



Use and Possession of Drugs – What Kind of Problem Is It? Polish Perspective.

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Abstract: The article is an essay to answer the question of what drug addiction is and in the context of what type of problem this issue should be approached: as a social, medical or legal problem. The text presents the thesis that drug use is a multidisciplinary issue, important from the social and medical point of view and indicates how to solve problems related to drug addiction. However, drug use and consumer possession should not be the focus of criminal law.

Keywords: psychoactive substances, addiction, possession and drug use, criminal responsibility

I. Introduction

In common language, there are many terms describing psychoactive substances that act on the human central nervous system. *Narkōtikós* is the colloquial name of only some of them, namely those that are used for non-medical purposes (intoxication) and are controlled substances within the meaning of the Act of July 29, 2005¹. Currently, the Act on Counteracting Drug Addiction of 2005 uses three terms related to "drugs": narcotic drugs, psychotropic substances and new psychoactive substances. Who, contrary to the provisions of the Act, possesses narcotic drugs or psychotropic substances, shall be subject to the penalty of deprivation of liberty for up to 3 years. Whoever, contrary to the provisions of the Act, possesses new psychoactive substances, shall be subject to a fine².

Due to the limited framework of the article, I will only briefly indicate a few issues, focusing on a certain thesis - which may raise doubts - that the current legal status in terms of criminal liability for drug possession under the Polish Act on Counteracting Drug Addiction, unfortunately, intensifies the phenomenon of drug addiction.

Purpose and scope of the article are:

Purpose: Drug addiction as a phenomenon multidimensional³ - as to the factors necessary for its occurrence (drug-emotions-repeatability) and multifactorial - as to the sources (social impact of specific groups, scale of drug supply, social status, cultural factors, life perspectives).

Scope: Drug addiction as a problem: social nature - manifestation of social pathology; medical nature - addiction as a disease entity, legal nature – impose criminal liability for the crime of drug possession.

In addition, unfortunately, criminal law has made people who require treatment or people requiring other forms of assistance, a special category of criminals - drug owners. At this point, I

¹ Act on Counteracting Drug Addiction of 29.07.2005 Journal of Law 2005, No 179, item 1485.

² Art. 62 (1) and art. 62b (1) of Act on Counteracting Drug Addiction of 29.07.2005.

³ Problem narkomanii – wybrane aspekty społeczne i prawne, Senat Office of Analysis and Documentation 2012, p. 4.

completely ignore the issue of drug supply, focusing only on so-called in literature, consumer possession (also use) of psychoactive substances and narcotic drugs (i.e. in such circumstances and in such quantity that prove that a person possess them for its own use). So the main thesis of the article are: 1) The current legal (criminal law) regulations which increase and sometimes even generate a number of medical social problems that are related to drug addiction. 2) In the current legal system, due to the stipulated criminal liability for drug possession, the vast majority of us allow the criminal law system to take care of addicts.

I. Drug addiction as a social problem

Drug use is sometimes called as a symptom of social pathology. In the literature we can find a lot of concepts of pathology that perfectly reflect the meaning of understanding addiction as a manifestation of pathology. According to A. Podgórecki, it is "this type of behavior (...) which remains in a fundamental, irreconcilable contradiction with the ideological values that are accepted in a given community"⁴. A. Gaberle defined a pathology as "behavior destructive to society or its elements, and at the same time inconsistent with the values generally recognized in a given cultural circle"⁵. L. Pytka as "a group of harmful phenomena in the sense of an individual or a group with a specific genesis, social range and negative effects, also legal"⁶.

The problem of drug addiction is common, sometimes we can even say that there has been a certain de-stigmatization of the so-called light drug (e.g. cannabis culture). Although, unfortunately, drug addiction and the approach to it, is one of the greatest social threats, they are often denied. Why it might be asked? Probably because social changes are progressing, the current value system is being relativized, the so-called smart drugs market is developing (substitutes, designed drugs to replace controlled drugs, and unfortunately being more dangerous), the problem of recreational drug use is increasing, and the last three years of significantly limited possibilities of society functioning in pandemic conditions - all this have led to deepening of disorders in the ability to verify certain phenomena (both collectively and individually).

It is true that we still operate on the basis of certain universal values, certain norms, approved by a society functioning on the basis of a specific tradition and historical and cultural foundations. Rather, it does not raise any doubts that behaviors not accepted in this society, contrary to the norms, will constitute a manifestation of pathological behaviors, behaviors destructively influencing the community and the individual itself. There are many reasons for these unacceptable, pathological, antisocial behaviors. They can have the context:

- cultural - associated with belonging to a specific subculture, also being an expression of a certain rebellion (conception of R.K. Merton)⁷, adaptive – pressure, the so-called rat race⁸
- psychological - assuming that there are certain psychological factors that predispose a person to pathological behavior (e.g. referring to childhood experiences, handicaps in the process of influencing a young person or personality disorders),⁹
- learned reactions - in which a person learns pathological behavior in the same way as he/she learns to behave in accordance with the norms, so it means that it is a "learnable" phenomenon (conception of C.J. Frederick)¹⁰.

⁴ D. Pstrąg, Wybrane zagadnienia z problematyki uzależnień, Rzeszów 2000, p. 13.

⁵ A. Gaberle, Patologia społeczna, Warszawa 1993, p. 17-18.

⁶ L. Pytka, Patologia społeczna. [in:] Elementarne pojęcia patologii społecznej i pracy socjalnej. T. Pilch, D. Lalak (red.), Warszawa 1999, p. 175.

⁷ R.K. Merton, Teoria socjologiczna i struktura społeczna, Warszawa 2002, p. 206 and following pages.

⁸ M. Jędrzejko (red.), Narkomania spojrzenie wielowymiarowe, Pułtusk-Warszawa 2009, p. 149.

⁹ H. Sęk, Wprowadzenie do psychologii klinicznej, Warszawa 2003, p. 88.

¹⁰ J. Rogala-Obłękowska, Przyczyny narkomanii, Warszawa 1999, p. 48.

Each of these factors has a significant influence on the tendency to engage in such behavior as taking drugs, but they are certain regularities worth mentioning¹¹. The most important factor in taking drugs is their availability. There is such thing as cultural accessibility to "taking". They consist of opinions that circulate in society, divisions into "soft" and "hard" drugs, misconceptions about the social role of the drug addict and the nature of drug addiction itself, ignorance about the effects of taking, wrong assessments of the prevalence of taking, fashions in social groups, lifestyle. From the point of view of prevention, it is important to build a permanent 'anti-drugs' culture. Perpetuating a strong and widespread disapproval of drugs in society¹². It is perhaps also as important as "chasing" dealers. Much depends on the voice of social authorities, if they function in the society. This is also an important field for educators, a part of their social role¹³.

II. Drug addiction as a medical problem

Drug addiction is not only a social problem that is an expression of non-compliance with certain social norms, it is also a huge medical problem. Drug addiction is a common term for addiction - from psychoactive substances influencing the human central nervous system. The essence of the concept of "addiction" is the loss of control over behavior. An addicted person takes a drug not because he/she wants to do so, but because he/she is driven by an internal compulsion to take the substance. Addiction diagnosis is carried out, inter alia, based on the International Classification of Diseases and Related Health Problems ICD-10 (Mental and behavioral disorders due to psychoactive substance use F10-F19)¹⁴.

Drug addiction also has its statutory definition related to non-medical use of substances that pose a risk of addiction. Act on Counteracting Drug Addiction of 2005 states that drug addiction is the constant or periodic use of narcotic drugs, psychotropic substances, substitutes or new psychoactive substances for non-medical purposes, as a result of which an addiction to them may or has arisen (art. 11). The essence of the concept of "addiction" is the occurrence of a set of mental or somatic phenomena resulting from the action of the above-mentioned measures on the human body, characterized by a change in behavior or other psychophysical reactions and the need to use these substances constantly or periodically in order to experience their impact on the psyche or to avoid the consequences caused by their lack (art. 4 (29)).

Addiction is a disease in the somatic and mental dimensions, with a different course. According to specialists, the disease is curable but not totally remediable¹⁵. The basic condition for obtaining positive results is to undergo the entire treatment process. Unfortunately, some people who are allegedly using psychoactive substances in an initially controlled manner, lose that control at some point. To explain these reasons, science refers to a number of concepts aimed at indicating the causes of addictions, ranging from typically biological, through psychological, to sociological concepts. For example - in biological concepts (J. Rogala-Obłękowska, J. Vetulani), it is emphasized that addiction is the result of a disturbance in the functioning of the brain (specifically the area related to the reward system, emotional and cognitive systems)¹⁶. Such a drug causes a surge of dopamine, which reduces negative feelings,

¹¹ M. Jędrzejko (red.), *Narkomania...* op.cit., p. 370 and following pages.

¹² G. Świątkiewicz, *Problem narkotyków i narkomanii a inne problemy w percepcji społecznej [in:] Zapobieganie narkomanii w gminie, Zasady tworzenia gminnych programów przeciwdziałania narkomanii*, Warszawa 2007, p. 43.

¹³ M. Jędrzejko (red.), *Narkomania...* op.cit., p. 394.

¹⁴ <https://icd.who.int/browse10/2016/en#/F10-F19> (1.03.2022)

¹⁵ M. Jędrzejko (red.), *Narkomania...* op.cit., p. 52.

¹⁶ J. Rogala-Obłękowska, *Przyczyny...* op.cit., p. 21 and following pages.

hence the irresistible urge to take it again¹⁷. So there is a vicious circle. The genetic and behavioral concept (E. Hornowska) is extremely interesting, in which the source of addiction is seen, among others, by temperament, i.e. an individual set of reactions to stimulus from the environment, which is largely genetically determined (R. C. Cloninger conception)¹⁸. Environmental concept (J. Rogala-Oblękowska)¹⁹ emphasizes the role of the family and friends as an important factor in the occurrence of possible pathologies²⁰. Finally, a social concept (M. Jędrzejko, A. Podgórecki) indicates that the source of addiction may be the prevailing fashion or belonging to similar people. The essence is a very strong dependence on the group, which entails absolute respect for its rules and customs²¹. Due to the text length framework, I will not, of course, cover all of these concepts. I have only indicated them for one reason. Each of them clearly indicates the presence of certain - larger or smaller - disorders: either neurological or other personality disorders. As such, they are the source of drug use, and then addiction. Drug use is not the "norm" of the 21st century, as we are sometimes tried to be told. a way to relax or have fun. It is an escape from reality. Just like we run away into the virtual world, virtual friendships, we run away into artificial emotionality. Of course, modernity is characterized by a certain relativism, something that until recently was an abnormal behavior, is treated as a new "normality". Only this choking on the new pseudo normality causes that we cease to notice its real danger, which means that we lose our lives in the so-called real. And we come into conflict with the law - criminal law, in particular.

III. Drug addiction as a legal problem

I claim that the criminal law system that is currently in force is increasing social and medical problems. The mere use of drugs is in theory not criminalized, but drug possession is. However, it is difficult to imagine the use of a drug without even temporary possession. Anyway, in the jurisprudence we can find judicatures in which the court - wrongly in my opinion - equates possession with use²². The question is, of course, how to separate these terms²³. Unfortunately, hence a simple way to create a completely abstract category of perpetrators who are drug consumers - owners (often addicts). And this is how a person requiring help is stigmatized with a conviction recorded in the National Criminal Record (KRK) and a lack of, for example, professional prospects. This causes a relapse of the convicted person to use drugs in order to deal with reality in this way, another conviction, only in conditions of recidivism, another stigmatization. And this vicious circle is closed.

There is also a problem with the treatment of such people, officially treated people are the top of the iceberg in the entire dark zone occupied by real drug users. In addition, there is also the problem of family co-dependence for fear of worsening the situation of the addict (e.g. so that he/she would not be criminally liable). In addition, prosecution of drug possession for oneself, for one's own use, contributes to the development of crime, including organized crime, in which producers and dealers make consumers dependent on their products, for which the addict is able to do everything, even commits a crime. Various types of other pathologies develop (e.g. prostitution to obtain funds to buy a drug).

¹⁷ J. Vetulani, M. Mazurek, *A w konopiach strach*, PWN 2016, p. 21; J. Vetulani, M. Rotkiewicz, *Mózg i błazen*, Wołowiec 2019, p. 110.

¹⁸ L. Ciepiałkowska (red.), *Oblicza współczesnych uzależnień*, Poznań 2006, p. 45.

¹⁹ J. Rogala-Oblękowska, *Przyczyny...* op.cit., p. 87

²⁰ M. Jędrzejko (red.), *Narkomania...* op.cit., p. 90 i nast.

²¹ *Ibidem*, p. 101.

²² Judgement by the Supreme Court of 27.01.2011, I KZP 24/10. Judgement by the Court of Appeal Szczecin of 18.03.2010, II AKa 30/10.

²³ K. Tkaczyk-Rymanowska, *Refleksje na temat art. 62 ustawy o przeciwdziałaniu narkomanii na tle karnoprawnym i konstytucyjnym*, *Ius Novum* 1/2021, p. 53.

The penalisation of the drug possession, in the present form, has also become, in my opinion, the reason for such a spectacular development of the market of „legal highs” - even more dangerous substances, with a completely unknown composition and effects. Due to this fact, they are subject to criminal liability (their trade or production are subject to administrative liability)²⁴ - it is difficult to meet the constitutional requirement of specific features of a prohibited act in the form of indicating what one should not really possess.

Another problem concerns the lack of a clear definition of what amount of the drug is not allowed to be possessed. Is it supposed to be enough for a single intoxication or a small supply is possible? There are large discrepancies in this respect in the jurisprudence²⁵. Moreover, the Polish Act on Counteracting Drug Addiction provides for the possibility of discontinuation of the proceedings if the perpetrator possessed drugs in an insignificant amount for its own use (art. 62a). There are no unambiguous thresholds, which would be worked out in a relatively uniform manner in the case law, and which would indicate how to distinguish a small amount, an amount covered by a basic type, from a large amount generating more stringent liability. Whether the holder is defended or not depends *de facto* on the effectiveness of his lawyer, if he has one, or on the indication of a relevant court decision (e.g. - the smallest dose of amphetamine causing intoxication is 0.2 g, although in some judgments the value was also 0.15 g or even 0.1 g (such differences were between Appeal Court in Rzeszów or Wrocław)²⁶. However, with regard to marijuana, it is assumed in the jurisprudence that one portion ("bag") of the drug is a mass of 0.2 with a discrepancy of even up to 1 g (such as Appeal Court in Wrocław or Lublin)²⁷.

Another problem is related to the non-uniform definition of drugs in the criminal law. In the Act, criminal liability applies to narcotic drugs, psychotropic substances and new psychoactive substances (the possession of that is subject to less criminal liability - a fine than the possession of classic drugs - imprisonment, which creates an illusory feeling that these new drugs are semi-legal, even less harmful, which, in fact, are often more dangerous). In the penal code from 1997²⁸, in the case of traffic crimes, the legislator used only the term narcotic drugs. Of course, the doctrine tries to make broader interpretations (because the regulation states that you cannot drive under the influence of cocaine, but some psychotropics you can, what is of course an absurd), but it is not the doctrine's role to correct the

²⁴ K. Tkaczyk-Rymanowska, Prawne aspekty obrotu dopalaczami – aspekt administracyjny oraz karno – prawny, Kwartalnik Administracja Teoria Dydaktyka Praktyka 4/2018, p. 209 and following pages.

²⁵ Court of Appeal in Krakow in 2000 stated that the possession of 200 g of amphetamine should be regarded as "a significant amount". Due to the fact that one plot of this drug is about 0.1 g, the given amount is enough to prepare 2,000 portions and intoxicate such a number of people once. Similarly, Court of Appeal in Lublin in 2002 considered 100 grams of heroin to be a significant amount. On the other hand, a significant amount, according to the position of the Court of Appeal in Wrocław, is also 5 g of methamphetamine because it can be used to produce about 30 portions of 0.15 g each. Similarly, in 2009, the Supreme Court decided that funds in the amount allowing for one-time satisfaction of the needs of at least several dozen addicts constitute a "significant amount". The measure of this "significance" may be the ratio of the amount of funds to the needs of one addicted person. Therefore, if it is such an amount that can satisfy the needs of at least several dozen people, then - in the opinion of the courts - it should be assumed that it is a significant amount. However, in my opinion, it should be remembered that the mark of a significant number characterizes the qualified type, which should be treated as exceptional. Judgement of Court of Appeal in Kraków of 4.10.2000, II AKa 161/00; judgement of Court of Appeal in Lublin of 17.12.2002, II AKa 282/02; judgement of Court of Appeal in Wrocław of 28.12.2005, II AKa 341/05 and judgement of Supreme Court of 16.07.2014, III KK 208/14.

²⁶ Judgement of Court of Appeal in Rzeszów 3.09.2013 r., II AKz 179/13; Judgement of Court of Appeal in Wrocław 1.03.2013 r., II AKa 43/13; Judgement of Court of Appeal in Wrocław 2.12.2014 r., II AKa 340/14.

²⁷ Judgement of Court of Appeal in Wrocław 23.03.2016 r., II AKa 63/16; Judgement of Court of Appeal in Lublin 11.04.2013 r., II AKa 45/13, Judgement of Court of Appeal in Wrocław 14.02.2013 r., II AKa 1/13.

²⁸ Criminal Code of 6.06.1997, Journal of Laws of 1997, No 88, item 553 with amendments.

mistakes of the legislator. This inconsistency within one branch of law - criminal law - may raise doubts in society, what is actually forbidden²⁹.

Finally, some doubts of a constitutional nature. The Polish constitution from 1997³⁰ clearly stipulates that limiting our freedoms may only take place by statute and only when it is necessary to protect certain other values, e.g. health. The Constitution mentions a statute, it does not necessarily have to be a penal statute right away. Different European countries treat the drug problem differently. Some withdraw criminal law from this area, others provide for non-punishment, and others provide an alternative in the form of therapeutic measures. I have serious doubts whether, therefore, criminal law as an ultima ratio should be the law of the "first throw" as it is in Polish conditions.

The Constitution also stipulates that only those who have committed an act prohibited by statute are subject to criminal liability. It is in the act that we are to find a set of features defining what the prohibited act should consist of. In the case of drugs, some of the stigmas have been transferred to sub-statutory legal acts - the ordinance of the Minister of Health. This is where we will find information about which substances are controlled and which, under pain of criminal liability, cannot be obtained. Therefore, in my opinion, these are unconstitutional provisions³¹. The unconstitutionality is also completed by art. 10 of the Polish Constitution - providing for the separation and balance of powers. In the case of indicating some of the features in the ordinance, it is the legislative authority that transferred to the executive authority the power to legislate in the area of substantive criminal law. This is completely unacceptable. Summing up, the penal provisions, unfortunately, starting from the legislative procedures and meeting constitutional requirements, through *de facto* "hindering" the exit from the underground for addicts, to the development of a number of pathologies and generating police statistics, are not the right way to counteract the discussed phenomenon, bringing more harm than good.

IV. Drug addiction - a triple problem for modern societies

Possession and use of drugs is associated with a range of harms on many levels. The most important of them are collected below.

| Social problems | Medical problems | Legal problems |
|---|--|---|
| <ul style="list-style-type: none"> • Loss of the ability to live in a family, in society, to perform professional duties • Disappearance of social relations • Codependency • Development of other social pathologies (e.g. prostitution) | <ul style="list-style-type: none"> • Gradual destruction of one's own health, sometimes up to the complete degradation of the person • The development of other diseases, including mental disorders • The phenomenon of tolerance • Politoxicomania | <ul style="list-style-type: none"> • Development of drug-related crime and other forms of drug-related crime (e.g. theft, robbery) • Criminalization, stigmatization of perpetrators, preventing them from returning to life in society (e.g. recording a |

²⁹ K. Tkaczyk-Rymanowska, Uwagi na temat „stanu odurzenia”, „środka odurzającego” oraz „środka działającego podobnie do alkoholu” w ujęciu przepisów karnych i prawa wykroczeń, w świetle ustawy z 29 lipca 2005 r. o przeciwdziałaniu narkomanii, Prawo i Więź 1/2021, p. 160 and following pages.

³⁰ Constitution of Republic of Poland from 2.04.1997 r. (Journal of Law No 78, item 483).

³¹ K. Tkaczyk-Rymanowska, Zasada wyłączności ustawy w kontekście pojęcia nowej substancji psychoaktywnej będącej znamiem czynu zabronionego – kilka ogólnych uwag natury konstytucyjnej, Krytyka Prawa 1/2021, p. 276.

| | | |
|--|--|--|
| <ul style="list-style-type: none"> • Stigmatization of drug addicts in society, marginalization and rejection of them in social contacts • The problem of the so-called recreational use | <ul style="list-style-type: none"> • Risky behavior, loss of control over the behavior • Addiction treatment costs • The need to expand drug treatment facilities (and methods) • Difficulties in treating people, especially after taking the so-called NPS | <ul style="list-style-type: none"> conviction in the National Criminal Register makes it difficult to navigate the labor market) • Legislative problems, constitutional doubts |
|--|--|--|

source: own elaboration

Substance use disorders are associated with a wide range of short- and long-term effects. They can vary depending on the type of drug, how much and how often it has taken and the person’s general health. Overall, the effects of drug abuse and dependence can be far-reaching. They can impact almost every aspects of human life. They may include a weakened immune system, heart conditions ranging from abnormal heart rates to heart attacks, increased strain on the liver, mental confusion and brain damage, lung disease, problems with memory, attention and decision-making, which make daily living more difficult and global effects as addiction, which can lead to other health problems. All drugs – cocaine, marijuana and others – affect the brain’s “reward” circuit, which is part of the limbic system. This area of the brain affects instinct and mood. Drugs target this system, which causes large amounts of dopamine—a brain chemical that helps regulate emotions and feelings of pleasure—to flood the brain. This flood of dopamine is what causes a “high.” It’s one of the main causes of drug addiction³².

Although initial drug use may be voluntary, drugs can alter brain chemistry. This can actually change how the brain performs and interfere with a person’s ability to make choices. It can lead to intense cravings and compulsive drug use. Over time, this behavior can turn into a substance dependency or drug addiction.

In a social and legal aspects, substance use disorders can lead to multiple social behavioral problems, both in the short- and long-term, which can include: aggressiveness, hallucinations, loss of self-control, development of many social pathologies (e.g. prostitution), stigmatization. These effects of drug abuse have serious consequences, like lost work, punishable offenses, accidents and injuries. Incidents include domestic violence, driving while intoxicated and offenses related to damaged property.

V. Solving problems related to drug addiction

Undoubtedly, there are many ways to deal with the problem of drug use, all overlapping with each other are presented below. Most of them are based on preventive systems before reaching for drugs (an interesting program is the Design Yourself program introduced 4 years ago in schools in Iceland, it

³² B. Szukalski, Charakterystyka środków psychoaktywnych [in:] Uzależnienie od narkotyków, podręcznik dla terapeutów, Krajowe Biuro ds. Przeciwdziałania narkomanii, p. 35-50.

includes: supervised free time after school, universal access to sports activities and cultural activities, special trainings for parents, etc.)³³.

| SOLVING PROBLEMS RELATED TO DRUG ADDICTION | | |
|--|---|--|
| <ul style="list-style-type: none"> Harm reduction systems (e.g. substitution treatment, needle and syringe exchange program, information programs) | <ul style="list-style-type: none"> Addiction treatment centers (e.g. treatment and reintegration of addicts) | <ul style="list-style-type: none"> Individual or group therapies / psychotherapies |
| <ul style="list-style-type: none"> Prevention (e.g. the Icelandic model, games and smartphone applications) | <ul style="list-style-type: none"> Supervision over narcotic substances (e.g. cultivation, combating illicit trade) | <ul style="list-style-type: none"> Criminalizing drug possession (?) |

source: own elaboration

An important target group in this type of approach are precisely young people, as part of the society most sensitive to the discussed phenomenon. Due to the significant digitalization of the minds of this category of people, various possible ways to reach this group are currently being developed, and due to the fact that it is most familiar with the latest technology, special applications are created for desktops and mobile devices, used for various purposes, including prophylaxis, but also monitoring, supervising or treating addicts. Some of the applications employ quite effective prevention techniques, based on accepted social norms, to challenge peer misconceptions about drug use. Examples of such applications: Quitzilla: Quit bad habits and addictions (available on Google Play), I don't drink, I don't take Guardian Angel (Google Play), Addiction (Google Play), WhatsApp® inter-Vention³⁴. In addition, special games are created, such as eg Good Behavior³⁵, based on a specific program to reduce risky behavior by using behavioral incentives in certain age groups to strengthen positive norms and rules³⁶. Some models of management are also based on harm reduction systems or, finally, on the treatment of addicts. However, I have doubts about the last method of solving drug problems presented here - criminal law interference for the reasons I have mentioned above. First of all, when looking at the phenomenon of drug addiction, it is precisely finding the answer to the question "why" that is one of the most important issues in proving the thesis that criminal law has no business here.

VI. Summary

The drug addiction is a fragment of reality, a certain social phenomenon, assessed differently depending on attitude, tradition, culture, belonging to specific societies, groups, etc. Therefore, as a

³³ http://www.islandia.org.pl/artykuly/2017/uzaleznienia_narkotyki_islandia.html (2.03.2022).

³⁴ I. Sadło, E. Guz, A. Wójciuk, M. Brodowicz-Król, M. Kaczoruk, P. Kaczor-Szkodny, Uzależnienie od substancji psychoaktywnych jako wyzwanie dla zdrowia publicznego, *Medycyna Ogólna i Nauki o Zdrowiu* 1 (27)/2021, p. 75.

³⁵ <https://www.radiokrakow.pl/audycje/lustro-50458/gra-w-dobre-zachowanie-skuteczny-sposob-na-dyscypline-w-klasie/> (1.03.2022)

³⁶ K.Tkaczyk-Rymanowska, *Refleksje...op.cit.*, p.63-64.

phenomenon, it is dynamic, dependent on many factors and events. On the other hand, the government's pressure on a strict drug policy, and numerous amendments that tighten the criminal liability of the "holder", did not leave unnoticed the manner of court proceedings. From numerous interviews with judges adjudicating in criminal departments³⁷, it appears that the conviction of a drug use is, in their opinion, a natural consequence of the committed act. The question of punishment is of secondary importance. This act is not considered in terms of a pathology that requires a non-penal approach. There is no doubt that a thorough knowledge of crime, in this case a drug-related crime, is essential for conducting a rational criminal policy. But the attitude to a number of social phenomena itself also requires rationalization. Drug use and the related consumer drug possession should be considered in the context of social pathologies and should not criminalize or penalize this type of behavior, but rather invest both effort and money in prevention, information and harm reduction programs. The National Bureau for Drug Prevention³⁸, which monitors the implementation of such activities, recommends greater concentration in these areas. I have emphasized many times in my statements³⁹ that criminal law is not able to protect people from harming themselves. Too much paternalism on the part of the state may be counterproductive. It is the demand for certain means that generates the supply, and it is the supply that has the full potential to effectively limit (not combat) the tendency to use psychoactive substances.

In the current legal system, due to the threat of criminal liability, the vast majority of us allow the criminal law system to deal with addicts who, fearing disclosure and the related criminal liability and stigmatization in society, prefer to maintain the *status quo* rather than face with the problem of drug addiction concerning them and seek help. I am aware that I have barely touched on this issue, but I hope that there will be some changes in the scope of the Polish currently binding criminal law regulations, which, unfortunately, apart from being inconsistent and generating a number of social and medical problems, are also - in my opinion - at the moment - unconstitutional.

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2. Criminal Code of 6.06.1997, Journal of Laws of 1997, No 88, item 553 with amendments,
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