

Chapter 2

Poland

Krzysztof Krajewski and Grzegorz Wodowski

2.1 Historical Steps and Recent Developments of Drug Laws in Poland

Development of the drug problem in Poland after World War II was largely determined by the fact that the country belonged to the Soviet Bloc. This meant a quite effective separation from the world black market of illegal drugs (extremely tight border controls, inconvertible currency, very low average income and purchasing power). Because of this, during the 1950s and 1960s, the main sources of the limited problems posed by drug addiction were drugs as morphine used for legitimate medical purposes, but diverted for illicit use. This changed during the 1960s as the problem of inhalant use among youngsters emerged. After introduction of some tough administrative control measures, the problem seemed to be taken under control, but during the 1970s, Poland developed a serious drug problem with a significant number of opiate users. This was mainly due to the invention of a homemade injectable opiate drug called “Polish heroin” or “kompot” produced from easily available poppy straw. At the beginning neither the public health system nor the legal system were prepared to deal with the problem. At that time legal regulations regarding illicit drugs consisted of a few administrative regulations in the pharmaceutical law and one antiquated penal provision in the criminal code.

The Drug Abuse Prevention Act of 1985 brought together for the first time in Polish history all regulations (administrative and penal) regarding drugs and drug addiction. It was mainly prevention-oriented and stressed public health approach to

K. Krajewski (✉)

Department of Criminology, Jagiellonian University Kraków, Krakow, Poland

e-mail: krzysztof.krajewski@uj.edu.pl

G. Wodowski

Monar Treatment Center, Krakow, Poland

e-mail: grzegorz@monar.krakow.pl

the drug problem. The lack of any provision criminalizing drug possession was a striking feature. However, such possession was not legal; it was prohibited by administrative law to possess drugs without valid ground (such as medical prescription), and drugs possessed without such ground were to be confiscated.

The situation started to change dramatically after the fall of the communist regime in 1989. Opening of the borders to movement of people and goods meant also opening Poland's territory to the world black market of illicit drugs. Poland became an important producing country of synthetic drugs (mainly amphetamines) and important transit country for smuggling heroin from Asia to Western Europe. At the beginning, heroin was passing Poland's territory in transit only, being too expensive for local consumers. But at the end of the 1990s, the significance of the domestic market for heroin started to grow. During the 2000s, also domestic markets for cannabis and amphetamines established themselves. Since about 2009 a special problem pose the so-called legal highs, new psychoactive substances, often not controlled by the drug law, sold "legally" in the so-called smart shops or in the Internet.

All this meant a change of public perception of the drug problem from a health problem to a law enforcement and criminal policy problem. Already the discussion during the ratification process of the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in the year 1994 stressed the role of penal law and repression in drug policy. It was argued that the new situation required a change of approach: from demand, prevention, and public health-oriented policies to supply, repression, and law enforcement policies. In 1997 the new Drug Abuse Counteraction Act has been adopted by the Polish Parliament. It criminalized possession of drugs but originally contained also a provision stating that a perpetrator who possesses narcotic drugs or psychotropic substances in small quantities and for own use is exempt from punishment. The main problem with the application of this provision constituted the fact that the law has not introduced threshold quantities constituting upper limits for small quantities. Unfortunately, in 2000 this exemption from punishment clause has been deleted. Polish drug law became one of the most restrictive in Europe, requiring prosecution of possession of any drug in any amount. Police and public prosecutors became also obsessed with investigating and prosecuting most petty cases of drug possession involving quantities of drugs irrelevant from the point of view of criminal responsibility in most European countries.

2.2 Criminalization

2.2.1 Penal Offenses (See Table 2.1)

In recent years there were several contradictory Supreme Court decisions regarding criminal responsibility for drug possession. Police and public prosecutors have developed a practice of treating as drug possession cases situations in which a person

Table 2.1 Penal offense according to the Drug Abuse Counteraction Act

	Offenses + qualifications	Penalties
Art. 53 Drug Abuse Counteraction Act	<i>Drug production</i>	
	Manufacturing, processing, or converting narcotic drugs or psychotropic substances or processing of poppy straw	Imprisonment for up to 3 years
	Large quantities of drugs or the perpetrator acts with intent to obtain material or personal benefit	Imprisonment for no less than 3 years plus fine
Art. 55 Section 1–3 Drug Abuse Counteraction Act	<i>Drug smuggling</i>	
	Import, export, intra-Community purchase, intra-Community consignment, or transport in transit through the territory of the Republic of Poland or the territory of other state of narcotic drugs, psychotropic substances, or poppy straw	Imprisonment for up to 5 years
	Large quantities or the perpetrator acts with intent to obtain material or personal benefit	Imprisonment for no less than 3 years plus fine
	Minor importance	Imprisonment or limitation of liberty (community service) for up to 1 year
Art. 58 Section 1–3 Drug Abuse Counteraction Act	<i>Drug trafficking</i>	
	Placing on the market narcotic drugs, psychotropic substances, or poppy straw or participating in such an activity	Imprisonment from 6 months to 8 years
	Large quantities of narcotic drugs or psychotropic substances	Imprisonment for up to 10 years plus fine
	Minor importance	Imprisonment or limitation of liberty for up to 1 year or fine
Art. 59 Section 1–2 Drug Abuse Counteraction Act	<i>Supplying narcotic drugs (simple drug dealing)</i>	
	Supplying another person with a narcotic drug or a psychotropic substance, facilitating or making possible use thereof, or inciting another person to use such a drug or substance	Imprisonment for up to 3 years
	Supplying to a minor, facilitating, or inciting use by a minor or of large quantities of drugs being involved	Imprisonment for up to 5 years
Art. 59 Section 1–3 Drug Abuse Counteraction Act	<i>Drug dealing for personal or material benefit</i>	
	Supplying another person with a narcotic drug or a psychotropic substance, facilitating the use, or inciting to use thereof with the intent to obtain material or personal benefit	Imprisonment up to 10 years
	Supply to a minor, facilitating or inciting use by a minor	Imprisonment for no less than 3 years
	Minor importance	Imprisonment or limitation of liberty for up to 2 years or fine

(continued)

Table 2.1 (continued)

	Offenses + qualifications	Penalties
Art. 61 Drug Abuse Counteraction Act	<i>Illicit handling of precursors</i>	
	Processing, converting, importing, exporting, intra-Community purchase, intra-Community consignment, or transporting in transit through the territory of the Republic of Poland or the territory of other state, purchasing, possession, or storage of precursors, contrary to the provisions of Regulation EC No 273/2004 or Regulation 111/2005, and with intent to manufacture illegally a narcotic drug or a psychotropic substance	Imprisonment for up to 5 years and fine
Art. 62 Section 1–3 Drug Abuse Counteraction Act	<i>Possession of drugs</i>	
	Possession of narcotic drugs or psychotropic substances	Imprisonment for up to 3 years
	Large quantities	Imprisonment for up to 8 years and fine
Art. 63 Drug Abuse Counteraction Act	Minor importance	Imprisonment or limitation of liberty for up to 1 year or fine
	<i>Illegal cultivation of poppy or cannabis</i>	
	Cultivating contrary to the provisions of the law, poppy, with the exception of low-morphine poppy, or cannabis, with the exception of fibrous hemp	Imprisonment or limitation of liberty for up to 2 years or fine

is tested positive for presence of drugs, with the underlying assumption that there is no way to use drugs without prior possession. In 2009 the Supreme Court argued that it means in fact punishment for use of drugs what does not constitute an act prohibited under the threat of punishment and held that possession of drugs immediately preceding own consumption does not constitute an offense under Art. 62 of the 2005 Drug Abuse Counteraction Act. A few months after this decision, another Supreme Court senate held to the contrary, arguing that there is nothing in the wording of Art. 62 indicating that purpose of possession constitutes one of its required features. Criminal responsibility for possession of drugs is independent of the intent underlying possession (own consumption/providing to others). In January 2011 the enlarged senate of the Supreme Court confirmed the position held in the second decision. However, the Supreme Court indicated that the problem of eventual responsibility for drug possession of persons testing positive for drug presence in their body is a matter of evidence and that testing positive per se may not be sufficient to convict for possession.

Provision of Art. 62 criminalizing possession of drugs was challenged quite recently in the Constitutional Court. The petitioner challenged its constitutionality mainly under the constitutional provisions requiring that any limitation of personal freedom must be introduced in accordance with the proportionality principle. However, in November 2014 the Constitutional Court held that Art. 62 of the drug law does not violate the constitution.

2.3 Alternatives to Punishment

2.3.1 *Unconditional Dismissal of a Case*

Described above restrictive approach to prosecution of drug possession cases was somewhat relaxed since 2012. In that year Art. 62a was introduced into the drug law. It makes possible for the public prosecutor or the court to dismiss minor cases of drug possession under the expediency principle (small quantity of drugs, low culpability, no public interest in prosecution). This means unconditional dismissal without any penal consequences and no conditions attached. In 2013 and 2014, about 1/3 of all registered drug possession cases were dismissed under this provision, although there are huge territorial differences in application of that provision.

2.3.2 *Conditional Discontinuance of Proceedings*

Many cases of petty drug possession can be qualified as cases of minor importance under Art. 62 Sec. 3 of the Drug Abuse Counteraction Act. In such cases the so-called conditional discontinuance of proceedings is applicable. This is a probation under Art. 66 of the penal code involving discontinuing proceedings accompanied by imposing a probation period from 1 to 2 years. If probation ends with a positive result, it does not involve future criminal record for an offender. However, this provision is not used often in practice.

2.3.3 *Treatment Instead of Punishment*

Since 1997, Polish law contains provisions implementing the so-called treatment instead of punishment approach, which is currently regulated in Art. 72 and 73 of the Drug Abuse Counteraction Act. This provision applies to two categories of drug users who commit offenses connected to their drug habit: drug offenses (e.g., possession, dealing, etc.) and penal code offenses (e.g., theft, burglary, robbery, etc.). Article 72 may be applied by the public prosecutor during the investigation and respectively Art. 73 by the court during the trial. These provisions are applicable to two categories of offenders: drug-dependent offenders and offenders referred to by the law as “persons using drugs in a harmful manner.”

If such persons commit an offense and during the investigation or later on during the trial agree either to undergo appropriate treatment (dependent person) or to participate in a “prevention and treatment program in a relevant health-care center or another entity in the health-care sector” (person using drugs in a harmful manner), public prosecutor or court may suspend the investigation or trial for the duration of treatment or prevention and treatment program.

If treatment or prevention program ends with a positive outcome (subject to evaluation and certification by the therapeutic personnel), public prosecutor may request the court to apply mentioned conditional discontinuance of proceeding accompanied by a probation period of up to 2 years. Treatment instead of punishment alternatives cannot be applied to offenses carrying imprisonment sentences exceeding 5 years.

Unfortunately, mentioned provisions are not used in practice by prosecutors or judges. Originally, the main reason for this situation was that a prerequisite for the application of conditional discontinuance of proceedings was that offender has no prior criminal record for intentional offense, what is not the case with most drug offenders who have extensive criminal records. Amendments introduced in 2012 changed this and now Art. 72 and 73 may be applied independently of the prior criminal record of an offender. Also special provisions requiring collection of data on addiction or other drug problems of offenders were introduced to stimulate their diversion to treatment system. Unfortunately, it seems that public prosecutors are still reluctant to apply these provisions. First, it requires additional work and prolongs investigation of cases perceived as simple and suitable for quick disposal. Second, having too many suspended investigations may be perceived in a negative way by the prosecutor's superiors. As statistical reports do not differentiate between investigations suspended under the code of criminal procedure and the drug law, prosecutors fear that suspensions are seen as a proof of inefficiency which may have several negative consequences.

It is also necessary to mention that since 2012 Art. 73a of the drug law makes it possible to suspend implementation of a prison sentence served by an addicted person to make possible treatment outside of prison. In case such treatment ends with a positive result, the remaining portion of the sentence is to be suspended.

2.3.4 Suspended Imprisonment Sentences

Under Art. 71 Sec. 1 of the Drug Abuse Counteraction Act, in case of drug-addicted offender being sentenced to suspended imprisonment sentence, it is always mandatory for the court to attach the condition to undergo treatment. Noncompliance may result in the execution of the prison sentence.

Additionally, under Art. 71 Sec. 3 of the Drug Abuse Counteraction Act, drug-dependent offenders sentenced to immediate imprisonment may be placed before the execution of their sentence in appropriate closed-treatment establishment for a period of no more than 2 years. If treatment results are positive, the court may decide either to suspend imprisonment sentence or to waive its execution in part or in a whole (Fig. 2.1).

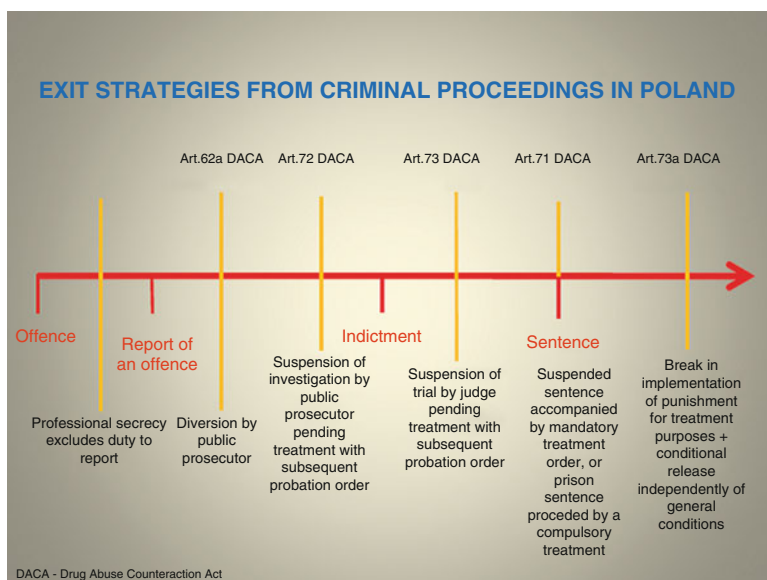


Fig. 2.1 Possibilities to exit from criminal proceedings in Poland

2.4 Treatment of Substance Abuse in Poland

2.4.1 Health Care, Social System, and Services

The Polish system of treating addicts is strongly focused on “drug-free” interventions. The non-pharmacological treatment dominates over pharmacological, and the majority of funds go to the residential rehabilitation centers, where treatment is expensive and less effective.

Every third person entering the drug addiction treatment services uses opioids. More than half of the applicants have already had unsuccessful attempts at treatment.

Most of the treatment services are financed by the National Health Fund. Addicts who have no health insurance are also entitled to treatment. The services are also subsidized by local authorities of many Polish cities. Educational and preventive actions, as well as harm reduction measures are financed by the National Bureau for Drug Prevention (a government agency associated with the Ministry of Health). Harm reduction programs are also funded from local sources.

Health Programs

- Detoxification centers (treatment of the symptoms of abstinence, motivation for treatment following detoxification)
- Substitution treatment (mainly methadone)

- Residential rehabilitation centers (treatment of addiction and psychotic disorders)
- Outpatient treatment (including counseling and psychotherapy)
- Needle and syringe programs and education on safer drug use
- Day care centers

2.4.2 Treatment in Prisons

If it is established during the execution of penalty that the convict has a drug problem, he or she is obliged to undergo appropriate treatment according to Art. 117 of the Penalties Execution Code.

- Drug-free programs (6-month therapy)
- Substitution programs (mainly methadone)

2.4.3 Harm Reduction Programs

Access to clean and free needles and syringes and appropriate education on safer drug use is a proven way to reduce infectious diseases and drug-related deaths. At the same time, such actions draw drug users closer to health-care services. In Poland, the reduction of harm associated with drug use is limited to needle and syringe exchange programs and low-threshold points of day care. There are about 13 projects, mostly in the biggest cities. The number of syringe exchange programs and the number of people using them has significantly decreased in recent years. There are no legal possibilities for the implementation of many programs in the area of harm reduction. Due to restrictions it is not possible to provide hygienic rooms or ecstasy testing points.

2.4.4 Treatment

2.4.4.1 Detoxification

In most parts of Poland, addicts have access to one of about 25 detoxification centers. Some of them function independently and some as departments of psychiatric hospitals. Depending on applied pharmacotherapy, condition, and needs of patients, hospitalization takes usually from 7 to 14 days. Most patients of detox centers are opioid addicts. In addition to treating the symptoms of abstinence, the staff puts much effort into motivating the patients for further treatment following detoxification.

2.4.4.2 Outpatient Treatment

In most medium and large Polish cities, there are outpatient clinics specializing in treatment of drug addicts. There are about 120 of them, treating over 30,000 patients in 2007. In some of those specialized clinics, comprehensive counseling and psychotherapy (also for families of addicts) are conducted. However, there is a lack of specialized treatment programs aimed at a particular drug. Some facilities additionally provide legal assistance for patients having legal problems.

2.4.4.3 Residential Rehabilitation Centers

The central model of addiction treatment is residential “drug-free” rehabilitation centers. The opinion that everyone can be cured is prevalent. There are 87 rehabilitation centers for mostly medium- and long-term treatments (12 months and longer). Those treatments are usually implemented by nongovernmental organizations.

In 2008, about 12,500 addicts were admitted to the rehab centers. Some rehab centers specialize in treatment of patients with double diagnosis: addiction and psychotic disorders. Many sites are designed to treat patients with physical disabilities. People addicted to various drugs make the largest group of patients treated in residential centers (over 50 %), followed by addicts to opiates (about 16 %), to sedatives (10 %), and to psychostimulants, mainly amphetamines (6 %). As these centers are usually located outside of cities, patients often find it difficult to smoothly return to society.

2.4.4.4 Substitution Treatment

Admitted patients must be adults (18 years) and opiate addicts. There are no time limits on the length of the substitution therapy. Substitution treatment patients usually suffer from an advanced level of addiction and multiple somatic diseases (e.g., HIV/AIDS, HCV, HBV, vein infections). Despite the fact that substances such as buprenorphine + naloxone can be administered, nearly only methadone is used for treatment (mainly for financial reasons).

Currently there are 21 substitution programs in Poland, where in 2010 2145 patients were treated.

2.4.4.5 Treatment in Prisons

There are two main forms of treatment toward drug-addicted prisoners in the penitentiary institutions: drug-free therapy and substitution programs.

Drug-free therapies have a duration of 6 months and are implemented in 16 specialized prison departments with 550 places.

Substitution programs are conducted in 22 prisons and detention centers (288 places). As in substitution programs outside prisons, the main substance used is methadone.

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