

UDC 341.4:343.5

Alina Chukaieva – Ph.D in Law,
Research Fellow of the Specialized
Academic Council Secretariat of the
National Academy of Internal Affairs

DRUG ABUSE PREVENTION POLICY IN FEDERAL REPUBLIC OF GERMANY

On the base of international experience analysis in the field of drug trafficking combat conclusions aimed to optimize the measures for overcoming such negative phenomenon as drug abuse are made.

Keywords: drugs; international experience; drug trafficking combating; drug dealing.

Current German drug policy was initiated in 1929 after the Reichstag had adopted the opium law. This legal act was basically the first to establish the responsibility for drug trafficking. It remained in effect within the German territory with few amendments till 1972. Later it was followed by its successor – the Law «On drug control» which is still in operation. This law regulates sale of different types of substances listed in three appendices. It also establishes the system of fines imposed by court for e.g. illegal sale of addictive substances with no therapeutic effect.

Collaterally with the Law «On drug control», the National Plan on Drug Control is effective in Germany (adopted during the National Conference on Drugs in 1900). It was designed upon the initiative of the heads of federal governments and lands and defines aims and methods of current German drug policy. The aim of the National Plan on Drug Control is to fight narcomania, develop additional preventive measures for further implementation, anti-drug campaign activation, consulting centers, complex rehabilitation courses and psychological support of vulnerable social groups. At the same time, legal and technical resources used by law enforcement agencies (especially the police) must be extended. Therefore, the National Plan on Drug Control envisages creation of 400 new positions in the Criminal Police

Federal Agency. Close international cooperation in terms of drug control must be activated on all levels.

But we must state that today the drug war is lost. Labor and energy consuming police work is neither efficient nor targeted. The main task of the police is to prevent the addiction development on the initial stage. General restrictive effect of drug prohibition hasn't been proved up to this moment leading to additional challenges for the law enforcement. Criminal legislation is not a suitable instrument to regulate the drug consumption. It requires complex scientific and public discussion on many unsolved questions concerning drug trade.

These discussions have been recently actively held in order to define the efficiency of German drug policy. The last wave of discourse was caused by the resolution of 120 criminal law scholars «Revision of anti-drug legislation efficiency» – its provisions were mostly considered to be of theoretical value only except for some aspects worth attention. Even Kofi Annan's appeal to the UN presented on September 9, 2014 emphasized the necessity to liberalize the drug policy and concentrate on health issues instead of criminal proceeding. It should be noted that lately the US government has also come to the conclusion that all efforts of international community to deal with this problem lead to minimum results – despite the loud arrests of drug barons performed by the US security services and law enforcement agencies authorities admit that these «hierarchy gaps» are filled in automatically and the system is highly survivable. Only in Mexico more than 70000 people died and 30000 people are missing during the last seven years of drug war.

Analysis of resource consuming police drug control leads us to demand for the assessment of the chosen approach efficiency. When we talk about criminal police fighting organized crime, first we mean drug control. Other numerous types of organized crime phenomena consume small percent of provided resources. More than 70 % of all drug-related crimes are (according to Police Criminal Statistics) crimes committed by the drug users. Despite the consistent improvement of social welfare level drug prices stay fixed or even decrease and the percentage of drug addicts has never been so high worldwide [1]. All signs of huge amount of available drugs are

presented on the market. That is why the police must be highly critical concerning the evaluation of their professional performance.

Legislation establishes the so called «social state principle» which is actualized via social welfare system – it is the government's responsibility to provide the relevant support to the society including healthcare issues. The Article 2 of Principal Law guarantees right for free individual development to every person as well. These provisions are the cornerstone of the humanistic approach applied regarding human life as the highest value. But this freedom also requires opportunity for every full-aged citizen to take decisions personally – whether to consume intoxicating substances. The «intoxication right» was denied by the Federal Constitutional Court in so called «cannabis judgement» in 1994 but it has slightly affected the results of drug abuse control. General restrictive effect of the drug prohibition still has no scientific background and remains doubtful. No blanket approach can be applied in this specific case.

Discussions on departure from the drug prohibition don't stipulate the general permission for drug consumption but are concentrated on decriminalization of consumption and market regulations with special attention to youth and consumers' rights protection. Every year in Germany approximately 74000 people die of alcohol intoxication, 140000 – of smoking-related diseases. These figures are compared to 1002 persons died of drug addiction (this determinant has slightly increased for the first time since 1988) [2]. Today experts are actively involved in discussions concerning the efficiency of the state drug policy taking low mortality rate as its determinant. Complex analysis of data collected from specific trafficking routes in California, Colorado, Washington, Uruguay and Portugal doesn't provide exact outcomes.

Current law «On drug control» pays due consideration to the circumstances of drug users special status but still requires complex analysis. One of the positive aspects in German legal system is Article 31a of the abovementioned law, which establishes special procedure for the prosecution concerning cases that involve drug users. Unfortunately invocation of Article 31 within the German territory is

marked with the absence of common procedure for the norm application. When dealing with users of hard drugs it is important to know that addiction is defined as individual medical condition, which affects somatic, psychological and social aspects of a person's life.

One of the external symptoms of this harm is addictive behavior stimulated by drugs. Separate forms of narcomania lead to fatal outcome. Thus, opiate addiction combined with heroin consumption is a disease which significantly reduces life duration. Addiction is considered to be a specific type of disability. Abstinence doesn't indicate recovery – it means that relapse is not a therapy fail but a symptom of current disease. Narcomania or intensive consumption of intoxicating substances is usually marked with prehistory, which starts long before the first dose and doesn't stop after fixed abstinence leading to psychic disorders [3]. In many cases it causes diseased addiction but never becomes its result – drugs are therefore used as a form of mental disorder treatment.

Statistical data on criminal proceedings provided by the Federal Statistical Service and criminal police indicate the activation of measures applied by the prosecution and courts for illegal possession of heavy drugs like heroin. Consequently, enforcement measures applied in these cases (especially when dealing with opiate addiction) are effective for prosecution of persons regarded as mentally disabled – enforced abstinence cannot be guaranteed. This process also cannot be expected if concurrent measures aren't initiated. Among the mandatory concurrent measures, we can accentuate, for example, the development of stress-relief oriented infrastructure and substitutive therapy with psychological support. Substitutive therapy may result in decriminalization of opiate addiction, infections avoiding and reduction of the risk of opiate overdose. Drug users free themselves from this abnormal health state, increase their working capacity, and get a chance for a decent life through social integration – this is the priority aim of modern anti-drug treatment and rehabilitation programs.

Still there are negative tendencies – underfinanced consulting centers providing psychological support cause incoordination of measures shared by the German Medical Association and the Association of

Statutory Health Insurance. That is why experts stress on structural problems that arise during abstinence control analysis [4].

Other issues are closely connected with the gaps in legislation or deficient policy implementation mechanisms. On the one hand, police activity is regulated by the principle of legality and the issue of drug addicts' support cannot exist in the state of legal vacuum. However, intensive involvement in the investigation process creates obstructions for drug users to receive consultations, seek for support and ensure their anonymity. Everyday practice proves that all key actors must coordinate their activity in order to ensure safety of consumers and law enforcement officers (supervising authorities). The police are responsible for taking preventive and restricting measures in this process, which requires specific practical experience to be applied in terms of criminological aspects. When the police deal with young (especially underage) drug users it is important to prevent serious forms of addiction using available methods. It must be noted that there is no standardized national system of professional training for criminal investigators and juvenile police in Germany – for example, only some federal lands provide an opportunity for future investigators to get relevant practical experience during an explicit training course. Police involvement is legally fixed only concerning criminal investigation. But police officers react not only to cases of illegal consumption of intoxicating substances, but aim their efforts at preventive actions as defined by the law (informing young people of alcohol and drug consumption negative effects through official channels – local authorities, state services, educational establishments, etc.) [5].

The role of the police in drug crimes dealing is mostly socially-oriented and concentrated on contacting parents, relatives and other persons close to drug user as they are characterized by so called «co-addictive state». It means that they seek for police support to help the drug user but, at the same time, it is a way for them to get the specific person punished for their family suffering caused by the addiction. In addition, it is stated that 70 % of crimes committed by drug users are stimulated by the lack of effective information resources for illegal trade and manufacturing of intoxicating analgesic substances. The

analysis of the enforcement measures applied to these drug users clearly indicates that criminal proceeding must be the measure of a last resort. But there is also a certain stereotyping effect, which in its turn leads to selective control or legal framework practice. Drug crimes are investigated in German police departments on a different intensity level. Depending on the region there are different mechanisms of cooperation with authorized prosecutors that are currently implementing facilitated drug case processing. For example, it involves destruction of small cannabis amounts by the police (identified as material evidence or given for storage) and self-disqualification procedure applied in specific circumstances (or simplified trial procedure).

The assessment of the chosen measure results (interference at early stage of drug addiction) depends directly on the moment selected to establish contact with a young person as the most relevant option. It also works for alcohol addicts. In these cases the police and the prosecution work as mediators providing access to consulting centers for young people. This type of support is provided by qualified specialists with relevant practical experience. It must be noted that after drug users accepted the offer of consultation or preventive complex their participation can have positive results such as termination of pre-trial investigation. Relevant enforcement measures seem to be mandatory in this case in order to turn the consumers to consultative network. From this point of view, we pay attention to the stigmatization of users through restricting enforcement practice. It is important to keep in mind that specific types of police intervention (confiscation and search) are first of all aimed to prevent the access of the third parties to dangerous items. Nobody will decline the importance of such intervention when talking about drug consumption on the locations like school yards. This approach is fixed in relevant legal regulations (e.g. laws regulating weapon and explosives trade, purchasing, bearing and employment). The contact point stipulates risk of improper drug use by shadowy characters. Still it is obvious that, for example, personal data storage in electronic database and following procedures lead to criminal aggravation of drug consumption.

The last point to be analyzed is law enforcement participation in supply shortage. Referring to the data from the 2013 report of Reuter agency (prepared by Tim Pfeifer-Herschel) it is possible to extrapolate the disorder occurrence coefficient (related to substance classified as DSM-IV in psychic diagnoses qualifier for Germans aged 18–64). This extrapolation defines that approximately 283000 of full-aged persons take up drug habit and 319000 persons are addicted to illegal cannabis, cocaine or amphetamine consumption. Forensic experts provide data for 1g of the abovementioned substances to be considered a minimum daily dose. Extrapolation leads us to the conclusion that only this group consumes approximately 219 tons of drugs annually. However, this figure does not correspond to the amount of substances confiscated by the police (according to the report of the Criminal Police Federal Agency) [4]. Figures out of official statistics are much higher than registered by the police – it can be explained by the initial data deflection. A daily dose at the rate of 1g is defined as low. Some experts tend to take 3g as a basic consumption parameter, which is more adequate in terms of disproportion calculation [6].

Consequences of drug consumption cannot be underestimated – even when criminal legislation is adequately tailored to current mechanisms of drug trafficking networks development and scientifically proved medical recommendations concerning drug users, police mustn't avoid the application of other (except of enforcement) instruments to involve the regularly supervised target groups in rehabilitation and minimize the consequences of this supervision. Legal regulation of social damage reduction must be reviewed. The priority issues for German authorities today are drug legalization and effective youth-oriented preventive policy.

After analyzing the German experience concerning combating drug trafficking we have come to the following conclusions:

1. Increased funding and resource distribution (police and border service) with PHARE and TACIS financial support.
2. Priority is given to communication improvement and data collection.

3. Activation of control measures (external EU borders) combined with the relevant data collection (Central and Eastern Europe).

4. Drug trafficking operations performed by the police and border service must include not only the arrest of drug couriers and confiscation of vehicles and cargo but identification and prosecution of networks' leaders responsible for drug flow in Central and Eastern Europe.

REFERENCES

1. André Schulz. Drogenpolitik neu denken!: 2.Alternativer: Drogen- und Suchtbericht 2015, online verfügbar unter: <http://alternativer-drogenbericht.de/wp-content/uploads/2015/05/Alternativer-Drogen-und-Suchtbericht-2015.pdf>.

2. Pressekonferenz der Drogenbeauftragten der Bundesregierung und des Präsidenten des Bundeskriminalamtes vom 17.04.2014 zur Rauschgiftlage 2013.

3. Elsner, H. (2006): Die abgeschobene Minderheit – Zur real existierenden Substitutionsbehandlung von chronisch mehrfachbeeinträchtigten Abhängigkeitskranken, in: Sozialpsychiatrische Informationen 2006 Heft 2.

4. Pfeiffer-Gerschel, T. et al. (2013): Bericht 2013 des nationalen REITOX-Knotenpunkts an die EBDD, online verfügbar unter: http://www.drogenbeauftragte.de/fileadmin/dateien-dba/Drogenund-Sucht/Illegale_Drogen/Cannabis/Downloads/REITOX_report_2013_Germany_dt.pdf; letzter Zugriff: 26.03.2015.

5. Der Kampf gegen Drogen, online verfügbar unter: http://www.europarl.europa.eu/topics/drugs/drug3_de.htm.

6. Statistisches Bundesamt (o.J.): Statistik zu Strafverfolgung, online verfügbar unter: https://www.destatis.de/DE/Publikationen/Thematisch/Rechtspflege/StrafverfolgungVollzug/Strafverfolgung210-0300127004.pdf;jsessionid=66EF2F4BE9ED0109E6AB7485EA12FB95.cae4?__blob=publicationFile, letzter Zugriff: unbekannt.

Чукаєва А. В. – кандидат юридичних наук, науковий співробітник секретаріату вченої ради Національної академії внутрішніх справ

Політика Федеративної Республіки Німеччина щодо протидії наркотизму

На основі аналізу досвіду Федеративної Республіки Німеччина у сфері боротьби з незаконним обігом наркотичних засобів зроблено висновки щодо оптимізації заходів стосовно подолання такого негативного явища, як наркоманія.

Ключові слова: наркотики; міжнародний досвід; боротьба з незаконним обігом наркотичних засобів; наркобізнес.

Чукаева А. В. – кандидат юридических наук, научный сотрудник секретариата ученого совета Национальной академии внутренних дел

Политика Федеративной Республики Германия по противодействию наркотизму

На основе анализа опыта Федеративной Республики Германия в сфере борьбы с незаконным оборотом наркотических средств сделаны выводы относительно оптимизации мер по преодолению такого негативного явления, как наркоманья.

Ключевые слова: наркотики; международный опыт; борьба с незаконным оборотом наркотических средств; наркобизнес.