INSTYTUT SPRAW PUBLICZNYCH
THE INSTITUTE OF PUBLIC AFFAIRS

Penalties for Possession.
Article 62 of the Drug Use Prevention Act – Costs, Time, Opinions

Abstract of the Study report and summary of main research results

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Abstract

The report sets out the results of research conducted with a view to answering the questions of **how art 62 of the Drug Use Prevention Act of 29 July 2005 works in institutional practice (i.e. in its law in action aspect) and of what are the costs to the relevant institutions (in terms of time and of financial outlays) of its implementation and enforcement.**

Art 62 of the Drug Use Prevention Act provides that possession of narcotics or psychotropic substances shall be punishable by incarceration for up to three years (art 62.1), for between six months and eight years in the case of larger amounts of narcotics (art 62.2), or by a fine, probation / curtailment of liberty, or incarceration for up to one year in minor cases (art 62.3).

The empirical research conducted as part of the study comprised 18 in-depth interviews with representatives of institutions / authorities involved in implementation of art 62 as well as a quantitative study – a questionnaire for a random layer sample of police, public prosecution, judicial, and probation / parole staff.

The main results of the study indicate as follows:

- Enforcement of art. 62 of Drug Use Prevention Act is costing the national budget at least PLN 80 million a year;
- Law enforcement professionals do not believe that implementation of art 62 is contributing to any significant reduction of the drug problem, for instance to curtailing drug dealing or to discouraging users;
- There is no cooperation between the various authorities charged with implementing and enforcing art 62 of the Drug Use Prevention Act. This leaves each of the institutions concerned to implement art 62 as it sees fit, true to its own functions and institutional culture – the public prosecutor's office brings charges, the courts set a penalty, etc. The end result, often enough, is that art 62 is applied on a routine, mechanised basis – to the exclusion of other solutions and methods provided for in the act.

The **recommendations** set out in the report centre on 1) opening avenues for cooperation between the various institutions charged with implementing and enforcing art 62 of the legislative Act regarding counteraction of drug addiction, first and foremost with a view to increasing knowledge and awareness of drug problems and of the various instruments available under the Act, 2) considering substitution of the strict legalistic approach now followed in prosecution under art 62 by an opportunistic approach, 3) for first-time offenders caught in possession of small amounts of psychoactive substances / narcotics who have no previous criminal records, considering that their criminal cases be discontinued at the level of the public prosecutor's office (thus sparing them entry in the register of criminal convictions), and 4) streamlining the work associated with enforcing art 62, especially as regards commissioning expert testimonies / evaluations (this should be done at a single stage of the proceedings, and not several times at different stages as now).

Summary of main research results

Given the constitution and workings of the Polish justice system, practical implementation of art 62 of the Drug Use Prevention Act rests within the ambit of various institutions charged with detecting crime and bringing its perpetrators to justice (the police and the public prosecution service), with efficacious handing down of equitable sentences and their enforcement and monitoring (the courts, the probation system), and with resocialisation, treatment, and isolation of offenders (the penal service). In their interactions, these various institutions have developed and entrenched a certain pattern of operation with respect to cases covered by art 62, settling into a certain route – the relevant tasks are generally executed efficiently, but schematically (and, in some ways, in a manner which is self-serving for the given institution).

Some officers of the national police force, for example, have come to refer to art 62 as "the statistical paragraph". In 2008, no les than 53% of the offences investigated on the basis of the legislative Act regarding counteraction of drug addiction were covered by art 62. With regard to these offences, positive identification of the perpetrator stands at a proud 100%, for the simple reason that arresting an individual caught in possession of drugs is practically tantamount to solving the case. All individuals caught by the police holding drugs – whatever the amount, type, or intended use of the substance in question – are bound to be entered under the same heading of the police statistics.

Proceeding to the public prosecution service, the majority of cases brought under art 62 of the legislative Act regarding counteraction of drug addiction boils down to a dispositional exercise, limited to perusing the indictment submitted by the police and to its endorsement. The essential character of the prosecution service and its institutional identity often means that, when faced with cases under art 62, it calls for penalties a bit on the heavy side – often more severe than those posited by the courts. At least as importantly, the prosecution rarely avails itself of the other instruments which the legislature envisaged for persons indicted under art 62, such as referring drug addicts for treatment (worth noting in this connection is the fact that it is only seldom that the prosecutors commission psychiatric evaluations of drug addicts).

From the perspective of the courts, art 62 cases are generally approached as fast and easy. Many (43%, to be exact) are considered in a court session – rather than in a full-blown hearing – under the procedure of voluntary submission to a penalty. This engenders two basic side effects. Firstly, such assembly line handling tends to gloss over more complex issues of substance dependency for those defendants who may benefit from being sent for treatment (when it sits in session and works subject to a simplified procedure, the court generally will not call for additional expert testimony, for instance on the defendant's addiction or treatment prognosis). Secondly, it perpetuates the tendency towards relatively harsh sentences and stricter legal qualification of the offence. This is because, under the voluntary submission to penalty procedure, the court takes the public prosecution's suggestions of penalties as they come, and these – as mentioned above – tend to be severe. To illustrate this with a statistic, in 26% of the art 62 cases which involved a hearing and which were concluded with the most lenient sentences for drug possession (fine, probation, incarceration for up to a year), the public prosecution initially called for a harsher sentence.

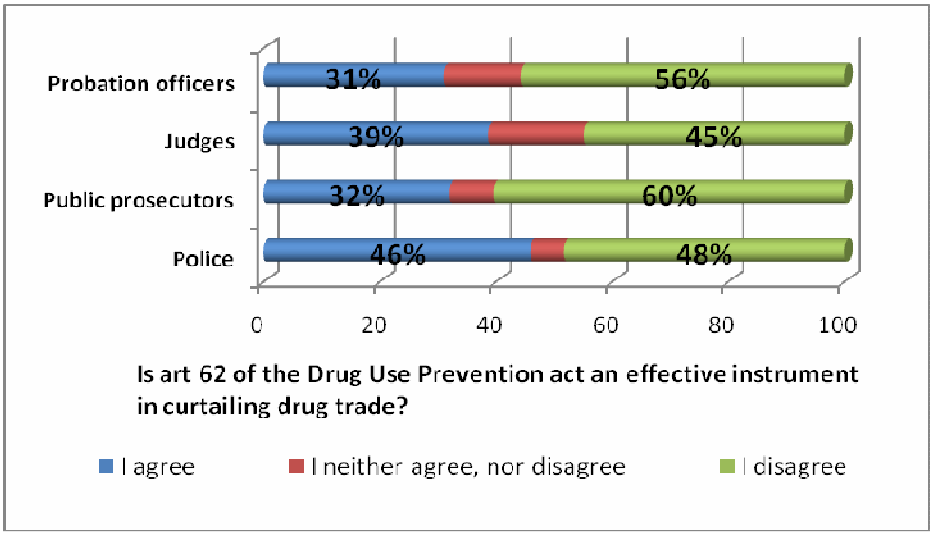
Probation / parole officers have been heard to complain that, as they work with individuals sentenced under art 62, they often do not know whether or not they are dealing with hard-core drug addicts (as already mentioned, expert witness testimony in this regard is rarely requested by the prosecution or by the court). The majority of persons sentenced for drug possession are covered by a probation regime which requires the probation officer to visit them at least once a month. Such a schedule – coupled with the large caseload with which most probation officers struggle – often leaves a feeling of inadequacy as regards the resources available to individual wards, or indeed the amount of time devoted to each one.

While many different people with different circumstances, needs, and levels of culpability are sentenced to probation under art 62, the treatment which they receive from probation officers often does not reflect this diversity.

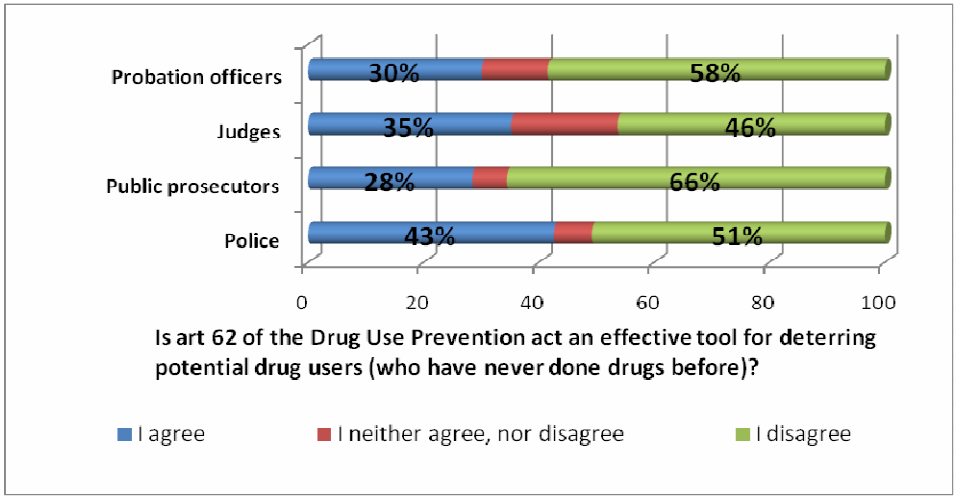
The Polish prison system, finally, seems to be overwhelmed not by art 62 cases as such (art 62 of the legislative Act regarding counteraction of drug addiction accounts for only 0.7% of the prison population) but by drug-related problems in general. Drug dealing in Polish prisons is a fact, and it has proved difficult to detect and to extirpate. As regards treatment of addiction, the jail infrastructure – as opposed to the prosecution service or the courts – has come to deal by its own resources in that it is the proverbial end of the line, having the most contact with an addict over the longest period of time. The prison system has been consistently working to develop its treatment and therapeutic infrastructure but, of course, this comes at some expense – the cost of maintaining a drug addict who embarks on therapy while in jail is estimated at twice that of a "regular" prisoner.

In the course of the study, representatives of the various institutions were asked for their opinions concerning different aspects of art 62 of the legislative Act regarding counteraction of drug addiction and its operation in practice.

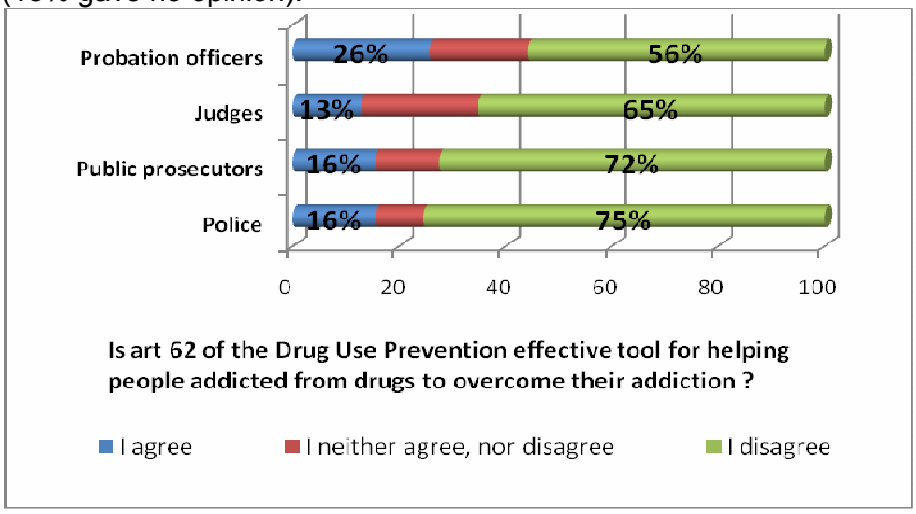
- **Public prosecution and Ministry of Justice officials do not see art 62 of the Drug Use Prevention act to be an unambiguously effective tool in their work** (or they have no opinion on this subject). The proposition that "art. 62 is an effective instrument in curtailing drug trade" is met with disagreement by 60% of public prosecutors (8% expressed no opinion), 45% of judges (17% expressed no opinion), 48% police officers (6% expressed no opinion), and 56% probation officers (13% expressed no opinion).



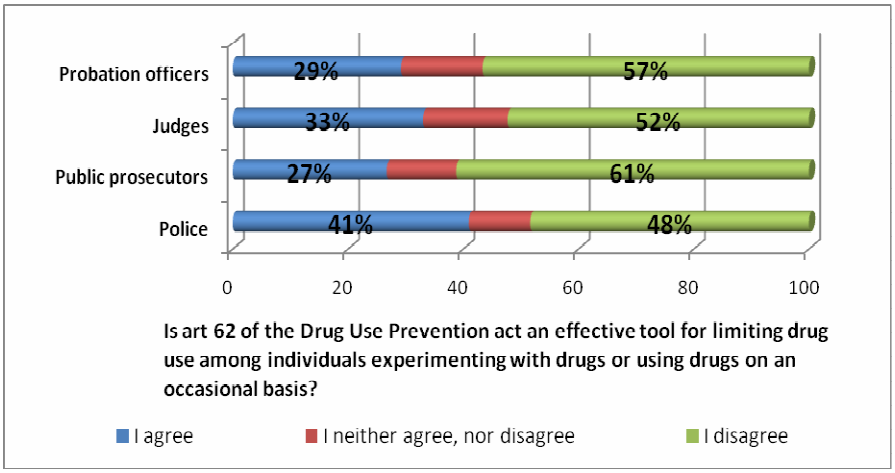
- **Opinions expressed by officials of the law enforcement and judicial services are divided but, by and large, point to limited effectiveness of strict penalties as a deterrent to drug users**. Asked to assess the statement that "art 62 of the legislative Act regarding counteraction of drug addiction is an effective tool for deterring potential drug users (who have never done drugs before)", half of the participating police officers (51%) disagreed (7% expressed no opinion), as did 66% public prosecutors (6% expressed no opinion), almost half the judges (46%) (19% expressed no opinion), and 58% probation officers.



- **Opinions expressed by the officials taking part in the study point to limited efficacy of criminalising drug possession as a tool for helping people addicted from drugs to overcome their drug dependency**. Asked to express their views on the statement that "art 62 of the legislative Act regarding counteraction of drug addiction is an effective tool for helping people addicted from drugs to overcome drug addiction", three-fourths of police officers disagreed (9% expressed no opinion), as did 72% public prosecutors (12% expressed no opinion), 65% of judges (22% expressed no opinion), and 56% of probation officers (18% gave no opinion).



- **Opinions expressed by the officials also suggest dubious efficacy of criminalising drug possession as a tool for limiting drug use by occasional / experimenting users**. The statement that "art 62 of the legislative Act regarding counteraction of drug addiction is an effective tool for limiting drug use among individuals experimenting with drugs or using drugs on an occasional basis" met with disagreement by almost half of police officers (11% expressed no opinion), by 61% of public prosecutors (12% expressed no opinion), half of the judges (15% expressed no opinion), and 57% of probation officers (14% gave no opinion).



As regards the cost of enforcing art. 62 of the legislative Act regarding counteraction of dru addiction, the Institute of Public Affairs has come up with an estimate of PLN 79.2 million for the year 2008, with law enforcement and justice system personnel expending 1,631,377.2 hours on art 62 cases (the equivalent of roughly 203,900 eight-hour workdays). The average offence prosecuted under art 62 entails expenditure of PLN 2,594 and 6.7 working days. For every person actually incarcerated for an offence under art 62, these figures rise to PLN 8,756 and to 22 working days. For every defendant sentenced in a more serious case brought on the basis of art 62, finally, the Polish state expended an average of PLN 687,300 and 1,764.4 eight-hour working days on the part of competent officials.