

English summary

The criminalisation of narcotic drug misuse – an evaluation of criminal justice system measures

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Currently all non-medical dealings with narcotic drugs are criminalised in Sweden. One of the more debated changes made in the legislation on the punishment of drug offences was to make punishable the personal use of drugs in 1988. This provision was strengthened in 1993 when imprisonment for at most six months was introduced into the scale of punishment for the personal use of a narcotic drug.

When drug use was criminalised in 1988, it was argued that this was necessary in order to signal a powerful repudiation by the community of all dealings with drugs. The legislator expected that this marking would have a preventive effect among young people and other persons at risk for narcotic drug misuse. In 1993, the punishment for personal drug use was made more severe by introducing imprisonment into the scale of punishment. This provision means that the police are empowered to undertake a bodily examination in the form of a urine or blood specimen test where there are reasonable grounds to suspect drug use. The purpose of the more severe provision was "to provide opportunity to intervene at an early stage so as to vigorously prevent young persons from becoming fixed in drug misuse and improve the treatment of those misusers who were serving a sentence" (Government Bill 1992/93:142). It was held

at the time that the penal value attached to personal drug use was low in relation to other forms of minor drug offences, notably possession for personal use.

The number of persons prosecuted for drug offences during a five-year period from the introduction of the more severe punishment in 1993 has risen by 40 percent compared with the previous five-year period. Those who have been prosecuted have largely committed minor drug offences. The present report evaluates the consequences of the legislative changes made in 1988 and 1993 for the justice system's action against drug misuse. Two main questions will be examined. First, how has police action developed as a result of the legislative changes? Second, to what extent have previously unidentified misusers been identified following the legislative changes? Whether the more severe punishments have led to the improved treatment of those who are serving sentences has not been investigated in the framework for the present evaluation.

In order to ascertain how police resources and work methods have changed in consequence of the legislative changes, police performance statistics, trends in the number of drug offences reported to the police, and statistics concerning the urine and blood specimen analyses carried out, have been examined. Subsequently the criminal statistics on persons prosecuted for crime have been studied to ascertain who are the persons who have been prosecuted for minor drug offences. The criminal records and social situation of these persons have been analysed both before and after the introduction of a more severe punishment in 1993.

The consequences of the legislative changes

The numbers of persons who are prosecuted for drug offences – and the nature of those offences – depends not only upon the extent of drug misuse but also upon the priority given to such offences by the police and the measures taken. The evaluation report notes that the criminalisation of personal drug misuse in 1988 meant that police work to a greater extent than previously focused upon the possession and use of drugs. The legislation did not, however, result in any especially marked increase in the number of persons prosecuted for drug offences. But following the increase in punishment severity in 1993 there was a marked change both in the police measures undertaken and the number of persons prosecuted for drug offences.

The priority accorded minor drug offences

In recent years, the police have clearly given increased priority to minor drug offences, of which personal drug use constitutes a sizeable proportion. This is reflected in the number of reports concerning possession and personal use;

these have increased greatly following the increase in the severity of punishment. The number of prosecutions for handing over drugs has, on the other hand, diminished somewhat. The police authorities' performance statistics show that measures against drug misuse are currently given a much higher priority than measures against gross drug crime. A necessary condition for the police to begin to work more actively against drug misusers was the possibility provided by the 1993 legislation to take urine and blood specimens where there were reasonable grounds to suspect drug use. This possibility has come to be used increasingly. Between 1994 and 1998 the number of specimens taken doubled – from 6 000 to 12 000. Nearly 90 percent of the specimens taken annually prove to be positive and slightly more than 10 percent prove to be negative.

Increased numbers of young persons tested

In accordance with the legislator's intentions, police activities concerning minor drug offences have increasingly been directed over time towards young persons. Increasingly those providing urine and blood specimens are young people. From the first six months of 1993 and up to 1998, some 5 000 young persons between the ages of 15 and 19 were tested. Of this number, 3 400 tested positively for drugs and 1 600 tested negatively. Hence, in more than one-third of tested cases it was not possible to prove drug use. In other age groups the proportion testing negatively is, on average, about ten percent. There are several possible explanations for the large proportion of negative test results among young people. The first is a matter of police methods. Police activities concerning young people are often focused on the environments popular among young people and in which drugs are used. It can be more difficult for the police to assess whether young persons are under the influence of drugs by comparison with older persons who have misused drugs over a long period. This makes for a risk that certainty in targeting is reduced. An important question in this connection is whether the lawful grounds that the police have to hold a person suspected of drug use are assessed independently of any given person's age and situation.

The second explanation concerns the nature of narcotic preparations. New substances appear and are used, particularly among young people, which are not always detected by the tests carried out. This can apply to substances that have not yet been classified as narcotic drugs. Thus, even though the police may consider that there are reasonable grounds to presume the use of a drug, there may be difficulties in proving that this is the case.

A marked increase in the number of prosecutions for minor drug offences

Partly as a result of the police being given increased possibilities to apply the legislation against personal drug use, a marked increase in the number of persons prosecuted for minor drug offences has occurred. The statistics on persons prosecuted for minor drug offences, show a 70 percent increase between 1991 and 1997. Prosecution for personal use constitutes about half of the prosecutions in recent years. In numbers the increase is from 4 100 to 7 000 persons. This finding must, however, be placed in relation to the trend in drug misuse over the same period. Chiefly among young persons, but also among those with a serious dependency on drugs, drug misuse has increased during the 1990s. The fact that a greater number of persons are prosecuted need not, therefore, necessarily depend upon a change in the working methods of the police.

The increase in prosecutions is greatest among known older misusers and young persons not previously known for drug offences

The increase in the number of persons prosecuted for minor drug offences is greatest among older persons who have earlier been prosecuted for drug offences. The number of persons aged 30 and older and previously prosecuted for some form of drug offence doubled between 1991 and 1997. The corresponding increase among persons in this age group who had not previously been prosecuted was slightly more than one-third. The increase in numbers is 1 200 and 370 respectively. The likelihood is that a large proportion of those who are repeatedly prosecuted for drug offences can be considered more or less established misusers. A considerable part of police activities are, therefore, focused on this group.

Police activities also show effects concerning young people. The number of persons under 25 who have been prosecuted for minor drug offences and who were not previously known for such crime has increased since the introduction of the more severe legislation. Between 1991 and 1997 the numbers have more than doubled. The increase concerns 940 persons. Among young persons previously known for drug offences, the increase is 70 percent or 260 persons.

Conclusions

The overriding purpose of the legislative changes was to reduce drug misuse by sending a signal of strong repudiation of all dealings with narcotic drugs. Another purpose was to give the police an instrument for the early detection

of, and interventions against, drug misuse. A third purpose was to improve the treatment of misusing drug offenders who were serving sentences.

So far as the aim of intervening more comprehensively to prevent drug misuse is concerned, more young persons not previously known for drug offences have been identified through police activities. In that respect, one of the aims of the changed legislation has been achieved. Changes in police working methods have resulted in more young persons who were previously unknown for drug offences being prosecuted.

The increased punishment severity also sought to improve the treatment of those with a drug misuse problem. The changes in legislation punishing drug offences have meant that more older and known misusers have been prosecuted than formerly. The social and medical problems of this group can obviously not be dealt with solely through the efforts of the police and other criminal justice agencies. Getting this group to cease its misuse demands measures carried out in other sectors of the community. The present research has not studied the efforts made by community agencies on behalf of this group.

The results obtained need to be assessed in the light of the purpose of the entire policy concerning narcotic drugs. In accordance with the legislator's intentions, police working methods have been altered and now focus to a greater extent on the consumption of narcotic drugs. These changes have, however, brought with them some unforeseen consequences. It was not the legislator's intention that the number of prosecutions for personal drug use should increase although, in fact, there has been a marked increase in such prosecutions. The largest group to be prosecuted as a result of changed police practice consists of older and previously known misusers.

It also appears from police performance statistics that activities focusing on gross drug offences are not assigned priority to the same extent as minor drug offences. The increased resources made available to the police have thus been focused primarily on the personal use of drugs. The purpose of the changed legislation was not presumably that police resources should be divided up in this way.

As mentioned previously, the police have identified a large number of young persons not previously known for drug offences. At the same time, of those seized for testing, one-third tested negatively. Since in other age groups about ten percent test negatively, this must be considered a large proportion. This result is important enough to warrant more discussion. Mindfulness of the infringement of personal integrity which test procedures can give rise to – and to which special attention was drawn in the preliminary work on the more severe legislation – should obviously apply where young people are concerned.

The overriding question is, of course, whether the legislative changes have contributed to a reduction of drug misuse. Based on available information on trends in drug misuse there are no clear indications that criminalisation and an increased severity of punishment has had a deterrent effect on the drug habits of young people or that new recruitment to drug misuse has been halted. The proportion of young persons stating that they have experimented with drugs

has increased throughout the 1990s. The trend in Sweden is similar to that in other countries. But it cannot be excluded that drug use among young people might have increased even more if the legislative changes had not been made.