

THE EUROPEAN UNION POLICY OF COMBATING THE DRUG TURNOVER

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Abstract: The article deals with the problem of fighting the drug trafficking and drug abuse within the European Union. It describe the background of the issue and deals with the impact of the abolition of border controls within the Union on the increase and character of the drug turnover. She moreover points on the other negative side-effect, i.e. the increase of criminality caused by the abuse of drugs. Then she analysis the contemporary legal regulation of the drug trafficking and drug abuse in Poland and within the European Union and compare both regulations. She critically calls for the establishment of the comprehensive common strategy to avoid the negative outcomes of the “free drugs turnover” within the territory of the Union.

Keywords: drug trafficking, turnover, EU, Poland, European policy, common strategy

I. Drug abuse and the human rights – pros and cons of the European integration

The long awaited European integration has been considerably accomplished. The indicators of the new reality became the currency union and the economic union. For the need to create the new European space there were cancelled the state and customs borders. That enabled to introduce four basic rights, i.e. free flow of people, capital, services and goods. Nowadays, it is difficult to imagine the Europe from the past, when it was divided by the borders. In this way the former conflicts were expired on the borderlands of France and Germany, Poland and Germany, Spain and France. The single market was created, which enables the better fight with the unemployment, poverty or the other social problems¹.

¹ See. Z.M. Doliwa-Klepacki, *Integracja Europejska. Łącznie z uczestnictwem Polski w EU i konstytucją dla Europy*, Białystok 2005, p. 105.

However, if something sometimes seems to be enormously useful, it has also its disadvantages. Cancellation of borders made it easier to expand the organized crime. There are known some examples of transferring the mafia groups from one country to the other, particularly the Italian and Russian mafias. It is easier to hide the economic crime and the offences against the consumers. There are some numerous cases of avoiding paying the owing taxes and the insurance premiums by the large nets of shops and restaurants. There is the mechanism used here to permanent transformation of the legal structure of the organization, at preserving the economic uniformity of the firm. The old firm with the debts declares a bankrupt, while the new one is born instead, which overtakes the assets of the failed firm, but without the indebtedness, chiefly in relation to the Treasury².

Cancellation of the borders simplifies making the numerous offences against the human being. The number of the cases of white slavery increased, chiefly the women and children trade. It appeared the new phenomenon of the slavery, chiefly in relation of the field works, which the numerous examples we observed in Italy and Spain³.

Moreover, the economic crisis of one of the states has its serious influence not only on the economy of the neighboring countries, but also on the whole European Union. Nowadays the European Union is struggling with huge financial troubles in Greece, and it is possible that in the nearest future the same can happen in much more bigger countries, such as Spain or Portugal. Functioning within the framework of the single market, on the one hand helps to fight with the economic crisis in the individual member states or the regions, but on the other hand, it can destabilize the economy in the whole Union.

The subject of this paper is another negative phenomenon, namely the drug abuse, which has intensified to a large extend because of cancelling the borders in Europe. In particularly we take into consideration growing the drugs, their trade, illegal possessing, using, export and import. The phenomenon of drug abuse can be seen from different points of view, as for example sociological, psychological, biological or legal.

- 2 The present legal status in Poland does not allow to differentiate the national and foreign subjects, as far as it concerns paying taxes. Therefore, everybody is obliged to bring in the income taxes. Such an attitude we can find in the answer of the under – secretary in the Ministry of Treasury – by procurement of the minister – asked by the deputy K. Borkowski no. 4900 concerning the amount of the tax revenues from the particular subjects. The deputy claims that the foreign subjects avoid paying taxes. Despite the conclusive answer of the Ministry, it is impossible to negate the statement of the representative. See: http://www.podatki.biz/sn_autoryzacja/logowanie.php5/artykuly/14_8874.htm?idDzialu=14&idArtykulu=8874 [11 V 2010].
- 3 See. F. Dammacco, *La criminalità organizzata, il traffico di esseri umani e nuove forme di schiavitù*, [w:] G. Dammacco, B. Sitek, O. Cabaj, *Człowiek pomiędzy prawem a ekonomią w procesie integracji europejskiej*, Olsztyn-Bari 2008, p. 691.

The phenomenon of drug abuse is multiaspect and because of this, it is the subject of numerous scientific and popular – science dissertations. There are some well known authors who write about the problems associated with drug abuse, for example Cekiera⁴, Juszczynski⁵ and Tatala⁶.

By virtue of the subject of this paper, we mostly take into consideration combating the demand and supply of the drugs within the European Union because there is the need to protect the fundamental human rights, chiefly the health and life. The discussion is being continued about the need to protect the people addicted to drugs, the potential drugs purchasers. Such the activities are undoubted⁷. However, there is the need to remember that the addicted people constitute the threat to the health and even the life of the third persons. Hence, the need of protecting the human rights in broad meaning of this word, demands providing a deep, true reflexion about the problem of drug abuse in the united Europe. All the more, that every convention of human rights are silent in this subject.

From the legal point of view, the specificity of drug abuse is its punishability for only possessing the drugs, independently on the aim. This is constituted in art. 62 of the Act from 29th July 2005 about counteracting the drug abuse⁸. Taking into consideration the subject of protection, the legislator used here the dogmatic construction of the abstract endangerment of the legal good. Therefore, to prove the criminal responsibility of the offender, it is not necessary to have the material result of the offence, the behaviour itself is enough. This is the offence which has the continuous character and it starts at the moment when the offender purchases the dazing agents. In this case, I disregard the explanation of the notion dazing agents, because of the extensiveness of the subject matter⁹. The legal aspects of drug abuse are in the interest of such author as S. Pikulski¹⁰.

4 Cz. Cekiera, I Niewiadomska, *Profilaktyka uzależnień drogą wolności człowieka*, Lublin 2001.

5 Z. Juszczynski, *Narkomania. Podręcznik dla nauczycieli*, Warszawa 2002.

6 M. Tatala, K. Kościelecki (red.), *Rozwój osób uzależnionych w procesie zdrowienia*, Zakroczym 2022.

7 Such an attitude towards the threats connected with taking the drugs was presented by the lecturers during the conference organized by the Parliamentary Commission of Law and Justice, in 2003. The materials from that conference were published in the library edition the Conferences and Seminars. Human rights – of the people taking the drugs and infected by the HIV, 10(54)03.

8 Official Journal. No 179, pos. 1485.

9 See: D. Wysocki, *Pojęcie posiadania w prawie karnym*, PiP 2000, n. 2, p. 14; K. Krajewski, *Sprawy o posiadanie narkotyków w praktyce sądów krakowskich*. Report from the researches, Kraków 2008.

10 S. Pikulski, dz. cyt.

II. Cryminogenic role of drug abuse

The analysis of the subject, and the analysis of the police and court records indicate explicitly the connection of drug abuse with the criminality. This statement finds its justification in the number of the criminal acts committed by the drug addicts against the third persons and against the other drug addicts. In the first case, the matter is that the people being under influence of the dazing agents make crimes and also they do it to gain the dazing agents. In the report of the activity of the Central Investigation Agency KGP from 2009 there is the data associated with the dynamics of the increase in criminality linked with drug abuse. From the data included there appears that in comparison with the year 2008, in 2009 the consumption and the trade of amphetamine and marihuana distinctly increased¹¹.

It is obvious that the persons being under influence of the dazing agents very often commit various crimes, both consciously and unconsciously. The intensification of the criminal activity depends on the quantity and quality of the dazing agents. Their effects are temporary. The drug addicts not seldom commit the grave crimes, such as assassinations or robberies with battery, which are the result of limiting or eliminating the self control. A lot of incidents on roads traffic are caused by the people taking drugs. The other crimes committed by the drug addicts are the result of weakening the moral ties, what can lead for example to the rape¹².

Gaining the drugs and their trade, apart from their illegality, cause also the other criminal acts, such as: theft, fencing the stolen goods, forgery of documents, chiefly the prescriptions, blackmail, very often together with the physical enforcement used against the third persons to receive the valuable things. Drug traffickers commit also the illegal turnover and smuggling. The drug trade as a very good "business" is controlled by the big international cartels, so it is the organized crime.

In the end the drug abuse harms the health of the person who takes drugs. Everybody indeed can decide about their own luck. However, we cannot forget that the drug addicts need treatment, also in case of falling ill because of the HIV virus. In this case, the costs of irresponsibility are paid by the society and the risk of infection is transferred on the relations and the medical personnel. Moreover, the drug addicts also create the negative problems within the frame of their families and bringing up their children. The problem is that the children repeat the behaviour of their parents and at the same time they transfer the threat of HIV virus.

11 The report of the activity of Central Investigation Agency KGP from 2009, Warszawa 2010, p. 6, computer printing.

12 See: S. Pikulski, *Kilka uwag na temat narkomanii w Polsce*, [in:] *Człowieka a tożsamość w procesie integracji Europy*, Olsztyn, 2004, p. 528 and following.

The range of the phenomenon of drug abuse and its cryminogenic results presented above, indicates that there is the need of creating the legal policy within the framework of combating the drug abuse and its negative results. The statistical data shows that it is not enough to introduce the coherent legal system on the territory of one state. Hence, this is necessary, at first to present the policy of combating the drug abuse in Poland, and then in the European Union. In the last item of this paper we are going to present some issues of the cooperation among Poland, the Czech Republic and Slovakia.

III. The legal and institutional policy of combating the drug abuse in Poland

The anti drug strategy in Poland is based mainly on the act from 29th July 2005 about counteracting the drug abuse¹³. Furthermore, there are issued 25 regulations of different ministries, depending on the need to manage combating the drug abuse. In the legal act itself the legislator indicated the ways and instruments of combating the drug abuse.

The basic ways of combating the drug abuse is counteracting, which means the preventive activities. According to the art 2 act 1 of the legal act, the ways of combating the drug abuse are:

- The educational, tutorial, informative and preventive activities;
- Treatment, rehabilitation and reintegration of the addicted persons;
- Restricting the health and social damage;
- The supervision of the substances which using can lead to drug abuse;
- Combating the illegal trade, producing, processing and possessing the substances which using can lead to drug abuse;
- The supervision of growing the plants containing the substances, which using can lead to drug abuse.

Whereas the fundamental instruments to combat the drug abuse are: law, the institutions responsible for preventing activities, criminal and administrative measures.

There are numerous institutions which lead the preventing activities in the process of combating the drug abuse, they can be divided into the institutions which do it voluntarily and those which realize their legal duty to counteract the drug abuse. In the first case there are different kinds of religious organizations, particularly the catholic church, but there are also numerous foundations and associations which can be indicated as well. In the second case the legislator in art 5 act 2 indicated the specific subjects legally obliged to undertake such the activities. There are:

13 Official Journal No 179, pos. 1485.

- Kindergartens, schools and the other organizational units mentioned in art 2 items 3–5, 7–9 of the legal act from 7th September 1991 about the educational system (Official Journal from 2004, no 256, pos. 2572 with later changes);
- Universities;
- The health care centers and the other subjects acting for the health protection;
- Polish Military Units, the Police and the Border Guard;
- Customs agencies;
- The organizational units of Prison Service and the Young Offenders' Homes and the Hostels for Juvenile Offenders;
- The social aid centers, the district centers of help for families and the regional centers of the social policy;
- The media.

The above set of institutions responsible for counteracting the drug abuse was completed by creating the National Agency for Counteracting the Drug Abuse (art. 6).

Apart from the legal act, some instructions to the anti narcotic strategy in Poland are contained in the National Programme of Counteracting the Drug Abuse. In this programme there are drafted some directions and the types of activities within the framework of counteracting the drug abuse, the schedule of the accepted activities, purposes and the ways of their achieving and the ministers responsible for their realization and also the subjects appropriate to undertake the particular activities. Moreover, in each province there has to be the Provincial Programme of Prevention of the Drug Abuse.

The Council of Prevention of the Drug Abuse works at the Prime Minister. This is the coordinative – advisory body of the cases of preventing the drug abuse. The members of the Council are the secretaries or under secretaries from the Ministry of Health Matters (chairman) Ministry of the Interior, Justice, Education, Ministry of National Defense, Agriculture, Social, the Treasury, Foreign Matters and science. The tasks of the Council are in particular:

- Monitoring and coordinating the activities within the framework of realization the state policy in the area of dazing agents, the psychotropic drugs and precursors;
- Submitting the Ministry of health the matters associated with creating, changes and amendments to the national strategies and plans of prevention the problems caused by the trade and using the dazing agents, the psychotropic substances and precursors;

- Monitoring the information about realization of the national strategies and plans of action;
- Monitoring of the National Programme realization;
- Offering the organizational solutions concerning the prevention of drug abuse;
- Cooperation with the subjects, which are mentioned in art. 5 concerning the Council activity.

Combating the drug abuse is also the task for the local authority. This duty is regulated by the art. 10 paragraph 1 of the act and it includes:

- Increase in the accessibility for therapeutic help and rehabilitation for the addicted persons and the persons endangered by the addiction;
- Providing psychological-social and legal help to families in which the drug abuse problems appear;
- Running the preventive, informative, educational and training activity within the framework of solving the drug abusing problems, particularly for children and teenagers, including running the sport – recreational classes for students, and also the activities to give additional food for children taking part at the after school tutorial, educational and socio therapeutic programmes;
- Support for the activities of the institutions, off – government organizations and the natural persons helping to solve the drug abuse problems;
- Social assistance for addicted people and their families suffering from poverty and the social elimination and the integration with the local community using the welfare work and the social contract.

To implement this task the village head (mayor, mayor of the city) has to work out the project of the Local Authority Programme of the Drug Abuse Prevention, which should consider the tasks drafted in the article 2 paragraph 1 item 1–3 and the directions of the activities which result from the National Programme. To implement this task, the village head can appoint the legal representative.

Combating the consequences of drug abuse can be achieved mainly basing on the penalty regulations, included in chapter 7 of the law. The legislator made the penalization of the following deeds: possessing the dazing agents, their elaborateness, preparing for elaborateness e.g. purchasing the equipment for drugs production, promotion at purchasing, making personal profits from the drug abuse, growing and harvesting the drugs.

In the regulations there are introduced some administrative instruments, which aim is, first of all, to prevent the drug abuse. These instruments are:

- Introducing the permits to harvest the poppy milk and opium from poppy¹⁴, the permits for import and export of dazing agents¹⁵ and the permits to run the wholesale trade turnover of the dazing agents¹⁶;
- Payments for giving the permits for producing the psychotropic substances¹⁷;
- The records of production or the precursors trade turnover¹⁸;
- The procedure at alternative treatment¹⁹ and the procedure with the addictive products²⁰.

IV. The Union policy within the framework of combating the drug abuse

In the European Union does not exist the general policy of preventive activities and combating the consequences of drug abuse. The rule is that each mem-

- 14 The Regulation of Health Minister from 28th October 2008 about giving and withdrawing the permits to pick up the poppy milk and opium from poppy and wort or cannabis resin, different than fibrous, to carry the scientific research and to prepare the extracts from the poppy straw and paregoric. (Official Journal 2008. 197. 1225)
- 15 The Regulation of Health Minister from 13th January 2003 about the detailed conditions and the procedure of giving the permits for import from abroad and for export abroad the dazing agents, psychotropic substances and the precursors of the group I-R and the documents which entitle to their import from abroad and to export abroad for your own health needs (Official Journal No 36, paragraph 316).
- 16 The Regulation of Health Minister from 13th January 2003 about the detailed conditions and the procedure of giving and withdrawing the permits for carrying the wholesale trade turnover of the dazing agents, the psychotropic substances and precursors of I-R group and about the duties of the persons possessing such permits (Official Journal No 36, pos.317).
- 17 The Regulation of Health Minister from 25th October 2005 about the Mount of payments for giving permits for producing, elaboration, using for research and the permits for import, export, internal community purchasing and the internal community delivery of the dazing agents, the psychotropic substances and precursors of category 1, and also the change of these permits and licences (Official Journal 2005. 214.1818); the Regulation of Health Minister from 13th January 2003 about the detailed conditions and the procedure of giving and withdrawing the permits for producing, elaboration the dazing agents, the psychotropic substances and precursors of group I-R, and the detailed conditions of entering the business activity consisting in using the agents to carry out the scientific researches (Official Journal No 36, pos. 315).
- 18 The Regulation of Health Minister from 23rd December 2002 about the procedure of running the records of production or the trade turnover of precursors of groups IIA-R and IIB-R and submitting the precursors of group IIA-R(Official Journal from 2003 No 7, pos.88).
- 19 The Regulation of Health Minister from 19 October 2007 about the detailed procedure at the alternative treatment and the detailed conditions which should be performed by the health center giving the alternative treatment (Official Journal No 205, pos. 1493).
- 20 The Regulation of Health Minister from 19 October 2007 about the detailed procedure at the alternative treatment and the detailed conditions which should be performed by the health center giving the alternative treatment (Official Journal No 205, pos. 1493).

ber state has its own legal regulations and its own policy of combating the drug abuse. However, it does not mean the whole lack of such policy, chiefly the legal and institutional policy, as for example police, court and administrative policies. The European Union works on the basis of the rule of subsidiarity and the acknowledge to act in the area of combating the drug abuse results implicate from the treaty decisions. In the article 152 TWE the European legislator decided that the *Community fills the activities of the Member States leading to limit the harms which result from taking drugs, including the information and the prevention*²¹. This decision is now in article 168 in the Treaty on Functioning the European Union. The activities of European Union cover the problems within the framework of justice, security and public health²².

The drug abuse problem in the Union scale has the growth dynamics. This is proved by the analysis of the statistical data gathered and worked out by the Statistical Office of the European Communities Eurostat. It refers particularly to the new Member States. Thus, in the years 2002 – 2007 the number of crimes traditionally linked with the drug abuse, so illegal possessing, production or taking drugs increased in Poland by 8%, in Bulgaria by 24%, in Slovenia by 18%, but in Slovakia the situation remained without changes. In the countries of the previous Union the growth of drug abuse was noticed only in the Northern Ireland by 10%, in France by 5%, in Holland by 11%. In the other countries there was noticed even the decrease, e.g. in Finland by 5%²³.

The phenomenon of drug abuse is first of all directed against the human being, hence the Union policy is directed towards the human protection, particularly towards such the values as health and life itself in different stages of its development. Then the following purposes are realized such as combating the crimes associated with the drug abuse.

According to the European Monitoring Centre on Drugs and Drug Abuse, every year in the European Union there are 6500–9000 deaths caused by drug abuse, particularly by lethal overdose. Moreover, taking drugs intravenously brings the consequent threats. This is the main source of haematogenous transmission of the infections such as HIV/AIDS, hepatitis B and C. about 2 million

21 Polish translation is by: A. Przyborowska Klimczak, E. Skrzydło – Tefelska, *Dokumenty Europejskie*, lublin 1999, p. 227.

22 The Regulation 273/2004 PE I of the Council from 11th February 2004 about the precursors (Official Journal of UC L47, 18.2.2004, p. 1), the Regulation of the Council 111/2005 from 22nd December 2004 about the rules of control the precursors trade between the Community and the Third Countries (Official Journal of European Community L22, 26.1. 2005, p.1), the Regulation of the Council 1277/2005 from 27th July 2005 about implementing the rules of the regulation 273/2004 PE I of the Council about the precursors (Official Journal of the UC, L. 202, 3.8.2005, p.7).

23 This data comes from Eurostat. See: C. Tavares, G. Thomas, *Population and social conditions*, Statistics in focus 36/2009, p. 8 [in:] http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-09-036/EN/KS-SF-09-036-EN.PDF [14 V 2010].

people in the European Union has problems associated with taking drugs – half of them takes the drugs intravenously. The preventive activities caused that the frequency of appearing HIV, among the persons taking drugs intravenously, decreased in the years 2001–2005, and it was recorded in 2005 about 3500 new cases of morbidities²⁴.

According to the Maastricht treaty the Union policy of combating drug abuse belongs to the third pillar of the European Union. This pillar involves the Administration of Justice and the Internal Affairs and the cooperation within the framework of the police services. Combating the drug abuse and the drug trading, together with combating the international crime and terrorism, is the main subject of the police and judicial cooperation. Within the framework of the third pillar there are appointed some institutions, which play the substantial role within the framework of the cooperation associated with the common solving problems. These institutions are – Europol – European Police Office, Eurojust – European Unit of Judicial Cooperation, European Monitoring Centre on Drug Abuse²⁵. From our point of view the most important is the third institution. Apart from the institutions the fundamental element of combating the drug abuse are the European rights and the programmes.

V. The treaty bases of combating the drug abuse

The legal basis to combat the drug abuse in the European Union constitute the treaty decisions. There should be emphasized that till the European Single Act (SEA) of 1986, the issue of combating the drug abuse was at the exclusive competences of the Member States. The acknowledgement of this is in the declarations included to the SEA, where there is stated that this document does not disturb in any way the right of the Member States to undertake the activities in this area.

For the first time the task to combat the drug abuse, then the European Community, was formulated in the Treaty on European Union. In the article 29 (K.1) there was stated that the Union should assure the high standard of security through undertaking the common activities within the framework of the police and judicial cooperation. This purpose should be accomplished through combating and preventing the crimes, among others in the area of illegal drug smuggling. In the article (K 3) of the same treaty there is stated about the common activities within the framework of judicial cooperation in the criminal matters. In paragraph e) there was decided that in the whole European Union there will be the lower limit of penalties predicted for the illegal drug smuggling. This resolution is now in article 83 TEU (Treaty on European Union).

²⁴ See: http://ec.europa.eu/health-eu/my_lifestyle/drugs/index_pl.htm [15 V 2010].

²⁵ See: The structure of the European Union: Tyree pillars, [in:] <http://www.radaeuropy.org.pl/struktura-unii-europejskiej.html> [16 V 2010].

VI. Union (community) anti drug strategies

The first Union anti drug strategy was implemented in the years 1995 – 1999²⁶. The purpose of that strategy was strengthening the further cooperation among the Member States within the framework of reducing the consumption of drugs and limiting their trade within the borders of the European Union. The other Union anti drug strategy was implemented in the years 2000 – 2004²⁷. Its purpose was the implementation and the further tightening the Member States cooperation in the area of limiting the drugs consumption and their trade. The purposes of that strategy were not fully realized, this is proved by the statistical data of that period. In effect the number of people taking drugs in 2004 increased over 2 million Union citizens. That increase referred mainly the synthetic drugs, therein ecstasy.

Nowadays there is realized the Union anti drug strategy for the years 2005 – 2012. This is the continuation of the previous strategies. First of all the preventive activities should be directed towards combating the organized crime and liquidating the wholesale deliveries. Particularly this strategy is directed towards:

- prevention of drug consumption and addiction,
- limiting the supply of illegal drugs and the demand on them,
- limiting the social damages (marginalization),
- limiting the health damages,
- limiting the side crime associated with the drugs and the organized crime.

Undoubtedly there is here the lack of mention about combating the retail traders, in other words dealers. However, there was kept the drugs prohibition. They are also going not to punish the persons taking drugs.

VII. The Union (Community) Plans of Combating the Drugs

The normative act used to combat the drug abuse these are the Union plans (Community). The first Union (Community) Plan of Combating the drugs was accepted by the European Council in 1990 and was obliged in the years 1990 – 1994²⁸. In that Plan there was the attempt to define the aims and the rules of the common attitude of Member States to the problems of combating the drug abuse. There was assumed the direction of limiting the demand on drugs by virtue of the health criterion and limiting the supply by virtue of the need to combat the symptoms of cryminogenic drug abuse²⁹.

26 9012/99 CORDROGUE 33.

27 12555/3/99 CORDROGUE 64; 9283/00 CORDROGUE 3.

28 10234/1/90, 10.12.1990.

29 See: Z. Czachór, A. Graś, *Vademecum. Europa od A-Z*, Warszawa 2006, p. 107 and follow-

The effect of realization of the Plan was publishing by the European Commission, the message on the legal cooperation among the Member States in the area of combating the drug abuse³⁰. Then, there was created the European Police Office – Europol (1994), European Unit on Judicial Cooperation – Eurojust, European Centre on Monitoring the Drug Abuse (1993).

The following European Plans of Combating the Drugs were realized in the years 1995 – 1999 and 2000 – 2004. However, they were the continuation of the first Plan and the Strategy at the same time. The present Strategy concerning the drugs, which is realized in the years 2005 – 2012 includes two Plans. The first of them was accomplished in the years 2005 – 2008³¹ and the second one in the years 2009 – 2012.

The European Plans to Combat the Drugs from the years 2005 – 2008 were the continuation of the previous plan. Namely, one of the purposes of the undertaken activities was decreasing the demand and at the same time the considerable limitation of the drugs supply. Those activities had to be in accordance with the European Anti Drug Strategy. The activities defined in that Plan were realized in the Member States of the European Union and at the international arena. There was emphasized the need of cooperation among the Member States within the framework of the data transmission and the best practice. There was also emphasized the need of better interrelation of the Union policy of combating the drug abuse with the scientific researches.

Within the framework of the cooperation among the Member States there was emphasized the need to standardize the legal regulations, strategies and national plans. Particularly, there was emphasized the necessity of decreasing the consumption of drugs in the closed centers e.g. in the army, in prisons and the treatment of the addicted persons. At the same time there were intensified the activities in the interest of decreasing the drugs production and strengthening the control of “money laundering”³². Within the framework of the cooperation among the Member States the most important appeared transmitting the information about the dynamics of drug consumption and about the crimes associated with the drug abuse.

The basic task of the European Plan of Combating Drugs for the years 2009–2012 is the further implementation of the previous Plan assumptions, considering that there is the significant progress in the combat with the drugs consumption and trade in the territory of the European Union. In the present Plan, which is now realized the number of purposes to achieve and the activities were lim-

ing.

30 COM (1994) 223 final.

31 Official Journal. WE C 168, 8.7.2005.

32 See: J. Wójcik, *Przeciwdziałanie praniu pieniędzy*, Kraków 2004, p. 15 and following.; *Ibidem*, *Oszustwa finansowe. Zagadnienia kryminologiczne i kryminalistyczne*, Warszawa 2008.

ited. These measures were taken to make it easier to define the subjects, which are responsible for the realization of the existing tasks. Moreover, there is the tendency of convergence the Union policy of combating the drug abuse with the other kinds of policies, chiefly with the policy of protection the public health. These countries are encouraged to use the funds of the European Union programmes when they realize their own plans. To decrease the level of the drugs demand, there was assumed the intensification of the policy of realizing the drug harmfulness for the health and the life safety. The additional activities are introduced, which aim is the treatment of the addicted people who suffer from jaundice or HIV. In the area of combating the negative drug abuse results there is the tendency to unify the activities by closing the legislations of the Member States. The similar activities have to be undertaken in the field of international law, particularly, standardizing the law, exchange the information about the drugs demand and sales.

VIII. The secondary law and the drugs

The policy of combating the drug abuse phenomenon, particularly the drug trade, became the subject of legal regulations after accepting the Maastricht Treaty in 1992, where the first time the foundations were put for the common (Union) policy of combating this phenomenon. The first act of the second law was the regulation of the Council (EEC) no 302/93 of 8th February 1993 about appointing the European Center of Monitoring the Drugs and Drug Abuse³³. The following act was the statement of the Commission for the European Council and the Parliament about the Plan of Action of the European Union within the domain of combating the drugs (1995 – 1999)³⁴. The following Plan of Action was assumed by the decision no 102/97/EC of the European Parliament and the Council of 16th December 1996. There was the Community Plan of Action within the area of prevention of the drug addiction within the framework of the activities in the public health (1996 – 2000)³⁵.

Closing the legislations of the Member States within the framework of combating the drug abuse and prevention and combating the illegal drug trade were started on the base of Common Activity of the Council 96/750/WS and SW from 17th December 1996³⁶. The necessary instrument of this closing was the information exchange and the risk evaluation. Then the next document was published Common Council Activity 97/396/WS SW from 16th June 1997 concerning the information exchange, the risk evaluation and the control of the new synthetic medicines³⁷.

33 Official Journal L 36 z 12.2.1993, p. 1.

34 COM(1994)0234.

35 Official Journal. L 19 z 22.1.1997, p. 25.

36 Official Journal. L 342 from 31.12.1996, p. 6.

37 Official Journal. L 167 from 25.6.1997, p. 1.

The following important legal acts are the Council Regulation no 2046/97 from 13th October 1997 about the North – South cooperation at the campaign against the drugs and drug abuse³⁸ and the document accepting the Plan of Action of the Council and the Commission about the optimal accomplishing the Amsterdam Treaty resolutions at deciding the area of freedom, security and justice³⁹.

At the end of the nineties there were published the normative acts associated with the strategies and plans, which were obliged over the following years. Thus, there was accepted the document from the European Council session, which debated in Helsinki on 10th – 11th December 1999, particularly there was the Conclusion no 53, in which there was considered the EU anti drug Strategy (2000 – 2004) and the European Council Conclusions debating in Santa Maria da Feira on 19th – 20th June 2000, particularly paragraph 51, where the Council accepted the European Union Plan of Action within the framework of combating the drugs (2000–2004). There were the act belonging to the category *soft law*.

The legal acts commonly accepted at the beginning of XXI century were: the directive 2001/97/EC of the European Parliament and the European Council from 4th December 2001, which replaced the Council directive 91/308/ EEC about making impossible using the financial system to money laundering⁴⁰, the Commission statement to the European Council and Parliament about accomplishing the European Union Plan of Action in the area of combating the drugs (2000–2004) COM(2001)0301 and COM (2002)0599, regulation (EC) no 273/2004 of the European Parliament and the European Council from 11th February 2004 about the drug precursors⁴¹, and the general decision of the Council 2004/757/WS and SW from 25th October 2004 about the drug precursors⁴².

In the end there is a recommendation of the European Parliament for the Council and the European Council about the European anti drug strategy (2005–2012)⁴³.

IX. The European Institutions combating the drug abuse

On the basis of the Council resolution (EEC) no 302/93 from 8th February 1993 there was appointed the European Center of Monitoring the Drugs and the Drug Abuse⁴⁴. It was the consequence of introducing to the Treaty on European Union, the first elements of the Community policy of combating the

38 Official Journal. L 287 from 21.10.1997,p. 1.

39 Official Journal. C 19 from 23.1.1999, p. 1.

40 Official Journal. L 344 from 28.12.2001p. 76.

41 Official Journal. L 47 from 18.2.2004, p. 1.

42 Official Journal. L 335 from 11.11.2004,p. 8.

43 (2004/2221(INI)).

44 Official Journal. L 36 from 12.2.1993,p. 1.

drug abuse. The Center is the decentralized European agency, and although it was appointed in 1993, it started its activity in 1995. The head quarters of the Center is located in Lisbon, but the Agency has also its office in Brussels. Whereas institutionally it is depended to the European Commission.

The fundamental task of the European Center of Monitoring the Drugs and the Drug Abuse is gathering the information within the framework of the problems with drug abuse in the EU. The collected data are then analyzed and publicized by the media and the other publishers. In this way the decision makers, chiefly the politicians, but also the scientists, media or the organizational units dealing with combating the drug abuse have the access to the independent, reliable and comparable information about the drug abuse phenomenon. There should not be also forgotten about the documentation of the drug abuse phenomenon in Europe.

The collected data is used to work out the anti drug national and Union strategies. It is possible due to increasing the comparativeness of information about drugs and drug abuse in Europe and working out the methods and tools necessary to achieve the purpose. In this way the Member States can compare, and as a consequence, to claim what is their situation like against the background of the other European countries and to analyze the common problems and purposes.

The Center has also the other own tasks, namely the definition of the dynamics of the drug abuse problem. Hence, thank to "Reitox network"⁴⁵, the monitoring center appear in each of the 27 Member State in EU and in Norway, in the candidate countries to the EU and at the European Commission. In this way the yearly reports are prepared about the present situation of the drugs and drug abuse problems in the European Union and in Norway. In the Internet statistical Bulletin there is the yearly report about the present situation and the trends within the framework of drugs and drug abuse. The activities of the Center contribute to work out the effective anti drug strategy. However, the Center cannot submit the model of such strategy. The other institution dealing with the drug abuse is the European Police Office – Europol. This is the police agency, appointed in 1999 on the basis of the Treaty on European Union and it has its headquarters in Hague. Within the framework of drug abuse there are some actions of combating the crime linked with drug abuse, mainly the illegal drugs trade and the drugs production.

The third body responsible for combating the drug abuse is the European Commission itself. It assures the significant money to combat the drug problems within the new budget for the years 2007–2013. There are also continued

45 This is the computer European Network of Information about Drugs and Drug Abuse Reitox. The abbreviation comes from the French name Réseau Européen d'Information sur les Drogues et les Toxicomanies.

the works about the new instruments of financing the preventive treatment and the anti drug information. There are the financial measures assured of 21 million Euros. There are also appointed some new financial instruments, such as the Programme of prevention and combating the crime. The programme of public health for the years 2007–2013 and the seventh general programme in the interest of the researches and the technological development for the years 2007–2013. They assure the possibility to help financially the organizations working in different aspects of the domain of drugs. Moreover, from 2005, the European Commission and the Member States co financed the sum of 750 million Euros the helping projects associated with the drugs and realized in the third countries⁴⁶.

X. The legalization of possessing the drugs in the Czech Republic

The lack of coherent policy for combating the drug abuse in the European Union causes that each Member State can possess its own legal regulations within this framework. It often refers to the neighboring countries, as for example Poland and the Czech Republic. In Poland possessing even a small amount of drugs is the penal act. Similarly, if we mean the drugs production, export or import.

Meanwhile, from 5th January 2010 in the Czech Republic it is legal to possess 1,5 gm of heroine, 1 gm of cocaine, 2 gm of methamphetamine, till 15 gm of marihuana, till 4 pills of ecstasy, 5 gm of hashish, 40 hallucinogenic mushrooms and till 5 tablets of LSD. Possessing the bigger amount of drugs is penalized. The drug abuse in the Czech Republic becomes bigger and bigger. The report of the European Center of Monitoring the Drugs and Drug Addictions says that almost every third young Czech admits to smoke marihuana. Yearly they smoke 11,5 tons of marihuana and they take 1,2 million pills of ecstasy.

The simple question which has to be asked about this distinguishing difference in the legal regulations of possessing the drugs, between Poland and the Czech Republic, what about the consequences and the effectiveness of combating the drug abuse in the countries with the higher thresholds of combating the drug abuse. The police and media data says that the drug tourism started from Poland to the Czech Republic⁴⁷. It is easy to omit in this way all the prohibitions and programmes of combating the drug abuse.

Such divergences hit out at the fundamental human rights, chiefly at the right to life and health. The discussion is being made about the rights of the addicted persons and their exclusion. Naturally, such an attitude to the connection between the human rights and drug abuse has its deep justification

46 From <http://www.emcdda.europa.eu/html.cfm/index41522PL.html> [17 V 2010].

47 E. Furtak, *Gazeta Wyborcza*, 29.12.2009, http://wyborcza.pl/1,76842,7403754,Marycha_na_moscie_w_Cieszynie.html [17 V 2010].

in the everyday life. However, we cannot forget about the threats which are caused by the addicted and possibly infected persons. The people having contact accidentally are subjected to lose their health and even life. Therefore, this is the reverse of the medal, protection of infected persons and the permissibility of free drugs trade.

Introducing in the Czech Republic the permit to possess and trade the drugs creates in consequence the wide – ranging negative results for the individual persons and for the whole society in Poland. The freedom of some people, widely understood, cannot limitate the freedom of the others.

Conclusions

The drug abuse phenomenon, particularly the drug supply and demand have become the worldwide problem for at least thirty years. In the individual countries there are undertaken some activities towards combating the drug addiction and illegal drug trade. The reason of undertaking the activities within this framework is not only the need of protecting the fundamental human rights, particularly life and health of addicted persons, but also the necessity of limiting the treatment costs and minimizing the threats of infection the HIV virus or the jaundice C from strangers. The actions undertaken have the preventive character, and further they can become therapeutic. The investigative authorities and the judicial bodies prosecute the illegal drug possessing and trade.

In Poland the anti drug actions were undertaken in the nineties. The fundamental legal act within this framework is the law about drug abuse prevention and 25 different regulations. Moreover, there is the National Programme of Drug Abuse Prevention. The similar programmes function in voivodeships, administrative districts and local commune administrations. There is a wide range of the institutions which are legally responsible for the preventive actions.

The European Union undertakes the actions only on the basis of subsidiary, thus it does not replace the actions of the countries, but it only completes them. Hence, the first ideas of (community) anti drug policy appeared in the Maastricht Treaty in 1992. As a consequence, the first regulations appeared, which have the normative character in the secondary law. There was worked out the Union Anti Drug Strategy and the Plans of Action. There were appointed two institutions combating the drug abuse. The first of them is the European Police Office –Europol, which prosecutes and give the information about the illegal drugs trade or it investigates the other crimes connected with drugs. The next institution is the European Center on Monitoring Drug Abuse, which collects information about the quantity of drugs consumption on the territory of the Member States. Then the data are used to work out the anti drug strategies in the individual countries.

The lack of equal Union policy within the framework of combating the drugs supply and demand cause the distinguish differentiation of the legal regulations among the particular Member States. The example is Poland, where possessing any amount of drugs is forbidden and the Czech Republic, where they implemented the legal drugs turnover. The effectiveness of Polish regulations, from this perspective, seems to be inconsiderable, since without any obstacles the persons who want to purchase the drugs can cross the border to go to the Czech Republic.

The lack of the equal (strategy) of the European Union within the framework of combating drug abuse, chiefly the drug demand and supply, does not guarantee the proper protection of human rights. The addicted person is really treated not as the human being, but absolutely as the potential client of the international cartels. The lives of such persons are not important, but their consumption abilities. The drug lobby, stronger and stronger, make the legalization of drug supply, at the same time enabling the legalization of the so far illegal ways of earning fortunes. There is lack of prevention of the people endangered by the virus HIV infections, or the jaundice C being in relationships with the addicted persons, thus the members of families or the medical personnel. The money which the society has to invest to carry out the prevention and therapeutic activities, are not taken into consideration at all.