases in question the open investigative phase is a *quasi* 'procedural action' in the course of which the hearing of the witnesses and the interrogation of the accused are conducted, expert opinions are collected, and the actual accusation takes place. The outcome of investigation as regards the perpetrators of supply-side drug-related offences is often decided already at the time when the investigation becomes open or during the arrest when drug-related *corpora delicti* or other substantive evidence are seized.

Even if additional investigation would be necessary to obtain further evidence for accusation or to be able to maintain the 'heavy' classification, it is not likely in the open investigative phase and prosecutors ask for it to no avail.

We asked the prosecutors involved about what they consider to be the primary role of a prosecutor in the investigation of supply-side drug-related offences. We offered six possible alternatives and asked them to mark with an X those that characterize their daily activities most and also those (in a separate column) that they think could make the investigative phase and their action as prosecutors in court more successful.
The frequency of choosing an alternative is shown on the following chart.

Figure 1

The prosecutor's role in investigation of supply-side drug-related crime according to the prosecutors involved in the survey (%)[5]



There is an obvious difference between the present primary role of the prosecutor and his desirable role possibly resulting in more successful investigation and prosecution.

88.5% of the prosecutors in question indicated that their primary role in connection with drug-related crime is to follow the fulfilment of legal requirements during the investigation, and 71.2% of them marked also keeping track of investigative actions in the interest of a better realization of the legal requirements and the improvement of the criminal procedure.

88.6% said that it was typically the police that decided the type of investigation and data collection in connection of supply-side drug-related offences. Only 9.6% indicated that there is a team for that purpose in which also the prosecutor is involved, and 1.8% said that this decision lay with the prosecutor alone. The outcome of the procedures similarly corroborates the fact that the success of procedures demanding a high level of conspiratorial action depends on an effective cooperation of the police and the prosecutors, especially on the quality of coordination and communication.

Most prosecutors acting in supply-side drug-related offences play a reactive role in Hungary today. The findings of investigation are presented to prosecutors as a *fait accompli*, so they usually have little knowledge of investigation and even less opportunity to participate in it. However, they should play a proactive role instead, even if within their own sphere of competence. Their aim is not total control over investigation but cooperation and the effective coordination of roles and a good-quality communication between police officers and prosecutors.

The prosecutors' involvement into the collection of information can, namely, have a considerable impact on successful prosecution in court.

Whereas the members of both the policing and the investigative authorities need to have great expertise concerning the phenomenon and the implementation of the relevant regulations of the law,

'...both organizations should know and respect each other's roles and activities during the procedure' (Goldstock 1992) [6].

'Inappropriate realization', i.e., arrest at a wrong time, at a wrong place, etc., can greately determine the outcome of a procedure. Due to the nature of supply-side drug-related crime, data collection following arrest is difficult and rarely leads to actual results. It is not by chance that in most cases the investigative authorities cannot reach higher than couriers or medium dealers. Perpretrators on higher levels of organized crime usually cannot be detected. Knowing this, it becomes obvious why the average penalty of such offences imposed by courts of first instance was 4 years in the discussed period.

In the period in question, every third supply-side drug-related offence was linked with smuggling. The drug market being highly fragmented, actors of lower-level markets can appear in several roles. So it was basically this circle that were present in the sample. The majority of known perpetrators on the supply side belong to lower levels of the chain. They are mostly couriers (32.7% of all perpetrators in the sample), people who own plantations of cannabis or work on such (18.9%), and dealers[7] (27.7%) in our sample of people prosecuted and committed for trial.

The basic problem is that the term 'evidence' means something different for both sides (i.e., the police and the prosecutors), so there is no unified interpretation of evidence. In several cases, policemen and prosecutors qualify different things as evidence beyond doubt. What detectives or investigators see as clear evidence is often insufficient or unsuitable for a prosecutors if he wants to be successful before the court.

Even the practice of the individual counties or even cities within the same county can differ as to investigation, realization, and the evaluation of evidence. Legal security and a unified legal practice is hardly possible without a unified interpretation of evidence.

The prosecutors in the sample emphasized in connection with the activity of the police in the detection and investigation of crime the following:

a) As regards the problems concerning detection and realization (arrest)
- 'detection should not be limited to arresting perpetrators transporting drugs and trading with them with view to seizing the drugs they possess. In the case of perpetrators dealing with the trade and distribution of drugs, I find it important to detect at least some of the cases when the drug is actually handed over';
- 'the bad timing of investigative actions is a real problem';
- 'the police does not aim at the extension of investigation but stops short once a courier or distributor is arrested. It investigates possession instead, because this is much easier […] The detection of the whole chain is nearly impossible after that';
- 'generally, the network of distributors cannot be mapped, only a few dealers and some users can be found';
- 'it is a great problem that investigation is not prepared well, communication between the clandestine and the open phases is insufficient, and realization aims at finding drugs rather than detecting the chain';
- 'once the dealer gets known (and often even without that), the investigative authority aims at mapping the whole circle of users, which makes the otherwise lengthy investigations even more protracted'.

b) As regards the collection and evaluation of evidence
- 'there are differences of opinion about certain methods of obtaining evidence and about the interpretation of the evidence obtained between the police and the prosecution';
- 'opinions often collide in connection with the production and classification of evidence'.

c) As regards the organizational problems of the police and their shortage of human resources
- 'the problems of the police with regard to human resources have an impact on the success and duration of investigation';
- 'due to the high work load of the police, this type of criminal offence is not sufficiently dealt with'.

d) as regards problems in connection with the knowledge of relevant law and the problem of efficiency versus lawful action
- 'the knowledge of the investigative authorities is not up-to-date as regards the new regulations of the Code of Criminal Procedure and the Criminal Code, consequently the rules of procedure are often violated, due to which some painfully obtained evidence cannot be used by prosecutors or certain elements of the investigation have to be repeated';
- 'the investigative authorities sometimes prefer efficiency to legality';
- 'policemen consider coercive measures as subjects of bargaining. They often get the accused confess by promising them that they would discontinue the current coercive measures without informing the prosecutor first'.

Prosecutors are similar to the static centrepiece of a seesaw. If all goes well, they know both sides, i.e., the activity and way of thinking of the police and also those of the judge or the court. They know what evidence, data, and information would be needed for a judge to be able to assess the offence as it is.

A joint or cooperative operative phase would make evidentiary prosecution much more effective and could seriously support the success of prosecution. In short, prosecutors should know what evidence is needed, and investigators should know how to obtain it.

However, for want of this, the only indicator that determines and characterizes supply-side drug-related offences is the quantity of drugs seized in the process.

In 98.4% of all such offences in the sample considerable quantities were involved, though organized crime could be proved only in 4.6%.

Supply-side drug-related offences can best be divided into categories along two lines:
- by the complexity of the technical tools applied during operative investigation and
- by the type of the illegal activity.

The following investigative techniques are typically used in detecting supply-side drug-related offences:
- tapping (telephones, e-mails, sms etc.);
- informers or other confidential persons;
- undercover detectives;
- 'surveillance' by other technical means;
- financial intelligence (continued tracking of financial transactions and other economic activities;
- social network analysis;
- 'refined' electronic surveillance.

Financial investigation is not a frequently used method in Hungary, which is primarily due to the limited financial and human resources of the police. The most frequently used technique during secret data collection for the purposes of criminal investigation in cases of supply-side drug offences is the use of informants.

As usually no detailed information is collected in the detection phase about the financial activities of the target persons, large sums of money are rarely confiscated alongside drugs. Arrest takes place usually when relatively large quantities of drugs can be seized. It seems that detecting a chain and making it inoperative is only a secondary target, the primary target being to prevent the substance from reaching the drug market.

The confiscation of property is a problem of high priority. Several interviewed prosecutors remarked that 'little energy can be invested into detecting property that could be confiscated'. The problem is rooted once again in the operative investigative phase, so the solution should similarly be found there.

Several prosecutors indicated that affiliation with organized crime needs excess proof before the court, so it was not by chance that it was merely in 4.6% of the cases in our sample that perpetrators were accused of conspiracy affiliation with organized crime, while the existence of conspiracy was obvious both in the annexed documents of interrogation reports and in the records of evidence taken from the suspects by the police in much more instances. In 31.2% of the cases the investigative authorities actually accused the suspect with acting in conspiracy or committing organized crime. However, the available evidence was not enough for the prosecutors for proving this fact during the criminal proceedings.

In order to understand the significance of the confiscation of property, we need to know the operation of the drug market. As I have mentioned earlier, the aim of committing supply-side drug-related crimes is material gain. The higher the market level, the greater the excess profit. High-level drug traders are practically 'businessmen' rather than drug addicts. Their aim is to make profit by producing and trading in these 'goods' because trafficking in products and services that are unlawful but much sought after are the most profitable.

If we aim at suppressing drug trade we should consider which method is more effective: imprisonment or, once the offence is detected, the threat of a sanction resulting in a considerable material loss, in loosing excess profit and one's positions on the market? The investors active on the highest levels of trafficking in drugs are businessmen. They know the risks and even the techniques of avoiding loss. It is not by chance that jurisdiction rarely reaches this level. The level below this one, that of producers and wholesale traders, can possibly be reached by law enforcement. The incomes of the investors is, however, invisible for the authorities, can hardly been detected and is even more difficult to prove. These people can be classified as white-collar criminals. The traditional tactics of investigation are useless against them, just as against the supply-side drug market. Consequently, if the system of criminal jurisdiction wants to attack these higher levels of drug trade, it inevitably has to use financial intelligence that can substantiate successful confiscation of property. The considerable loss of property would, namely, be the most effective punishment both in order to avoid the repetition of crime and to prevent further offences.

Conclusion

The system of criminal jurisdiction shows a much more unified practice as regards so-called traditional offences both in detection or investigation and during the criminal procedures than as regards the so-called new-type ones. The obvious reason for this is that the former category has long been punishable, the relevant regulations of substantive law are clear, and the provisions of substantive law and the law of procedure are well adjusted. A relatively unified practice of procedure has come about, the cases are transparent both for the officers of the law and the perpetrators, and there is a social consensus with regard to the management of the phenomenon.

As a contrast, in the case of offences and deviations that were defined as such by the society only a few decades ago or even later, the system of criminal jurisdiction and legislation are still seeking solutions. Transparency and legal security is still not present.

Financial crime and drug-related crime typically belong to this category, it is, therefore, natural that the system of jurisdiction has difficulties in dealing with them. In order to detect and prove these offences the traditional tools, techniques, expertise, and knowledge are not enough any longer. Special knowledge and experts are needed, investigative teams have to include financial and economic expert, psychologists, and chemists in order to be able to detect and prove supply-side drug-related offences. Since these phenomena are extremely complex, perpetrating them similarly needs special expertise and information of ever newer

trends, substances, and methods of perpetrating. The criminal justice system has to adjust to these novelties if it wants to keep abreast of the illegal drug market and its actors.

The extremely rapid changes of the drug market (substance types, patterns of use, market trends, the organizational matrix, and direct marketing) make it imperative for the authorities to be up-to-date.

Although the spreading of new-type psychoactive substances is unquestionable, the criminal justice system is able to follow the rapid changes of the drug scene and the drug market only with considerable delay. Consequently, legal policy and legislation is forced to remain reactive for the time being. By the time certain changes of the legal environment are translated to legal practice, further changes become necessary because the new changes of the drug market have made them obsolete.

The question is how far can law enforcement and the criminal justice system be forced to operate in this way? How far can continuous legal insecurity and the lack of control over the social and legal requirements of the operative phase of law enforcement undermine the legitimacy of criminal law and legal security in general?

I am not arguing against handling drug addiction and trade as social problems. I just maintain that a transition to a rational, efficient, and cost-effective social management of the problem should be considered. Criminal law is not necessarily the best means of bringing the drug market to heel in a situation when the operation of the illegal drug market and the institutional efforts for its suppression taken together cause a much greater social harm and produce higher costs than the drug market itself.

As I have mentioned earlier, besides the drug market, it is in the interest also of the present institutional market to maintain the existing *status quo*.

Whereas legislation aims at controlling the market, the market itself is in constant change as a result of the permanently changing legal environment and legal practice. It is an important element of this process that the changes of the market, the behaviour of its actors, and the ways of distribution can be seen as responses to the legal practice, while the changes in the drug types are responses to the relevant ordinances, i.e., to the list of substances considered punishable by criminal law.

The process can be illustrated by a latin dance step: quick-quick-slow, quick-quick-slow. Quick changes on the drug market followed by slow ones in criminal policy, then quick changes in distribution and product development as a reaction to the former followed by slow responses on the part of criminal jurisdiction. So the slow response reacts actually not to the current changes but to the impact of the previous ones.

So both competing markets (that of drugs and that of the criminal justice system) seek balance but latently, it is not to the interest of either of them to find it.

The criminal justice system, by its very nature, is conservative in the sense Goffmann meant it and is, therefore, not suitable for rapid change. This can be seen in

- the lack of clear legal regulations;
- the problems of the interpretation of law following from the above;
- the subsequent lack of a unified legal practice; and
- the similarly related problem of the large number of decisions on the unity of law and of authoritative rulings; leading to
- legal insecurity.

A law is useful only as far as it can be enforced. The effectiveness of law is, however, determined by the quality of codification. This means that legislators should model the phenomenon they intend to punish correctly, i.e., in our case the operation of the drug market

and its actors, taking into account also the expertise of the legal profession, as well as their attitudes, their identification with the regulations or the persons involved.

Therefore, if we accept that the criminal justice system as the dominant instrument of solving the discussed problem is, by its nature and due to the characteristics of the problem (the drug market) it deals with, unable to reduce the problem of drugs and if we accept that criminal jurisdiction is considered as the dominant means of solving this problem in modern societies, it follows logically from this that the expertise of the legal professions remains the only tool for at least partially mitigating or solving the problem.

I still believe that the phenomenon should be addressed by methods that are able to take into account the special characteristics of drug trade and exert a direct influence on it. If we accept that the phenomenon to be controlled is not drug abuse, not the use of drugs but the drug market itself (including actors both on the supply and the demand side), we must admit that the really effective means are those that have an impact directly on the market, i.e., economic measures and new measures in social policy.

If we want to suppress drug trafficking, we should consider whether relatively short terms in prison or considerable financial loss, the loss of one's positions on the market, and the loss of excess profit can be considered to be the more severe punishment for perpetrators on the supply side. Which of the two could have a real retarding force in a consumer society, in a society in which the social value of a person is determined by the level of his consumption? Where consumption necessitates financial means and where the majority of criminal offences takes place in order to obtain still more money so that the offenders could be more successful consumers on the market?

For the time being, the criminal justice system is the most outstanding instrument of the society in handling the drug problem. Still it is quite clear – the changes of the drug market make it clear – that it has no real chance to win. The hopeless and ever costlier struggle of jurisdiction has several negative impacts on the society. The theory of spending more money on law enforcement and jurisdiction in the hope of being more successful has long proved wrong.

Legal instruments are by their very nature unsuitable for reducing demand, and the slowly changing criminal jurisdiction can react on changes of the drug market and on the supply side only with considerable delay.

High-level perpetrators or investors on the supply side are actually white-collar criminals. Traditional methods of investigation are not really effective against them just as against the supply-side drug market. If the criminal justice system wants to reach higher levels of drug trade, it is imperative to apply financial or economic intelligence that can successfully support the confiscation of property. From the point of view of both the repetition of crime and crime prevention, a considerable loss of property and possibilities on the market would be the most effective punishment.

If we interpret trafficking in drugs as an illicit market, i.e., an illegal economic activity, the instruments of control should similarly belong to the sphere of economic policy, taxing and financial policy. If the new substances are detrimental to health, the problem should belong to the authorities of consumer protection, food safety, public health, drug safety, and the means of handling it should be sought in these fields, naturally besides the treatment of drug addicts by health care and by the system of social institutions.

However, the basic problem should be dealt with first of all on social level by reducing demand as all markets, the drug market included, depend heavily on demand. Once young people no longer want to buy and use drugs, drug trade will drop accordingly and the actors of the market will look for new markets elsewhere. Besides the flow of information, this ideal situation can be reached by changing the values and the social culture of modern societies.

However, as long as demand is high and drugs are mostly illegal, the excess profit made by drug traffickers remains beyond belief.

It should, however, not be forgotten that the history of mankind has been the history of the use and prohibition of stimulants, as well. The difference between past and present is that as a result of our present way of life and the present level of scientific development the process has escalated considerably, while prohibition and punishment has fallen in value to the same extent.

Notes

1. EU Drug Strategy – 2013-2020. Promulgated in the Official Journal of the European Union on December 29, 2012. http://register.consilium.europa.eu/pdf/en/12/st17/st17547.en12.pdf
2. House of Lords, 2012. *The EU Drugs Strategy. European Committee.* 26th Report of Session 2010–12. London: The Stationery Office Limited (Authority of the House of Lords) pp.46.
3. The cases were selected from the period 2007-2011. The data were collected through questionnaires and also by interviewing policemen and prosecutors. In the second part of the research, I invited prosecutors working on local and county level, and in Budapest who dealt with drug-related criminal offences more often than the average to fill in questionnaires. The aim of this survey was to collect their experience, opinions, and suggestions that could contribute to a more efficient, more cooperative, and more successful application of the law in procedures of supply-side criminal offences. We corresponded through e-mail, and 72 out of the 86 invited prosecutors returned the completed questionnaires, all of which could be fully appraised.
4. One meaning very difficult and five meaning very easy.
5. We asked the following questions from the prosecutors participating in the survey: What is the primary role of prosecutors in these investigations at your office? What do you think it should ideally be? (Mark with an X the types of activity in the following chart that characterize your daily routine, and in column B mark those that you think would make the investigation phase and prosecution more successful.) The respondents could mark more than one alternative in both columns.
6. Goldstock (1992) unpublished paper [*The Approach of the Organized Crime task Force,* White Plains, NY.] was quoted *by* Gramckow, H. P. and Jacoby, J. E. and Ratledge, E. C., 1993. *Prosecuting Complex Drug Cases.* Washington, D. C.: Jefferson Institute for Justice Studies.
7. Dealers are persons distributing or selling drugs who use them themselves and beyond financial gain, they sell drugs to be able to obtain them for their own consumption

References

Arlacchi, P., 1998. Some Observations on Illegal Markets. *In:* V. Ruggiero, N. South and I. Taylor, eds. *The New European Criminology, Crime and Social Order in Europe.* London: Routledge

Benson, B. L. and Leburn, I. S. and Rasmussen, D. W., 2001. The impact of drug enforcement on crime: An investigation of the opportunity cost of police resources. *Journal of Drug Issues,* 31 (4), 989.

Bevezetés az erkölcsök és a törvényhozás alapelveibe. 1977. *In:* Gy. Márkus ed. *Brit moralisták a XVIII. században.* Budapest: Gondolat

Chaiken, M. R. and Chaiken, J. M., 1991. *'Priority Prosecution of High-Rate Dangerous Offenders'.*Research in Action, Washington, Dc.: National Institute of Justice, U.S. Department of Justice.

Christie, N., 2001. *Crime Control as Industry.* London–New York: Routledge

Burt, R. S. 1982. *Toward a Structural Theory of Action: Network Models of Stratification, Perception and Action*. N.Y.: Academic Press

Fekecs Gy., 2005. *Titkos információgyűjtés avagy titkos adatszerzés?* [The covert criminal investigation] Available from: http://www.jogiforum.hu/publikaciok/174 [Accessed 20 March 2005]

Finszter G. and Mészáros Á., 2010. *A titkos felderítés új szabályozása.* [The new legistlation of the covert criminal investigation] Manuscript. Budapest: Országos Kriminológiai Intézet [National Institute of Criminology]

Global forum on combating illicit drug trafficking and related threats. 25–27 January 2012, Brussels. Speech by W. Götz, EMCDDA Director; Brussels, 25 January 2012. Available from:
http://www.emcdda.europa.eu/news/2012/speeches/WCO [Accessed 25 January 2012]

Gramckow, H. P. and Jacoby, J. E. and Ratledge, E. C., 1993. *Prosecuting Complex Drug Cases.* Washington, D. C.: Jefferson Institute for Justice Studies. Available from:

http://www.jijs.org/publications/prospubs/Compxdr.pdf [Accessed July 1993]
House of Lords, 2012. *The EU Drugs Strategy. European Committee.* 26th Report of Session 2010–12. London: The Stationery Office Limited (Authority of the House of Lords)
Lyman, M.D., 1989. *Practical Drug Enforcement: Procedure and Administration.* New York, NY: Elsevier Science Publishing.
Mill, J. S., 1869. *On Liberty.* London: Longman, Roberts & Green (N. Y.: www.bartleby.com, 1999)
Natarajan, M. and Belanger, M. 1998. Varieties of Drug Trafficking Organizations: A Typology of Cases Prosecuted in New York City. *Journal of Drug Issues,* 28 (4) 1005–1026.
Reuter, P.*: Developing a Framework for Estimating Government Drug Policy Expenditures EMCDDA.* Available from: http://www.emcdda.europa.eu/attachements.cfm/att_21247_EN_Reuter_2004.pdf [Accessed 11 May 2004]
Reuter, P. and Kleiman, M.A.*,* 1986. *Risks and prices: An Economic Analysis of Drug Enforcement. In.* Tonry, M. and Wilson, J. Q., (eds.) *Crime and Justice: An Annual Review of Research,* vol. 13, Chichago: University of Chichago Press.
Ritter, I., 2009. *Drogkereskedő karrierek* [Criminal carrier of drug dealers]. Manuscript, 66.
Ritter, I., 2012. Bevezetés a kábítószer-gazdaságtanba I. [Introduction to the Drug Economy I.] *In:* Gy. Vókó ed. *Kriminológiai Tanulmányok 49.* Budapest: Országos Kriminológiai Intézet [National Institute of Criminology], 139–157.
Ruggerio, V. and South, N., 1995. *Eurodrugs, Drug Use Markets and Trafficking in Europe*. Washington, D. C.: Taylor & Francis Group
Shepard, E. M. and Blackley P. R., 2007. The Impact of Marijuana Law Enforcement in an Economic Model of Crime. *Journal of Drug Issues*, 37 (2) 403–424.
Schur, E. M., 1965. *Crimes Without Victims: Deviant Behavior and Public Policy.* N. J.: Prentice Hall, Englewood Cliffs
Swedberg, R. 1995. *New Economic Sociology.* Conference Paper. Budapest: Second European Conference for Sociology, 30 August to 2 September
The State of the Drugs Problem in Europe, 2008. Luxembourg: European Monitoring Centre for Drugs and Drug Addiction, Office for Official Publications of the European Communities, 21. Available from:
Werb, D. et al., 2011. Effect of drug law enforcement on drug market violence: A systematic review. *International Journal of Drug Policy*, 22 (2) 87–94.