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DRUGS AND PUNISHMENT

*An up-to-date interregional survey
on drug-related offences*

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NCJRS

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FOREWORD

The current deep concern with drug abuse and drug trafficking has prompted a range of actions — at national, regional and global levels — to cope with these problems even while important aspects of the phenomena are still inadequately explored and understood. This study on “Drugs and Punishment” is the product of an interregional survey undertaken by the United Nations Social Defense Research Institute on the topic of drug-related penal measures in light of its mandate to promote crime policy being formulated on a more informed basis. An earlier version served as a background document submitted by the Institute to the International Conference on Drug Abuse and Illicit Trafficking convened by the United Nations in Vienna, Austria, from 17 to 26 June 1987. The principal aim of the study is to offer an up-to-date picture of penal provisions for drug-related offences and to present information on trends in sentencing practice in this field.

As often happens in this kind of research the results obtained have helped to identify areas and problems which should not be overlooked in the future and which indeed deserve further inquiry. Except in a few of the 31 countries surveyed, it was either extremely difficult or even impossible to secure statistical information on sentencing practice and, particularly, on recidivism in the drug-related crime field.

This interregional survey on drug-related offences has led to the discerning of two salient, mutually-influencing trends in the field of drug-related penal legislation. These are: first, a tendency towards continuous and rapid change of legal provisions and, second, a tendency to depart from some general principles of penal law generally accepted by almost all states of the international community. The first trend, for which the dynamic character and complexity of the drug phenomenon is a possible explanation, appears to be

creating instability in drug-related crime policy, which, in turn, seems to be promoting the second trend and the latter may have far-reaching and problematic consequences for criminal justice systems. Both point to an area that should be subjected to further study and research.

Another important finding is that the differences between countries in drug-related penal legislation are more pronounced with regard to illicit possession and illicit consumption than with illicit production and illicit trafficking. With respect to the last two there seems to be *de facto* a more homogenous approach to penal legislation.

The present publication commences with an introductory chapter which discusses the context of the interregional survey and its purposes and methodology. It also recapitulates basic measures of penal regulation arising from the Single Convention on Narcotic Drugs (1961, as amended by the 1972 Protocol) and the Convention on Psychotropic Substances (1971). It then presents basic models of drug abuse-related penal measures adopted in the countries surveyed. Following next is the core of the book: a detailed analytical presentation of the national legal systems, including penal sanctions, studied by the project. The chapter also presents perceptions of national drug abuse situations and the results of an attempt to ascertain trends in sentencing practice and recidivism within the context of drug-related crime. A final chapter then sets out the principal findings and conclusions of the survey and the recommendations arising therefrom.

Professor Dušan Cotič, Judge, Federal Supreme Court of Yugoslavia, analysed the results of the inter-regional survey and undertook the preparation of this study acting as Consultant to the United Nations Social Defence Research Institute. Support and assistance was extended to him by many staff members of the Institute. I express to him my deep gratitude for this contribution to the furtherance of the Institute's mandate. To those of my colleagues who collaborated with him I owe grateful thanks.

Rome, December 1987

Ugo Leone
Director

INTRODUCTION: CONTEXT, PURPOSES, METHODOLOGY AND BASIC MODELS OF PENAL REGULATION

The international community and individual Member States of the United Nations and its specialized agencies are deeply concerned about the perilous effects of drug abuse in all its forms. The fundamental idea behind the Single Convention on Narcotic Drugs (1961, as amended by the 1972 Protocol) and the Convention of Psychotropic Substances (1971), is the prevention of narcotic-drug and psychotropic-substance abuse through efficient national and international control systems aimed at regulating production, distribution and handling in order to restrict these activities exclusively to legitimate medical and scientific purposes. The control systems already established at enormous political, social and economic cost now threaten to be overwhelmed by the expansion of drug addiction and the exploitation of the problem by organized crime on such a scale that the prosperity and development of several countries are being jeopardized. With their far-reaching financial and technical resources, organized-crime groups are frequently able to bypass or even to penetrate and corrupt the systems of regulation.

Drug abuse and illicit trafficking today constitute a top-priority political problem — nationally, regionally, and internationally.

Purposes and methodology of research

This study is the product of a research project of the United Nations Social Defence Research Institute (UNSDRI) initiated in early 1986 in support of the objectives of the International Conference on Drug Abuse and Illicit Trafficking, as set forth in General Assembly

resolution 40/122. The project, an International Survey on Drug-related Penal Measures, sought to build on a 1984 UNSDRI study focussed on the prevention of drug abuse and drug-related crime (*).

The survey covers contemporary penal regulations contained in criminal and special legislations on drugs, particular attention being paid to types and sternness of penal repression for the most important categories of criminal behaviour, namely, illegal cultivation and production, and illegal trade and trafficking, as well as to perceptions of the seriousness of these phenomena. Drug consumption and possession, notably in cases of drugs designated only for the addict's personal use, are also scrutinized from the same vantage point. Examined, too, are differences occurring in the legislations whether dealing with "hard" or "soft" drugs and the amounts concerned. Definitions of "hard" and "soft" are colloquial and admit to many differing views. Generally, hard drugs are those considered very dangerous, such as heroin, morphine, cocaine, medical opium, LSD, and so on. Soft drugs usually include coca leaves, khat, kratom, ganja and hemp products, such as marijuana and hashish. It takes into account, additionally, "related" incriminations with a view to illustrating wider aspects of various strategies for combatting drug abuse.

The research endeavoured, within the limits of the available statistical data, to identify basic indices on the scope of actual application of penal legislation during a five-year period (1980-1984) by means of ascertaining the number of sentences and basic trends in penal policy. The data acquired thereby being insufficiently elaborated, they cannot be used, however, for full evaluations of the efficacy of the approaches. Nor are they adequate for international comparisons, for there are among the various penal laws very different classifications of offences. There are

(*) "Combatting Drug Abuse and Related Crime", UNSDRI Publication No. 21, July 1984.

differences also with respect to processing powers in relation to prosecution. Also relevant are differences between alternative measures pursued outside the conventional boundaries of "penal" repression.

For the most part, shortage of time limited the research process to the preparation and administration of a questionnaire and to an analysis of the replies received. The questionnaire, considered to be necessary because of previous findings on the adequacy of data available within established national statistical systems, covered aspects of penal legislation and sentencing policy for drug abuse in terms of four basic and frequently committed illegal actions: cultivation or production, possession, consumption (if differentiated from possession), and trafficking. The research also embraced an analysis of the legal texts of the surveyed countries, and this included, too, other incriminations closely connected with these punishable acts.

The selection of countries included in the study was made, in the first instance, on the basis of the consideration that all the continents should be covered. Our survey has been classified into three global regions: Europe, Asia-Africa and Latin America. This has been done with regard to: socio-economic characteristics of some world regions and phenomenology of drug abuse; the belief supported by statistical data that some world regions are more important consumers of drugs, while other parts represent traditional areas for growing, producing, and exporting narcotics illegally.

On this assumption, penal policy for prevention of narcotic drug abuse manifests itself differently in these regions according to the phenomenology of dominant forms of criminal acts of drug abuse, especially illegal production and cultivation, illicit trafficking, consumption, and possession, all of which are the subject of our research. These territories differ in the development of their social and judicial institutions as well as in the standards and norms of their legal systems.

Accession to the international legal instruments — the Single Convention on Narcotic Drugs (1961), at the very least — was taken as another basic consideration.

A few of the national experts or officials of the countries concerned declined the invitation to participate in this survey, and a few others did not reply on time to the questionnaire. An attempt was made to fill the resultant information gaps through studies of available legal texts.

National experts or governments officials of the following countries replied to the project questionnaire:

Australia, Austria, Colombia, Costa Rica, Côte d'Ivoire, Denmark, Ecuador, Egypt, France, German Democratic Republic, Germany Federal Republic of, Greece, Hungary, India, Italy, Japan, Kenya, The Netherlands, Nigeria, Poland, Saudi Arabia, Sri Lanka, Sweden, Switzerland, Thailand, Turkey, United Kingdom, USSR, Venezuela, Yugoslavia.

Additionally, Indonesian legal texts were studied and the findings included in the part on the comparative legal aspect of the survey.

The project received guidance from two Scientific Panels which met respectively in Belgrade, Yugoslavia, and Rome, Italy, in July 1986 and December 1986 to review the project's results and to advise on its further development. The Panels brought together a number of individual experts and representatives of UN system organizations and units, national institutions and non-governmental organizations.

International-level penal regulations of concern

It is well known that, especially during the 1970's, national legislations for the control and prevention of drug abuse were based, by and large, on the Single Convention on Narcotic Drugs and on the Convention on Psychotropic Substances. By becoming parties to the Conventions, the governments concerned have undertaken to adopt the

legislative and administrative measures necessary for their application at the national level and, in particular, to restrict production, manufacture, exportation, importation, distribution, trade and possession of narcotic drugs and psychotropic substances to medical and scientific purposes only. The contracting parties, within the bounds of their respective constitutions and national penal codes, are required accordingly to punish to an adequate degree offences committed intentionally in the field of illegal cultivation, production, manufacture, extraction and preparation; of illicit possession; and of illicit trafficking. In the case of more serious offences, this injunction called for adequate punishment through imprisonment or other deprivations of liberty. For drug abusers, the Conventions make it possible for the parties to opt for measures for treatment, education, aftercare, rehabilitation, and social reintegration — as alternatives to imprisonment or concurrently with imprisonment.

The contracting parties are required to take into account foreign sentences, especially in cases of recidivism. They are required also to agree to accept requests for extradition in connection with, at the very least, serious offences or to penalize the offender concerned even if the offence has been committed in foreign territory.

The above being said, the Conventions permit the ascendancy of national law in certain matters. This applies particularly to definitions of crime and legal regulations on prosecution and punishment, the sole condition being that seizure and confiscation of drugs and of raw materials, substances, and equipment for their production are included in the embrace of such actions.

The prescriptions summarized above are only minimum requirements arising from the Conventions. Contracting parties are at liberty to issue severer measures, as explicitly provided for in Article 23 of the Convention on Psychotropic Substances.

This flexibility, appears to be a natural corollary of the fact that the phenomenology, including the spreading-out

factor, of drug abuse, and its aetiology are different for different regions of the world — and in some large countries there are differences also between subregions of the country. This is so on account of variations regarding relevant characteristics, dimensions, and cause-and-effect manifestations.

An important purpose of this study was to present objective illustrations of the reactions of experts representing selected contracting parties to obligations arising from the international Conventions.

Basic models of penal regulation in connection with drug abuse

In accordance with expectations, the concerned contracting parties have indeed adapted or expanded national legislation to cope with the requirements of the Conventions. The resultant instruments have also been modified in the light of new international recommendations, new developments in the medical and scientific fields, and the experience of the countries in application of legislation. These changes have taken several basic directions. Some have been addressed, in general, to a firmer, global differentiation of approach vis-à-vis illicit manufacturers, smugglers, traffickers and peddlers of drugs through, notably, intensification of repression and increasing international collaboration in the more efficient prosecution of such persons. Others have focussed more on improved measures for prevention, treatment and rehabilitation, especially in regard to the young.

There is also a diversity of approach to the building-in and classifying of penal measures within the framework of national legal instruments. In spite of having traditionally codified all criminal legislation globally for all sectors, most West European and Latin American countries seem to have decided to give special treatment to the drug problem by enacting specific laws. These laws attempt entirety of coverage by linking all modalities of social control and

action embracing prevention, control, repression, treatment, and rehabilitation. Within the frame of this approach, there is also in some countries a differentiation by type of substance. In this sense, heroin, morphine, cocaine, opium, cannabis, and other drugs and psychotropic substances are differently treated. But these are refinements only, the desirability of global approaches being clearly recognized.

East European socialist countries, on the other hand, appear to be characterized by a policy of codifying all criminal acts in penal codes that encompass all subject-matter areas of crime and by a desire to continue to apply this policy even for drug-related crime. Exceptions appear to be the German Democratic Republic and Poland. Poland, in January 1985, enacted a special Drug Abuse Prevention Act and this legislation includes all penal regulations that existed, in part, in the country's Penal Code.

Another noteworthy characteristic of the East European socialist countries is the existence in parallel with criminal legislation of an administrative penal system. This system metes out fines for socially less-dangerous actions; on an exceptional basis, it also deals with very short-term imprisonment (one to two months with corresponding protective measures) for more serious cases.

SURVEY ON DRUG-RELATED PENAL MEASURES

- *Europe including
New South Wales (Australia)*
- *Asia*
- *Africa*
- *Latin America*
- *Other related issues*

EUROPE

including New South Wales (Australia)

Although data on expansion of drug abuse are not sufficiently exact, information indicating no essential changes in the situation during the last 25 years, particularly in West European countries, can be accepted as reliable. The situation has certainly not improved. In South European and East European socialist countries an increased danger has been noticed, particularly during the last decade. Consequently, public sensitivity to the occurrence of drug abuse has increased, too.

This situation in Europe has led not only to efforts to improve preventive programmes and actions in many countries but also to more severe repressive measures. Parallel to this development is a differentiated approach to drug users. Addicts in the primary stage are receiving medical treatment and social rehabilitation.

In the case of juveniles, as was true two decades ago, cannabis (marijuana and hashish) is most used, but a bigger presence of other opiates (heroin and morphine), formerly characteristic mainly of older drug addicts, is also noticed. Penetration of cocaine is characteristic in the drug market in Europe, as is that of versatile psychotropic substances, especially stimulants and depressants.¹ Therefore, it can be said that polydrug addiction is now characteristic in Europe. At the same time, there is an increased number of "home" laboratories, frequently using raw materials available from legitimate sources or processing parts of cannabis and poppy plants.²

¹ Walter J. Leamy, *Drug trafficking and control*, feature No. 154, June 1985, UN Department of Public Information.

² R. Hartnoll, *Current situation relating to drug abuse assessment in European countries*, Bulletin on Narcotics, Vol. XXXVIII, Nos. 1 & 2, United Nations, Division of Narcotic Drugs, 1986.

Although it is dubious to base the epidemiological picture on the results of repressive measures (for example, on the number of condemned in some countries or on amounts and types of drug seized), these data are essential to gain insight into the extent and dynamics of drug misuse.³ Europe has for a long time been characterized by high quantities of drugs seized, while there has been a recent important increase in amount of seized cannabis plants, opium plants and heads, and stimulating psychotropic substances. There is simultaneously an increasing number of persons convicted for drug-related crimes.

Analysis of legal texts shows that European countries, in combatting drug abuse, are consistently carrying out their international obligations to punish drug abuse. This is particularly true in the case of illegal production and illicit trafficking of drugs. Long-term imprisonment is the rule for such criminal acts, although countries vary in severity of sanction and in their definitions of milder and more serious forms of these criminal acts. European countries differ slightly in their approaches to illegal drug possession with regard to type and amount, especially in connection with drug destination. There is also a very different approach to cases of illegal consumption of drugs; Europe has mostly decriminalized *de jure* or *de facto* this sort of drug abuse (See table page 23).

It should be mentioned that the answers contained in this survey are opinions of scientific institutions, or situation evaluations by official institutions answering the questionnaire. These answers have not been supported by the corresponding epidemiological studies and empirical data with indices considered most frequently relevant for evaluating a country situation (number of drug dependents, according to type of drug; number of deaths caused by drug consumption directly or indirectly; number of arrested,

³ *Data on the illicit traffic in narcotic drugs and psychotropic substances during 1984*, Commission on Narcotic Drugs, Vienna 1986 (E/CN.7/1986/CRP 7).

Evaluation by some European countries of the gravity of their drug-abuse situation in response to questionnaire

	Exceptionally serious	Serious	Moderately serious	Not serious	Non-existent
Austria			X		
Denmark		X			
France	X				
German Dem. Rep.					X
Germany, Fed. Rep. of			X		
Greece			X		
Hungary				X	
Italy	X				
The Netherlands		X			
Poland		X			
Sweden		X			
Switzerland		X			
Turkey			X		
United Kingdom		X			
Yugoslavia			X		

accused, and condemned as well as the structure of pronounced sanctions; amounts and types of drugs seized; structure of drug addiction according to age, education, profession, and employment; along with longer-range research into the changes in these indices).

Therefore, the data for evaluating the gravity of the situation in some countries should be accepted with caution, especially because these estimates are often influenced by public opinion and the mass media. They are more strongly expressed in places where drug abuse is occurring as a relatively new mass phenomenon. We are led to such caution, for example, by evaluation of an *exceptionally serious* situation in Italy as, according to the indices concerning condemned persons, drug addiction is increasing permanently and significantly: 1,926 convicts in 1980 and 5,864 in 1984. On the other hand, the situation in the United Kingdom is evaluated not as *exceptionally serious* but only *serious*, even though 24,716 persons were

convicted in that country for drug abuse in 1984. The same evaluation was given for the situation in Poland, where only 228 persons were convicted in the same year.

The answers obtained in the research on the forms of the phenomenon of drug abuse for West European countries point to illegal trafficking, possession, and consumption of drugs as the most serious phenomena. In the case of Turkey, illicit trafficking is the most serious problem. Yugoslavia's problems are in illegal trafficking and possession for drug consumption; Poland's problems are in cultivation, that is, production and use of drug, while Hungary and the German Democratic Republic have no expressed and specific problems except sporadic narcotic-drug abuse.

Austria

(Legislation: Suchtgiftgesetz, 1951; amend. 1985)

basic offence of illicit production (Large quantity) (Art. 12/1)

imprisonment	up to 5 years
and possible fine	up to ASch. 1,000,000

organized production: persons previously convicted; large scale production (quantities 25 times larger than "basic offence quantities") (Art. 12/2,3)

imprisonment	1-10 and 1-15 years respectively
and possible fine	up to ASch. 1,000,000

persons leading large gangs or organizations for the illicit production of narcotics (Art. 12/4)

imprisonment	10-20 years
and possible fine	up to ASch. 1,000,000 (could be increased to ASch. 2,000,000)

production of narcotics in small quantities (and other situations not covered by previous offences) (Art. 16)

imprisonment	up to 6 months
or fine	up to 360 days' wages

Denmark

(Legislation: Criminal Code)

illicit production of narcotics (CC Sec. 191)

imprisonment up to 6 years

illicit production of considerable quantities of particularly dangerous drugs (CC Sec. 191/2)

imprisonment up to 10 years

In particularly aggravating circumstances the penalty may exceed the above mentioned penalties by one half – CC Sect. 88/1.

France

(Legislation: Code de la Santé Publique)

illicit production of narcotics classified as poisons (Art. 626)

imprisonment 2 months – 2 years

and fine FF. 2,000 – 10,000

illicit production of substances classified as narcotic drugs (Art. 627)

imprisonment 10-20 years

and fine FF. 5,000 – 50,000

German Democratic Republic

(Legislation: Narcotic Drugs Act, 19 December 1973)

illicit production (processing, manufacture) of drugs (Sec. 10/1b)

imprisonment up to 5 years

or fine

or suspended sentence

serious cases (involving children or young persons; organized activity; production on a large scale; considerable danger to the health or lives of people) (Sec. 10/3)

imprisonment up to 10 years

Germany, Federal Republic of

(Legislation: Das Gesetz uber den Verkehr mit Betaubungsmitteln)

basic offence of illicit production of narcotics (Sec. 29/1)

imprisonment up to 4 years
or fine

very severe cases of illicit production: production on a commercial basis; considerable quantities of narcotics endangering the health of several people, etc. (Sec. 29/3)

imprisonment 1-15 years

organized production (members of gangs) (Sec. 30/1)

imprisonment 2-15 years

in less severe cases (Sec. 30/2)

imprisonment 3 months – 5 years

Greece

(Legislation: Legislative decree 743 concerning the punishment of persons violating the laws relating to (v. p. 122) narcotic drugs – Official Gazette, Vol. 1, 10/12/70)

illicit production of drugs (Art. 3 g, L)

imprisonment 5-20 years

production of particularly harmful drugs by dangerous offenders (Art. 5)

imprisonment up to life
fine Dr. 100,000-10,000,000

Hungary

(Legislation: Criminal Code)

basic act (felony) of illicit production of narcotics (Art. 282/1)

imprisonment 1-5 years

illicit production on a commercial basis; in criminal alliance
or in significant quantity or value (Art. 282/3)

imprisonment 2-8 years

illicit production of narcotics in small quantities for
purposes other than to put on the market (Art. 282/5)

imprisonment up to 1 year

or reformatory

or educative labour

or fine

Italy

(Legislation: Law No. 685, 22 December 1975)

illicit production of narcotic substances classified in List II
or IV ("soft" drugs) (Art. 71)

imprisonment 2-6 years

and fine Lit. 4,000,000-100,000,000

illicit production of narcotics indicated in List I or III
("hard" drugs) (Art. 71)

imprisonment 4-15 years

and fine Lit. 6,000,000-200,000,000

organized illicit production (conspiracy; armed gangs)
(Art. 74, 75)

imprisonment above penalties increase by 1/3
up to 2/3, but no less than 15 or
20 years respectively for the
more important members of the
organization (leaders, organizers
and persons establishing or
financing the entity)

The Netherlands

(Legislation: Opiumwet, 1928, as amended up to 1985)

illicit manufacture of up to 30 g. of cannabis-products
(Sec. 11/1)

imprisonment	1 month
fine	Fl. 5,000

manufacture of more than 30 g. of cannabis-products
(Sec. 11/2)

imprisonment	up to 2 years
and/or fine	Fl. 100,000

production of drugs "with an unacceptable risk" ("hard drugs") (Sec. 10/3)

imprisonment	up to 8 years
and fine	Fl. 100,000

If the value of drugs exceeds Fl. 25,000, a fine of Fl. 1,000,000 may be imposed.

Poland

(Legislation: Drug Abuse Prevention Act, 1985) (Dziennik Ustaw No. 4)

illicit cultivation of poppy or cannabis, or harvesting poppy lactescence, opium, poppy straw, resin or herb of cannabis
(Art. 26/1,2)

imprisonment	up to 2 years
or limitation of liberty	
or fine	

illicit production of narcotic drugs or psychotropic substances; conversion of poppy lactescence, poppy straw or narcotic or psychotropic drugs (Art. 27/1)

imprisonment	up to 3 years
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production of considerable quantities of narcotics;
production for gain (Art. 27/2)

imprisonment up to 5 years
and fine

in the case of extended act of illicit drug production (CC,
Art. 58)

above penalties could be increased up to 50%

Sweden

(Legislation: Narkotikstrafflag, 1968: 64, as amended, 1985)

basic act of illicit production or manufacture of narcotics
(Para. 1, Sec. 2)

imprisonment up to 3 years

illicit production: if the offence is judged to be petty (Para. 2)

imprisonment up to 6 months
or fine SKr. 500

if the offence is judged to be grave (production on a large
scale; professional activity; large quantities, etc.) (Para. 3)

imprisonment 2-10 years

Switzerland

(Legislation: Loi fédérale sur les stupéfiants, 3 October 1951,
as amended 1975)

production or cultivation of narcotics for personal use
(Art. 19a)

imprisonment up to 3 months
or fine

in case of leniency

suspended prosecution
or suspended sentence
or reprimand

basic act of illicit production or cultivation of narcotics
(Art. 19/1)

imprisonment 3 months – 3 years

organized; professional or large-scale production of drugs
(Art. 19/1,2)

imprisonment 1-20 years

possible fine up to SFr. 1,000,000

Turkey

(Legislation: Criminal Code, as amended by the Law 6123,
9/7/53)

basic act of illicit production (Art. 403/1)

imprisonment 10-24 years

fine TLire 10 for each
gramme of drug (not less than
TL 3,000)

production of heroin, cocaine, morphine or hashish
(Art. 403/2)

imprisonment life

fine TLire 10 for each
gramme of drug (not less than
TL 3,000)

organized professional production of heroin, cocaine,
morphine or hashish (for leaders or members of gangs)
(Art. 403/5,6,7)

capital punishment

United Kingdom

(Legislation: Misuse of Drugs Act, 1971, amended 1979)

Drugs are classified in three types, from "A" (most dangerous) to "C" (less dangerous). The severity of sanction depends primarily on mode of prosecution. (Sec. 25, schedule 4)

summary prosecution

illicit production of controlled drugs – Classes “A” and “B”

imprisonment	6 months
and/or fine	£ 2,000

illicit production of a controlled drug – Class “C”

imprisonment	3 months
and/or fine	£ 4,500

prosecution on indictment

illicit production of a controlled drug – Class “A”

imprisonment	life
and/or fine	unlimited

illicit production of a controlled drug – Class “B”

imprisonment	14 years
and/or fine	unlimited

illicit production of a controlled drug – Class “C”

imprisonment	5 years
and/or fine	unlimited

illicit cultivation of cannabis plants

summary prosecution

imprisonment	6 months
and/or fine	£ 2,000

prosecution on indictment

imprisonment	14 years
and/or fine	unlimited

New South Wales (Australia)

(Legislation: Drug Misuse and Trafficking Act, 1985, No. 226)

Quantities ("small", "indictable", "trafficable" and "commercial") have been legally determined for each drug.

Indictable offences

summary prosecution without consent of the accused –
illicit cultivation of prohibited plant (Sec. 23/1), or illicit
manufacture and production of prohibited drug (Sec. 24/1)
– not more than small quantity (Sec. 30/1)

imprisonment 2 years
and/or fine A\$ 2,000

summary prosecution with consent of the accused – illicit
cultivation of prohibited plant or illicit manufacture and
production of prohibited drug – not more than the
indictable quantity (Sect. 31/1)

imprisonment 2 years
and/or fine A\$ 5,000

indictment for illicit cultivation, manufacture or production
of prohibited plant or drug (Sect. 32g)

imprisonment 15 years
and/or fine A\$ 200,000

where the offence relates to cannabis plant or leaf
(Sec. 32h)

imprisonment 10 years
and/or fine A\$ 200,000

illicit production or cultivation of drugs or plants involving
commercial quantities (Sec. 33g)

imprisonment life
and/or fine A\$ 500,000

where the offence relates to cannabis plant or leaf
(Sec. 33h)

imprisonment 20 years
and/or fine A\$ 500,000

USSR

(Legislation: Criminal Codes of Soviet Socialist Republics)

illicit production aimed at trafficking (Art. 224 CC RSFSR)*

imprisonment up to 10 years
and property confiscation

organized illicit production; recidivism; large scale activity
(Art. 224/2 CC RSFSR)

imprisonment 6-15 years
and property confiscation

production of drugs without intention to carry out
trafficking (Art. 224/3 CC RSFSR)

imprisonment up to 3 years
or corrective labour up to 2 years

recidivism in such production (Art. 224/4)

imprisonment up to 5 years

cultivation of opium poppy, hemp or other prohibited
plants containing narcotics (Art. 225 CC RSFSR)

imprisonment up to 5 years

recidivism in such cultivation (Art. 225/2)

imprisonment 3-8 years

Yugoslavia

(Legislation: Criminal Code SFRY, 1976)

basic offence of illicit production of narcotic drugs or
psychotropic substances (Art. 245/1 CC)

imprisonment 6 months – 5 years

* Identical provisions are contained in CC's of other SSR's.

organized, large scale activity or involvement of a particularly dangerous drug (Art. 245/2 CC)
imprisonment 1-10 years

Penal regulations in connection with illegal trafficking of drugs

As they do for illegal production of drugs, all European countries have consistently incriminated and punished illegal trafficking of drugs. The basic act of drug trafficking is frequently treated in the same way as illegal drug production even when considered in a special subsection. Therefore, the sanctions are identical although some countries have special laws regulating punishment for illegal export, import, or transport of drugs.

For the purpose of our research, the term illicit trafficking covers illegal export, import, and transport of drugs, as this relates to illegal trafficking (illicit offering, offering for sale, distribution and sale of drugs) regardless of whether relevant incriminations are contained in criminal legislation, special legislation on control of drug trafficking, or anti-smuggling and customs laws. We have not included illicit drug possession in this category, because the problem deserves special analysis owing to the variety in criminal-political approaches to the matter in the legislations of European countries.

As has been mentioned, European legislations, although sometimes in various sections, subsections or subparagraphs, provide the same punishment for criminal acts of illegal production as for illicit trafficking of drug (illegal export, import, transport, sale distribution, or offering of drug). Such an approach exists in the legislations of Austria, Denmark, Federal Republic of Germany, German Democratic Republic, Greece, Hungary, New South Wales (Australia), Sweden, Switzerland, Turkey, United Kingdom, USSR and Yugoslavia. This reflects the equal dangers posed by these mutually connected forms of drug abuse, since illegal production or manufacture of narcotic drugs

and cultivation of narcotic plants are usually undertaken for the purpose of gain from illegal trafficking.

Strict punishments, as those for illegal production, have been provided by other European legislations for organized drug trafficking by criminal groups; in cases of exceptionally large or "commercial" quantities or specially dangerous drugs (particularly cocaine, morphine, heroin); or cases of illegal trafficking of drugs to children or young persons, by recidivists or multirecidivists or by organizers of criminal groups.

It should be added that, in applying the regulations on penalties, it is possible to adjust the punishments according to seriousness and danger of the act, enabling the pronouncement of suspended sentences or fines or some other alternatives to imprisonment.

The legislation of Poland deserves further comment for several reasons. The Polish Drug Prevention Act is the most recent legal instrument, considering the growing misuse of home-made opiates, treats the cultivation or trafficking of opium poppy or cannabis differently from the manufacture or preparation of other drugs or narcotic substances.

Austria

illicit trafficking of narcotics – basic offence – large quantity endangering health or lives of people (Art. 12/1)

imprisonment	up to 5 years
possible fine	up to ASch. 1,000,000

professional or organized activity (members of a gang)
(Art. 12/2)

imprisonment	1-10 years
possible fine	up to ASch. 1,000,000

Fine could be increased to ASch. 2,000,000 (Art. 12/5).

previously convicted member of a gang; large scale trafficking; large organization of traffickers (Art. 12/3)

imprisonment	1-15 years
possible fine	up to ASch. 1,000,000

Fine could be increased to ASch. 2,000,000 (Art. 12/5).

leaders of larger organizations of traffickers (Art. 12/4)

imprisonment	10-20 years
possible fine	up to ASch. 1,000,000

Fine could be increased to ASch. 2,000,000 (Art. 12/5).

illicit trafficking of smaller quantities of narcotics (and other activities of illicit trafficking not covered by above-mentioned articles) (Art. 16)

imprisonment	up to 6 months
or fine	up to 260 days' wages

Denmark

illicit transfer (trafficking) basic act (CC Sec. 191/1)

imprisonment	up to 6 years
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illicit transfer of a particularly dangerous or harmful drug, or if the offence has a particularly dangerous character (CC Sec. 191)

imprisonment	up to 10 years
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In particularly aggravating circumstances the penalty may exceed the prescribed penalty by one half (CC Sec. 88/1).

France

illicit trafficking of substances classified as poisons (Art. 626)

imprisonment	2 months – 2 years
and fine	FF. 2,000 – 10,000

illicit trafficking of substances classified as narcotic drugs
(Art. 627)

imprisonment 2-10 years

petty offence of illicit trafficking of drug for personal use
(Art. 627/2)

imprisonment 1-5 years
and fine FF. 5,000-500,000

German Democratic Republic

illicit import/export and illicit trafficking (Sec. 10/1a,1b)

imprisonment up to 5 years
or fine
or suspended sentence

serious case of illicit trafficking (engagement of children or
juveniles; organized activity; endangering the health or lives
of people) (Sec. 10/3)

imprisonment up to 10 years

Germany, Federal Republic of

illicit trafficking of narcotics, basic act (Sec. 29/1,1)

imprisonment up to 4 years

The Court may refrain from penalty if the offender imports and/or
exports narcotics merely for private consumption (Sec. 29/5).

severe case of illicit trafficking: trading on a commercial
basis; trading narcotic drugs in considerable quantities;
endangering the health of many people (Sec. 29/3)

imprisonment 1-15 years

organized illicit trade (members of gang); import of narcotics in a considerable quantity (Sec. 30)

imprisonment	2-15 years
in less severe cases	up to 5 years

Greece

basic act of illicit trafficking (Art. 3/a, b)

imprisonment	15-20 years
and fine	Dr. 50,000-100,000

large scale organized illicit trafficking, distribution or disposal of drugs to juveniles (Art. 5)

imprisonment	up to life
and fine	Dr. 10,000-100,000

Hungary

basic act of illicit trafficking (CC Art. 282/1)

imprisonment	1-5 years
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trafficking of narcotics as a trade, on commercial basis; in a criminal alliance; or involving drugs of significant quantity or value (CC Art. 282/3)

imprisonment	2-8 years
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Italy

illicit trafficking (offering, selling, disposing, etc.) narcotic substances on list II or IV – “soft” drugs – in small quantities for personal use of third person (Art. 72)

imprisonment	1-4 years
and fine	Lit. 100,000-6,000,000

illicit trafficking narcotic substances on list I or III – “hard” drugs – in small quantities for personal use of third person (Art. 72)

imprisonment	2-6 years
and fine	Lit. 100,000-8,000,000

illicit trafficking of “soft” drugs (narcotics on list II or IV) (Art. 71)

imprisonment	2-6 years
and fine	Lit. 4,000,000-100,000,000

illicit trafficking of “hard” drugs (narcotics on list I or III) (Art. 71)

imprisonment	4-15 years
and fine	Lit. 6,000,000-200,000,000

illicit placing on the market of substances by an authorized dealer (Art. 71/2)

imprisonment	4-18 years
and fine	Lit. 20,000,000-200,000,000

If the offences are committed by a gang of three or more persons or by a member of a gang; if the act is committed by an armed person; and if large quantities of narcotics are involved the penalties shall be increased by one half to two thirds (Art. 74). More severe penalties, imprisonment up to 24 years, are provided for larger and armed organizations and conspiracies (Art. 75).

The Netherlands

illicit trafficking of hemp-products up to 30 g. (Sec. 11/1)

imprisonment	1 month
or fine	FL. 5,000

illicit trafficking of hemp-products over 30 g. (Sec. 11/2)

imprisonment	up to 2 years
and/or fine	FL. 100,000

importing or exporting "hard" drugs for personal use (the courts apply a quantity of 0.5 g.) (Sec. 10/5)

imprisonment	up to 1 year
or fine	FL. 10,000

importing or exporting "hard" drugs not for personal use (Sec. 10/4)

imprisonment	up to 12 years
and/or fine	FL. 100,000

If the value of drugs involved exceeds FL. 25,000 a fine of FL. 1,000,000 may be imposed.

other acts of illicit trafficking (Sec. 10/3)

imprisonment	up to 8 years
and/or fine	FL. 100,000

If the value of drugs involved exceeds FL. 25,000, a fine of FL. 1,000,000 may be imposed.

New South Wales (Australia)

Indictable offences

illicit trafficking (supply of a prohibited plant, or a prohibited drug)

dealt summarily without consent of accused, if the narcotics are not more than the small quantity (Sec. 30/1)

imprisonment	2 years
and/or fine	A\$2,000

dealt summarily with consent of the accused, if the narcotics are not more than the indictable quantity (Sec. 31/1)

imprisonment	2 years
and/or fine	A\$5,000

dealt with on indictment, not involving commercial quantities
(Sec. 32)

imprisonment	15 years
and/or fine	A\$ 200,000

where the offence relates to cannabis plant or leaf
(Sec. 32h)

imprisonment	10 years
and/or fine	A\$ 200,000

dealt on indictment, involving commercial quantities
(Sec. 33g)

imprisonment	life
and/or fine	A\$ 500,000

where the offence relates to cannabis plant or leaf
(Sec. 33h)

imprisonment	20 years
and/or fine	A\$ 500,000

Poland

illicit import, export or transit of narcotic drugs or
psychotropic substances (Art. 29/1)

imprisonment	up to 5 years
and fine	

in a case of lesser gravity (Art. 29/2)

imprisonment	up to 1 year
or limitation of liberty	
or fine	

illicit export, import or transit of narcotics in considerable quantities, or if the act was committed with the purpose of gain (Art. 29/3)

imprisonment 3-15 years
and fine

illicit introduction on the market of poppy lactescence, poppy straw, or psychotropic substances (Art. 30/1)

imprisonment 8 years
and fine

in case of lesser gravity (Art. 30/2)

imprisonment 3 months-2 years

if considerable quantities of narcotics are the object of the offence (Art. 30/3)

imprisonment 1-10 years
and fine

Sweden

illicit trafficking or smuggling of narcotics (Art. 1 Narkotikstrafflag, and Art. 1 Lag om straff for varus-magglings)

imprisonment up to 3 years

grave offence of trafficking or smuggling of narcotics (professional, or large scale activities) (Arts. 3 of above-mentioned laws)

imprisonment up to 10 years

petty offences of trafficking or smuggling of narcotics (Art. 2 of above mentioned laws)

imprisonment up to 6 months
or fine up to Skr. 500

Switzerland

illicit trafficking, basic act (Art. 19)

imprisonment 3 months-3 years
or fine

grave case of illicit trafficking (large quantity of drugs,
endangering people; organized illicit trafficking by a gang;
trafficking on a commercial basis) (Art. 19/2)

imprisonment 1-20 years
and possible fine up to SFr. 1,000,000

petty offence of trafficking to ensure own consumption
(Art. 19a)

imprisonment up to 3 months
or fine

In case of leniency the competent authority may suspend prosecution
or refrain from punishment (Art. 19a/2).

Turkey

illicit trafficking (CC Art. 403/3)

imprisonment 5-24 years
and fine TL. 10 for one gramme of drug
 (not less than TL. 3,000)

illicit trafficking in cocaine, morphine, heroin or hashish
(Art. 403/4)

imprisonment 10-24 years
and fine not less than TL. 10,000

organized trafficking on professional or commercial basis
(Art. 403/6)

the penalties may increase by one half

organized smuggling of heroin, cocaine, morphine or hashish on professional basis; engagement of juveniles in such activities; or being a leader of criminal organization for smuggling above-mentioned narcotics (CC Art. 403/5,6,7)

death penalty

United Kingdom (Sec. 25, Schedule 4)

illicit trafficking (supplying or offering to supply a controlled drug)

summary prosecution

Class "A" or "B" drug involved.

imprisonment	6 months
and/or fine	£ 2,000

Class "C" drug involved.

imprisonment	3 months
and/or fine	£ 500

indictment

Class "A" drug involved.

imprisonment	life
and/or fine	unlimited

Class "B" drug involved.

imprisonment	14 years
and/or fine	unlimited

Class "C" drug involved.

imprisonment	5 years
and/or fine	unlimited

USSR

illicit trafficking of narcotics, basic act (Art. 224/1 CC RSFSR)

imprisonment up to 10 years
and/or property confiscation

illicit trafficking (recidivism, organized activity, large scale trafficking) (Art. 224/2 CC RSFSR)

imprisonment 6-15 years
and property confiscation

Yugoslavia

illicit trafficking of narcotic drugs or psychotropic substances (CC SFRY Art. 245/1)

imprisonment up to 5 years

illicit trafficking of particularly dangerous drugs; organized trafficking (CC SFRY Art. 245/2)

imprisonment 1-10 years

Penal measures in European legislation for illicit drug possession

The separation of problems pertaining to punishment for illicit drug possession was due to a series of questions. Some of them were already present during the formulation of article 36 of the Single Convention. In addition, the parties to the Convention are, under the present regulation, obliged to incriminate drug possession as well as other forms of drug abuse. Some of the dilemmas and open questions in connection with illicit possession of narcotics have been pointed out in the Commentary on the Convention, especially with regard to Articles 4, 33 and 36.

From the text of the Commentary it can be concluded that the signatory countries are not bound by the Con-

vention to incriminate and punish illicit drug possession for personal use only. Such cases are not serious offences in the sense of the Convention, even when this understanding is not accepted under the Commentary.

Most of the dilemmas pertaining to illicit possession of drug arise from the ambivalent character of this possession, which can have one of two aims: *drug trafficking* or *personal use of the drug*. This results in two basic and different approaches to this form of drug abuse: more severe repression when drug possession is a preparatory phase of illegal drug trafficking, and a milder criminal-legal approach in case of possession of drug for personal use by a drug addict, who often benefits more by social and medical actions and support than by repressive measures.

These two aspects of drug possession are increasingly discussed in the legislations of European countries. Some of them are for repression, while others favour a socio-medical approach to this phenomenon of drug abuse. Except in Italy and Denmark, the majority of legislators incriminate and punish illicit possession of even small quantities of drugs for personal use. In Yugoslavia such cases are covered by administrative and penal proceedings. But, even in cases of severe repression for such acts, treatment and rehabilitation of drug addicts are foreseen as alternatives or parallels to punishment.

Normative dispositions give different solutions to the distinction between drug possession for trafficking or for personal use, some leave it to the courts to solve this problem as *quaestio facti*, while others are endeavouring to solve the problem by legal determination of drug quantities considered reasonable for personal use as opposed to those involving trafficking.

Legislations incriminating any illicit possession of drugs, under which sanctions and punishment do not restrict or differentiate with regard to the motives of drug possession: France, German Democratic Republic, Sweden and New South Wales.

For any illicit drug possession, regardless of motive, the penalties are:

France

imprisonment	2 months to 2 years
fine	FF. 2,000-20,000

German Democratic Republic

imprisonment	up to 5 years
or suspended sentence	
or committal to custody	
or fine (Sec. 10/1)	

Sweden

petty offence (Art. 2)

imprisonment	up to 6 months
or fine	SKr. 500

basic offence (Art. 1)

imprisonment	up to 3 years
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If the offence is considered as grave, imprisonment 2-10 years.

New South Wales (Australia)

(Sec. 23/1c, 30/1a)

imprisonment	2 years
and/or fine	A\$ 2,000

Legislations incriminating illegal drug possession only in cases where drug possession is aimed at illicit trafficking or transfer: Denmark and Yugoslavia.

Denmark

drug possession for illicit trafficking (CC 191)

imprisonment up to 6 years

drug possession in a considerable quantity of a particularly dangerous or harmful drug aimed at trafficking or transfer (CC 191)

imprisonment up to 10 years

Yugoslavia

keeping (possessing) of drug for illicit trafficking (CC Art. 245/1)

imprisonment up to 5 years

possession of a particularly dangerous drug for illicit trafficking (CC Art. 245/2)

imprisonment up to 10 years

drug possession not aimed at trafficking (for personal use, etc.) – involves administrative punishment

imprisonment up to 60 days
or fine Din. 5,000-20,000

Legislations variously incriminating and punishing illicit drug possession with regard to motives of possession (for trafficking or for personal use):

Greece, Turkey, United Kingdom and USSR.

Greece

illicit possession of drug for personal use (at the offender is not a drug-addict) (Art. 7/1)

imprisonment 2-5 years

illicit possession of drug (aimed at trafficking) (Art. 5/1)

imprisonment 5-20 years

Turkey

illicit possession of drug for personal use (Art. 404/2)

imprisonment 3-5 years
and fine TL. 3,000-30,000

illicit possession of narcotics aimed at trafficking
(Art. 403/3)

imprisonment 5-24 years

in case of possessing heroin, cocaine, morphine or hashish
(Art. 403/4)

imprisonment 10 years minimum

United Kingdom (Sec. 25 Schedule 4)

Having possession of a controlled drug

summary prosecution

Class "A" drug involved

imprisonment 6 months
and/or fine £2,000

Classes "B" and "C" drug involved

imprisonment	3 months
and/or fine	£ 500 and £ 200 respectively

indictment

Class "A" drug involved

imprisonment	7 years
and/or fine	unlimited

Class "B" drug involved

imprisonment	5 years
and/or fine	unlimited

Class "C" drug involved

imprisonment	2 years
and/or fine	unlimited

possession of a controlled drug with intent to supply it to another:

summary prosecution

Classes "A" and "B" drug involved

imprisonment	6 months
and/or fine	£ 2,000

Class "C" drug involved

imprisonment	3 months
and/or fine	£ 500

indictment

Class "A" drug involved

imprisonment	life
and/or fine	unlimited

Class "B" drug involved

imprisonment	14 years
and/or fine	unlimited

Class "C" drug involved

imprisonment	5 years
and/or fine	unlimited

USSR

illicit possession not aimed at trafficking (Art. 224/3 CC RSFSR)

imprisonment	up to 3 years
or corrective labour	up to 2 years

by a recidivist (Art. 224/4 CC RSFSR)

imprisonment	up to 5 years
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possession for trafficking (basic act) (Art. 224/1 CC RSFSR)

imprisonment	up to 10 years
and/or confiscation of property	

possession for trafficking in large quantities of narcotics, by a multirecidivist, or by a recidivist for narcotic offences (Art. 224/2 CC RSFSR)

imprisonment	6-15 years
and confiscation of property	

Legislations differentiating various forms of illicit drug possession primarily on the basis of quantity and drug type. These legislations frequently designate as a special offence possession of a small quantity of drug destined solely for personal use. In case of such "petty offences" it is usually possible to conduct conditionally suspended prosecution or

punishment under special and explicit legal authorization, if such power does not lie in the prosecutor's office, under the "expediency" or "opportunity" principle of prosecution accepted in such European legislations as those of Denmark, France, The Netherlands, Switzerland and the United Kingdom.

Austria

possession of small quantity (Art. 16/1)

imprisonment	up to 6 months
or fine	360 days' wages
or suspended prosecution	
(Art. 17)	

possession of large quantity with no perceived intent to trafficking (Art. 14a)

imprisonment	up to 3 years
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Germany, Federal Republic of

possession of narcotics (Sec. 29/3)

imprisonment	1-4 years
or fine	

possession of narcotics – considerable quantities
(Sec. 29/3,(4))

imprisonment	1-15 years
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The court may refrain from penalty if the offender possesses narcotic drugs merely for private consumption (Sec. 29/5).

The law enforcement authority may, with approval of the court, defer execution or punishment on condition of treatment if imprisonment imposed is less than two years, or refrain from prosecution in such cases and situations (Sec. 35,37).

Hungary

possession of small quantity with no perceived intent of trafficking (Art. 282/5)

imprisonment up to 1 year
or reformatory labour
or fine

possession of narcotics aimed at trafficking (Art. 282/1)

imprisonment 1-5 years

possession of narcotics aimed at trafficking – significant quantity or value; in criminal alliance (Art. 282/3)

imprisonment 2-8 years

Italy

possession of small quantity of “soft” narcotics for use of third person (Art. 72)

imprisonment 1-4 years
and fine Lit. 100,000-6,000,000

possession of small quantity of “hard” drug for use of third person (Art. 72)

imprisonment 2-6 years
and fine Lit. 100,000-8,000,000

possession of large quantity

“soft” drug (Art. 71)

imprisonment 2-6 years
and fine Lit. 4,000,000-100,000,000

“hard” drug (Art. 71)

imprisonment 4-15 years
and fine Lit. 6,000,000-200,000,000

The Netherlands

possession of hemp products up to 30 g. (Sec. 11/4)

imprisonment	1 month
or fine	FL. 5,000

possession of hemp products exceeding 30 g. (Sec. 11/2)

imprisonment	up to 2 years
and/or fine	FL. 100,000

possession of "hard" drug for personal use (Sec. 10/5)

imprisonment	up to 1 year
or fine	FL. 10,000

possession of "hard" drug, basic offence (Sec. 10/2)

imprisonment	up to 4 years
and/or fine	FL. 100,000

New South Wales (Australia)

Summary offence

possession of a prohibited drug (Sec. 21,10/11)

imprisonment	2 years
and/or fine	A\$ 2,000

Indictable offences

summary prosecution without consent of accused – illicit possession of a prohibited plant, not more than small quantity (Sect. 30/1)

imprisonment	2 years
and/or fine	A\$ 2,000

summary prosecution with consent of accused – illicit possession of a prohibited plant, not more than the indictable quantity (Sec. 31/1)

imprisonment	2 years
and/or fine	A\$ 5,000

indictment for illicit possession of a prohibited plant not involving commercial quantity (Sec. 32g)

imprisonment	15 years
and/or fine	A\$ 200,000

where the offence relates to cannabis plant or leaf
(Sec. 32h)

imprisonment	10 years
and/or fine	A\$ 200,000

indictment for illicit possession of a prohibited plant involving commercial quantities (Sec. 33g)

imprisonment	life
and/or fine	A\$ 500,000

where the offence relates to cannabis plant or leaf
(Sec. 33h)

imprisonment	20 years
and/or fine	A\$ 500,000

Switzerland

possession of drugs for personal use (Art. 19a)

imprisonment	up to 3 months
or fine	

In case of leniency the competent authority may refrain from prosecution or punishment, or impose a reprimand (combined with treatment) (Art. 19a/2)

illicit possession of narcotic, basic act (Art. 19)

imprisonment	3 months-3 years
or fine	

grave cases (large quantities; endangering health or life of people; aimed at trafficking or for commercial purposes) (Art. 19/1,2)

imprisonment	1-20 years
and possible fine	up to SFr. 1,000,000

Legislation not penalizing drug possession *per se*.

Poland

drug possession

not seen as a specific offence unless qualified as preparation for trafficking

Criteria for evaluation of drug quantities

The review of the legislation of New South Wales, where drug quantity is emphasized as the basic criterion for differentiating criminal policy approaches towards various forms of drug abuse (i.e., "small", "traffickable", "indictable", or "commercial" quantity), leads to an examination of this factor in the qualification of criminal acts of drug abuse (particularly drug possession) in other countries. Even when drug quantities are not explicitly referred to in a country's legislation, they represent a very important objective element for differentiation between more serious and lighter drug-abuse offences. The quantity of drug found can be used by a court as the basis for determining whether the drug is destined for trafficking or for personal use.

A component of New South Wales law comprises the tables which define the aforementioned groups of drug quantities for every drug and prohibited plant. Thus, for

example, "small" quantities are defined as: 5 g. cannabis plant, 25 g. cannabis leaf, 2 g. cannabis resin, 0.2 g. cocaine, 1 g. opium, 1 g. codeine, 0.7 g. morphine. If the accused possesses ten times larger quantities, the law considers this as drug possession for distribution. Twenty times larger quantities will be "indictable". As "commercial" quantities requiring life imprisonment (except in the case of cannabis), the law considers the following: 10 kg. codeine, 2 kg. cocaine, 20 kg. opium, 2 kg. morphine or heroin, 100 kg. cannabis resin, and 100 kg. cannabis leaves. Such an approach, especially when legal presumption substitutes for other methods in determining motives of drug possession, opens others questions about principles valid in criminal law and even in criminal procedure. On the other hand, it should be kept in mind that the problem of estimating the significance of certain quantities of some types of drug as a criterion for differentiating criminal acts of drug abuse is a very complex matter for the courts. If court practice is to be made uniform, such a matter can hardly be left to the courts for solution without corresponding findings of the experts who will direct court practice in a single case or for the entire country.

Following are the positions on drug quantities as treated in some countries:

Austria: An official document expresses the important opinion that the quantity of drug required for personal use depends not only on type of drug but also on subjective factors: habits and needs of drug addicts should be taken into consideration. The Austrian Council at the Ministry of Justice instructs the courts as follows: "large amounts" should be 10 g. of morphine or methadone, 5 g. of heroin, 15 g. of cocaine, and 30 g. of codeine, etc.

Hungary: The Hungarian legislation, in determining less serious forms of offence, uses the term "small quantity of drug"; in more serious crimes the terminology is "drug of significant quantity or value". In the instructions of the Hungarian Supreme Court, "significant value" corresponds

to a sum of more than 100,000 forints, while "significant quantity" equals the consumption of the ordinary drug abuser for one year. "Small quantity" has not been similarly defined.

The Netherlands: As we have seen, the Netherlands legislation has not defined 30 g. of hemp product as being necessarily a quantity solely for personal use. However, in view of the sanction in that case and the analogous differentiation of sanctions for "hard drug" where they separate "small quantity for personal use" without defining this quantity (according to the literature it should cover 0.5 to 1 g. of hard drug), 30 g. of hemp product may well be considered the quantity required solely for personal use.

In The Netherlands it is unusual for the Minister of Justice to issue guidelines for prosecution. Prosecutors have wide powers and may, but are not obliged to, prosecute criminal offences (expediency or opportunity principle). But 30 g. of cannabis represents a significant criterion, on the basis of which the Minister of Justice has *de facto* decriminalized sale, possession, and production of cannabis products and possession of "small quantities" of "hard" drug solely for personal use.

Sweden: In order to create a uniform prosecution policy, the Chief Public Prosecutor's Circular in 1980 designates such quantities as 0.75 to 1 g. of cannabis, or 0.1 to 0.2 g. of central-nerve stimulants as small amounts of narcotics for personal use which were interpreted to the effect that prosecution could be weived in these cases. This means that possession of more than one fill of cannabis should lead to prosecution. It is interesting to note that a similar circular in the 1970's set the limit for personal use at the quantity of cannabis required for use during one week.

Switzerland: The Swiss Federal Court has decided that "exceptionally large" quantities of drugs are: 12 g. of heroin, 18 g. of cocaine, 4 kg. of hashish, and 200 LSD trips.

Opinions must naturally be adjusted to legal terms and requirements of the courts in each country. Much caution should be applied in comparing quantities of drugs used as criteria for separating more serious punishable acts from lighter forms of drug-abuse offences, especially in cases of illicit drug possession.

Punishments and other measures provided by European legislation for illegal drug consumption

Most European legislations support the treatment and rehabilitation of drug addicts or corresponding measures of support and supervision by social welfare institutions. Repression is aimed primarily at those dealing with illicit production and processing of drug and cultivation of narcotic plants for sale and trafficking, especially by international groups, although court practice does not always conform to this attitude. The majority of European legislations do not incriminate drug consumption *per se* unless it is connected with drug distribution or enticing juveniles into drug addiction. Some, however, favour medical or social measures combine with penal measures.

Criminal acts in connection with drug consumption have been foreseen in the European legislations of France, Switzerland, Greece and Turkey and in the legislations of some Soviet Socialist Republics (especially in the southern and central Asian regions of the USSR). Our survey took into consideration only the legislations which have provided *criminal penal sanctions*, but not other sanctions defined in administrative laws nor special medical and social welfare laws.

As we have classified legislation on illicit drug possession, thus, we can identify two basic types of legislation on drug consumption.

The first approach is somewhat more repressive, with harsher sanctions, and is based on the general institutions of criminal law. In the second group we have classified the

legislations providing relatively mild punishments for drug addicts under special laws on drug control and, consequently, elaborating more specifically the means of taking alternative social and medical measures.

Comparative analysis of legislation on penalties for illicit drug consumption shows:

France: imprisonment 2 months to 1 year and fine of FF. 500 to 5,000 (Art. 628).

Greece: imprisonment of 2 to 5 years if the offender is not a drug-addict (Art. 7), (if the offender is a drug-addict he will undergo compulsory treatment).

New South Wales: imprisonment for a term of 2 years and/or fine of A\$ 2,000 (Sec. 12/1).

Switzerland: imprisonment from 1 day to 3 months or fine; for lighter cases, suspended prosecution, suspended sentence or punishment, or reprimand (on condition of treatment) (Art. 19a).

Turkey: imprisonment of 3 to 5 years (Art. 404/2 CC).

In those *Soviet Socialist Republics* where drug consumption (without medical permission) is a criminal act (Kirgiz, Tadzhikistan, Armenia, Georgia, and Turkmenistan), imprisonment up to 1 year has been provided (in Tadzhikistan up to 2 years). An alternative solution is corrective labour lasting up to 1 year (in Turkmenistan, up to 2 years) or fine (Kirgiz and Georgia: up to 50 rubles; Armenia: 50 to 100 rubles; Tadzhikistan: up to 100 rubles; Turkmenistan: up to 200 rubles). Measures of social influence on the accused can be pronounced in Georgia and Armenia. Tadzhikistan views as a serious criminal act drug abuse in a case in which the accused systematically consumed drug without special permission, for which the penalty can be up to 5 years' imprisonment.

Legislations which once had relatively serious punishments for drug consumption are now greatly reducing the intensity

of repression and orienting judicial practice to measures of medical treatment and rehabilitation, applying these measures independently or in combination with conditional sentence, or probation.

In France, the punishment pronounced will not be implemented if a convicted drug-dependent person agrees to the indicated medical treatment, on condition that the public prosecutor, investigative judge, and judge for minors, during the preliminary process as well as in court, subsequently apply measures of compulsory treatment; in that case the penal measures foreseen by law are not applicable, unless the accused declines or avoids treatment.

Switzerland also provides the possibility of giving up criminal prosecution or punishment if the accused has already undergone treatment under medical supervision or agrees to be subjected to such treatment. However, for a drug addict (in conformity with Article 44 of the Criminal Law) the court may apply the measure of treatment and care together with punishment or suspended sentence.

Similar alternative measures or special obligations, combined with suspension of prosecution, or conditional sentence in criminal legislation exist in the majority of other countries. They can sometimes be applied to a drug dependent person who has performed other criminal acts such as forging prescriptions, breaking into a pharmacy, stealing narcotics, violating official duty, etc. In this way, socio-medical orientation is spreading to territories exceeding the scope of our study.

ASIA and AFRICA

We have covered the two continents of Asia and Africa jointly, having in mind the similarity of some of their socio-economic features. Regrettably, the desirable and planned coverage could not be achieved as the data available to the study were only those for Cote d'Ivoire, Kenya, Nigeria and Egypt (the latter, according to one classification accepted by the United Nations, is a subregion of the Near and Middle

East representing a "bridge" toward the Asian region). Both these continental regions, although having very different traditions and cultures, especially with regard to history of drug use, cover a climatic and biological belt very suitable for growing opium poppy, cannabis, khat, and others, used for consumption by local populations and representing objects of illegal export and smuggling into richer areas of the world.

These circumstances, at least from the standpoint of the illegal activities we are discussing, related these regions, making them similar for the context of this report.

We shall endeavour, however, to maintain the individual characteristics of the situations in Africa and Asia and to present them as differentially as possible.

Brief survey of epidemiological situation

a) *Asia*

Asia has a long tradition of cultivation and consumption of narcotics, opium in particular and especially in the 19th century in China. Chinese migration took it to other parts of Southeast Asia. It should be taken into account that the use of opium in these regions has been legal and was even encouraged by the old colonial powers, which, with considerable profit, established monopolies in opium production and distribution. Owing to this traditional consumption of opium, even the international conventions on production and control of opium made certain concessions to registered opium addicts. The traces of these transitional stages are being felt in the contemporary legislation of some Asian countries, although a wave of prosecution, especially after the Second World War, led to strict legislation aimed at forbidding opium distribution in Asia. Such legislation took effect in Singapore and Hong Kong in 1946, Laos and Thailand in 1959, Burma in 1965, and so on. However, in several countries of Asia heroin has replaced opium, especially during the 1960's, and this fact together with large social changes led to more strict legislation. An area encompassing parts of Burma, Laos, and Thailand con-

tinues to be a major source of opiates which are further refined into heroin.

In addition to misuse of opium and opiates, there is abuse of *Cannabis sativa* (Ganja) and betel nut on the Asian continent, the latter particularly in India and Sri Lanka by older generations.

With regard to cannabis, especially cannabis herb and cannabis plants and resin (hashish), according to the data, there is being conducted more recently an intensive campaign to prevent illicit cultivation of cannabis, particularly in Pakistan, Thailand, and Egypt. This is confirmed by the large amounts of cannabis seized during the past few years in these countries. Such is the case also in some other countries of Asia, but with somewhat less intensity and success.⁴

In Japan, Indonesia, and the Philippines, there is greater misuse of psychotropic substances, especially amphetamines, although a certain increase in cannabis abuse is also being noticed in Indonesia and the Philippines. However, this is not the case with Japan, where abuse of amphetamines still dominates.⁵

b) *Africa*

Excluding North Africa, where hashish (cannabis resin) has been consumed traditionally, East Africa, where the khat plant is used, and some southern parts of the continent where dagga is used, the literature reports that Africa has not been especially subject to the phenomenon of drug consumption. Drug consumption in Africa has not been linked with religious ritual or practice. However, the situation has changed considerably owing to the industrialization and the urbanization of African countries, bringing also the penetration of psycho-active substances into the field of drug abuse.

⁴ Walter J. Leamy, op. cit.

⁵ Caras Suwanwela and Vichai Postyachinda, *Drug abuse in Asia*, Bulletin of Narcotics, Vol. XXXVIII, Nos. 1 & 2, 1986.

The khat plant (*Catha edulis*) is being more widely used in Kenya, Madagascar, Somalia, Tanzania, and Ethiopia. Its use has been limited to local populations, because the euphoric effect of this plant can derive only from fresh leaves and shoots. The cannabis plant (*Cannabis sativa*) is spreading to almost the entire continent because of population migration in the distant past and the movement of armies in more recent history. These plants, it is assumed, have been brought from Asia.⁶

All these circumstances have caused the spreading of drug abuse from fairly restricted areas to a larger part of the continent. Although cannabis is the most common present-day drug (as can be illustrated by the fact that in 1984 one-third of all amounts of cannabis plants seized in the world have been seized in Africa, mostly in Nigeria), more recently, a larger presence of cocaine and heroin has been noticed, especially in Nigeria, Kenya, Liberia and Mauritius.

While the misuse of sedative, hypnotic and other psychotropic substances is not yet a phenomenon of large magnitude in Africa, during the past five years there is growing concern at the traffic into Africa of psychotropic substances, mainly originating outside the region.⁷

Evaluation by some countries of Asia and Africa of their drug abuse situation in response to questionnaire

	Extremely serious	Serious	Moderately serious	Not serious	Non- existent
Côte d'Ivoire		X			
Egypt	X				
India			X		
Japan		X			
Kenya			X		
Nigeria			X		
Saudi Arabia	X				
Sri Lanka			X		
Thailand		X			

⁶ Walter J. Leamy, *op. cit.* (see note No. 2).

⁷ Tolani Asuni, *Drug abuse in Africa*, Bulletin of Narcotics, Division of Narcotic Drugs, Vienna, Vol. XXXVIII, Nos. 1 & 2, 1986.

The drug issue in the Asian region can be categorized within the range of "moderately serious", as in India and Sri Lanka, "serious", as in Japan and Thailand, and "extremely serious", as in Saudi Arabia. The situation in Africa is categorized as "moderately serious" in Kenya and Nigeria, "serious" in Côte d'Ivoire, and "extremely serious" in Egypt. We reiterate the evaluation of the situation in European countries, namely, that the perception of the situation is influenced not only by the spread and intensity of drug abuse but also by the dynamics of the phenomenon, especially if increasing suddenly or occurring as new.

In terms of perceived seriousness of the problem, as it concerns different types of illicit behaviour, the range is significantly broad. Saudi Arabia, Thailand, Japan, Kenya and Nigeria consider illicit cultivation or production as their most serious problem, followed by illicit trafficking in Saudi Arabia, India, Kenya and Nigeria. Illicit possession is similarly evaluated and equally problematic in India, Saudi Arabia, Sri Lanka, Japan, and Kenya, while illicit consumption is given minimal rank by the countries reviewed, except in Egypt and Côte d'Ivoire, where illicit consumption ranks very high, equal to illicit possession and trafficking, but much lower than illicit production or cultivation.

Penal regulations with regard to illicit drug production

As is the case in the legislations of European countries, African and Asian countries are showing very high sensitivity and, consequently, tendencies of repression in connection with production and cultivation of drugs, punishments being as severe as those for drug trafficking. However, as a result of traditional factors, especially in Asian countries, where legislation has developed historically from that pertaining first to opium and opiates, then to cannabis, and subsequently to other dangerous drugs and psychotropic substances, legislations differentiate the sanctions not only with regard to the form of drug abuse but also in connec-

tion with the type and group of drug concerned. This is particularly true in Japan and Thailand, where four legal instruments are in force. In addition, in Asia and Africa it has been generally accepted that penal regulations are covered not by criminal laws but by special legislation to control drug production and trafficking.

a) *Asian countries*

An interesting and specific fact is that the law of Saudi Arabia does not consider illicit production or cultivation of drug as a special incrimination. The activities are punished as forms of incrimination for drug possession which is aimed at trafficking and operations of production, manufacture, or processing.

India

(Legislation of the Narcotic Drugs and Psychotropic Substances Act – 61 of 1985).

illegal production, processing, or cultivation of opium poppy, coca plants opium straw, or derivatives; production of all other drugs and substances (Sec. 15, 16, 17, 18, 19, 20ii, 21, 22)

rigorous imprisonment	up to 10-20 years
and fine	1-2 lakh rupees

cultivation of cannabis (ganja) (Sec. 20i)

imprisonment	up to 5 years
fine	up to Rs. 50,000

Indonesia

(Legislation: Law on Narcotics, 1976 – rep. 20/VII/1984) provides differentiation according to drug)

cultivation of opium poppy (Sec. 23/1a)

imprisonment	up to 10 years
fine	up to Rp. 15,000,000

cultivation of coca or marijuana (Sec. 23/1b)

imprisonment 6 years

fine up to Rp. 10,000,000

extraction of narcotics from plants (production of synthetic drugs) (Sect. 23/2a)

imprisonment up to 20 years

fine up to Rp. 30,000,000

except for coca and marijuana (Sec. 23/2b)

imprisonment up to 12 years

fine Rp. 20,000,000

Japan

(Narcotic Control Law – 1955, Opium Law – 1954, Stimulants Control Law – 1951, Cannabis Control Law – 1948 as Later amended)

Punishments vary according to the type of drug.

cultivation of cannabis (CCL, Art. 24/1) or compounding narcotic drugs other than diacetylmorphine (NCL, Art. 66)

penal servitude up to 7 years

cultivation of opium poppy or extraction of opium (OL, Art. 51), manufacture or compounding for purpose of gain of narcotic drug other than diacetylmorphine (NCL, Art. 65, 66/2); compounding drugs containing diacetylmorphine or its salts (NCL, Art. 64/2)

penal servitude 1-10 years

and possible fine up to Y. 1,000,000

(NCL, Art. 65, 66/2)

if the above mentioned offences are committed for the purpose of gain (OL 51/2, NCL 65/2, NCL 64-2/2)

penal servitude	1-15 years
and possible fine	up to Y. 3,000,000

manufacture of diacetylmorphine, its salts, or narcotic drugs containing any of them (NCL Art. 64); manufacture of stimulants (SCL Art. 41)

penal servitude	1-15 years.
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if the offences are committed for the purpose of gain (NCL 64/2, SCL 41/2)

penal servitude	3 years to life
and possible fine	up to Y. 5,000,000

Sri Lanka

(Legislation: Poisons, Opium and Dangerous Drug Ordinance is Liable (Sec. 78/5):

A differentiated system of penalties depends on mode of conviction
on summary conviction by a Magistrate

imprisonment	up to 1 year
and/or fine	up to SL Rs. 1,000

on conviction by a District Judge

imprisonment	up to 3 years
and/or fine	up to SL Rs. 5,000

on conviction by the Supreme Court

imprisonment	up to 10 years
and/or fine	up to SL Rs. 10,000

The decision for accusation in non-summary proceedings must be approved by the Attorney-General; the above are regular punishments for all types of drug abuse offences, except if the offence is related to trafficking, possession,

export or import of narcotics in amounts determined by an amendment (Act No. 13 of 1984) in which case capital punishment, life imprisonment and heavy fines are prescribed.

Thailand has with Sri Lanka the most severe punishments for the Asian countries surveyed. There are two main systems of regulation determined by "Narcotic Acts" (1976, 1979, 1985) and "Psychotropic Substances Acts" (1975, 1985), each with a scale of penal measures.

In the *Narcotic Acts system* the term *production* means planting, cultivation, manufacturing, mixing, preparing, denaturing or transforming of narcotics by scientific means, packing, or repacking. All drugs are classified in five categories.

The illicit production and manufacture of narcotics is penalized as follows:

Category I

drugs such as heroin (NA, Sec. 65)

imprisonment life

for the purpose of disposal (NA, Sec. 65/2)

death penalty

Category II

morphine, cocaine, codeine, opium, etc. (NA, Sec. 68/2)

imprisonment up to 20 years of life
and fine B. 200,000-500,000

Category III

narcotics containing substances of Category II (NA, Sec. 70)

imprisonment up to 3 years
or fine B. 30,000

Category IV

chemicals used for producing narcotics of Categories I and II (NA, Sect. 73)

imprisonment	1-10 years
and fine	B. 10,000-100,000

Category V

narcotics like marijuana and other narcotics not listed above (NA, Sec. 75)

imprisonment	2-15 years
and fine	B. 20,000-150,000

if the narcotic is Kratom plant (NA, No. 2 Sec. 7)

imprisonment	2 years
and fine	B. 20,000

In the *Psychotropic Substances Act* system all substances are distributed in four schedules:

Schedules I and II

especially dangerous substances (PSA, Sec. 89)

imprisonment	5-20 years
and fine	B. 100,000-500,000

Schedules III and IV (PSA, Sec. 90)

imprisonment	up to 5 years
and fine	up to B. 100,000

b) *African countries*

Côte d'Ivoire

(Legislation: is a reflection of the French Code de La Santé Publique, but the new national law is in preparation)

cultivation or manufacture of hemp or other substances
classified as narcotics (Sched. 3)

imprisonment	3 months-5 years
fine	CFAF. 240,000-2,400,000

Egypt

(Strict legislation for drug abuse)

illegal production of narcotics aimed at trafficking

death penalty and fine	LE. 3,000-10,000
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with leniency

penal servitude and fine	life LE. 3,000-10,000
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possession of seed for trafficking or cultivation of narcotic
plants

death penalty or penal servitude and fine	life LE. 3,000-10,000
-------------------------------------------------	--------------------------

with leniency

provisional penal servitude and fine	3-15 years LE. 3,000-10,000
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Kenya

(Legislation focussed repression on growing and processing
Indian hemp (*Cannabis sativa*))

cultivation or manufacture of Indian hemp or other drugs

imprisonment	up to 10 years
and/or fine	KSh. 20,000

Nigeria

manufacture, production, processing cultivation of cocaine, LSD, heroin or similar drugs

imprisonment life

Penal measures for illicit drug trafficking

As in analysing penal regulations of European legislation, we have in this case defined trafficking as every disposal, sale, offer for sale, and distribution of drug as well as import and export of drug, which most frequently represents drug trafficking across frontiers. There are rare cases of legislation which treat export and import of small amounts of drugs for personal use. In our opinion, such actions can most frequently be qualified as illicit possession.

a) Asian countries

India

(Legislation: The Narcotic Drugs and Psychotropic Substances Act – No. 61 of 1985)

The Act does not define the offence of illicit trafficking. The offence of trafficking is covered by illicit possession of narcotics aimed at trafficking, which is punishable by:

rigorous imprisonment	10-20 years
and fine	1-2 lakh rs. (Sec. 15, 16, 17, 18, 19, 20a, 21, 22, 23)

It is also applicable to traffickers, smugglers and foreign exchange manipulators (forfeiture, Property Act 1976)

Indonesia

In different subsections of the law, trafficking is defined as transport, transfer (Sec. 23/4), import, export, sale, trade, or agency in trade (Sec. 23/5).

trafficking (Sec. 23/4a, 23/5a)

imprisonment	up to 20 years to life or capital punishment
and fine	Rp. 50,000,000

trafficking in coca or cannabis plants (Sec. 23/4b, 23/5b)

imprisonment	up to 20 years
fine	Rp. 30,000,000

Japan

Differentiates punishments for transfer, supply and for smuggling of drugs (illicit export and import), and for various types of drugs; they are mostly equivalent to punishments for illicit production of drugs.

illicit import, export

diacetylmorphine, its salts or drugs containing any of them (NCL Art. 64) or stimulants (SCL Art. 41)

penal servitude	1-15 years
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if the offence is committed for the purpose of gain (NCL Art. 64/2, SCL Art. 41)

penal servitude	3 years to life
and possible fine	up to Y. 5,000,000

narcotic drugs other than diacetylmorphine (NCL Art. 65); raw material for stimulants (SCL Art. 42-2/5), or opium (OL Art. 51)

penal servitude	1-10 years
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if the offence is committed for the purpose of gain (NCL 65/2, OL 51/2, SCL 41-2/5)

penal servitude	1-15 years
and possible fine	up to Y. 3,000,000

illicit export, import of cannabis (CCL 24/2)

penal servitude up to 7 years

illicit transfer, supply

diacetylmorphine, its salts, or drugs containing any of them
(NCL 64/2)

penal servitude up to 10 years

if the offence is committed for the purpose of gain
(NCL 64/2, SCL 41-2/2)

penal servitude 1-15 years
and possible fine up to Y. 3,000,000

narcotic drugs other than diacetylmorphine (NCL 66),
opium and poppy straw (OL 52)

penal servitude up to 7 years

if the offence is committed for the purpose of gain
(NCL 66/2, OL 52/2)

penal servitude 1-10 years
and possible fine up to Y. 1,000,000

illicit transfer or supply of cannabis (CCL 24-2)

penal servitude 1 month-5 years

Saudi Arabia

(Legislation: Decree No. XI; 2 January 1374 (1954))

Legislation does not define the offence of illicit trafficking of narcotics
per se.

drug purchase (or trafficking) for personal use

imprisonment 2-15 years
fine Rls. 20,000

other acts of trafficking or transfer

imprisonment	5-15 years
fine	Rls. 20,000

The decree was amended in 1987 and the punishment imposed against drug smuggling has become the death penalty.

Sri Lanka

(except in typical situations where penalties depend on mode of conviction – summary conviction by a Magistrate, by District Judge, or before Supreme Court) the 1984 amendment forseees more severe penalties (Sec. 54a) for illicit export, import, trafficking (and equalized them with those for possession) if the drug involved is:

500 g. or more opium

3 g. or more morphine

2 g. or more cocaine or heroin

death penalty

or imprisonment	life
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50-500 g. opium

imprisonment	1-10 years
and/or fine	SL Rs. 2,500-25,000

up to 1 g. morphine

imprisonment	2-5 years
and/or fine	SL Rs. 10,000-25,000

1-3 g. morphine

imprisonment	5-10 years
and/or fine	SL Rs. 25,000-100,000

up to 1 g. heroin

imprisonment	3-7 years
and/or fine	SL Rs. 15,000-50,000

1-2 g. heroin	
imprisonment	7-12 years
and/or fine	SL Rs. 100,000-500,000
up to 1 g. cocaine	
imprisonment	2-5 years
and/or fine	SL Rs. 10,000-25,000
1-2 g. cocaine	
imprisonment	5-10 years
and/or fine	SL Rs. 25,000-100,000
up to 5 kg. cannabis	
imprisonment	up to 1 year
and/or fine	up to SL Rs. 25,000
5 kg. or more of cannabis	
imprisonment	2-5 years
and/or fine	SL Rs. 25,000-50,000

Thailand

Illicit export and import of narcotics

Category I (Dangerous drugs such as heroin)

export, import (NA Sec. 65)

imprisonment life

for disposal (NA Sec. 65/2)

death penalty

Category II ("ordinary" narcotics such as morphine, cocaine, codeine, medicinal opium)

export, import of drugs (except morphine, cocaine or opium)
(Sec. 68)

imprisonment	1-10 years
and fine	B. 10,000-100,000

if *corpus delicti* is morphine, cocaine or opium
(Sec. 68/2)

imprisonment	20 years to life
and fine	B. 200,000-500,000

Category III (narcotics containing substances of Category II)
import (NA Sec. 70)

imprisonment	up to 3 years
or fine	up to B. 10,000

Category IV (chemicals used for producing narcotics of
Categories I and II)

import, export (NA Sec. 73)

imprisonment	1-10 years
and fine	B. 10,000-100,000

Category V (narcotics which are not included in Categories
I-IV, such as marijuana and kratom plant)

import, export (NA Sec. 75)

imprisonment	2-15 years
and fine	B. 20,000-150,000

Psychotropic substances

import, export and sale of substances on Schedules I and II
(PSA Sec. 89)

imprisonment	5-20 years
and fine	B. 100,000-500,000

import, export and sale of substances on Schedules III and IV (PSA Sec. 90)

imprisonment	up to 5 years
and fine	up to B. 100,000

Illicit disposal of narcotics

Category I

disposal of up to 100 g. of pure substance (NA Sec. 66/1)

imprisonment	5 years to life
and fine	B. 50,000-500,000

disposal of more than 100 g. of pure substance (NA Sec. 66/2)

death penalty	
or imprisonment	life

Category II

disposal (NA Sec. 69/2)

imprisonment	1-10 years
and fine	B. 10,000-100,000

if *corpus delicti* is morphine, cocaine or opium in quantity not more than 100 g. (NA Sec. 69/3)

imprisonment	3-20 years
and fine	B. 30,000-200,000

disposal of more than 100 g. morphine, cocaine or opium (NA Sec. 69/4)

imprisonment	5 years to life
and fine	B. 50,000-500,000

Category III

disposal and export (NA Sec. 71)

imprisonment	up to 1 year
and fine	up to B. 10,000

Category IV

disposal of narcotics (incl. cannabis, but excl. kratom plant)
(NA Sec. 75)

imprisonment	2-15 years
and fine	B. 20,000-150,000

if the narcotic is kratom plant (Sec. 75, amend. 1985)

imprisonment	up to 2 years
and fine	up to B. 20,000

b) *African countries*

Côte d'Ivoire

trafficking in substances classified as narcotic drugs (Schedule
"B" of the Code)

imprisonment	3 months-5 years
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Egypt

Continues its strict approach with regard to trafficking.

sale, offering for sale, or delivery for trafficking purposes

death penalty

or penal servitude	life
and fine	LE. 3,000-10,000

with leniency

precautionary penal servitude	life
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Kenya

import, export of drugs, of Indian hemp (*Cannabis sativa*),
hemp-products, coca leaves or raw or prepared opium

imprisonment	up to 10 years
and fine	KSh. 20,000

Nigeria

export, transport or otherwise trafficking in narcotics

imprisonment	up to 20 years
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sale, purchase, exposure for sale or otherwise dealing with
cocaine, LSD, heroin or similar drug

imprisonment	up to 14 years
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Penal measures for illicit drug possession

In the majority of Asian and African countries illicit drug possession is equalized with illicit trafficking and production. There are rarely legislations, unlike in some European countries, to define lighter forms of these offences when small amounts of drug for personal use are concerned.

a) Asian countries

India

Differentiates offences of *drug possession* with regard to drug type, providing milder punishment and corresponding treatment and rehabilitation measures for possession of small quantities for personal use. The possession of quantities of drugs that exceed the amount of "small quantity", specified by the Central Government is punishable as basic offence of possession or illicit acquisition of narcotic drugs (Sec. 15-22). By Notification 9/85 "small quantity" shall be specified in each case by district chief medical authority. Additional to it by Notification 12/85 the Government as specified as "small quantity" 250 milligrammes of heroin ("brown sugar" or "smack"); 5 grammes of hashish or charas or opium; 125 milligrammes of cocaine and 500 grammes of ganja.

possession

small quantity cocaine, diacetylmorphine, morphine, or any other drug or psychotropic substance for personal use (Art. 27a)

imprisonment 1 year
and/or fine

small quantity other drugs for personal use (Art. 27b)

imprisonment 6 months
and/or fine

large quantity that exceeds the amount of officially defined "small quantity"

imprisonment 10-20 years
fine 1-2 lakh rupees

Court may instead of sentencing the addict at once to any imprisonment apply treatment measures upon consent of accused, with or without sureties to appear before the Court within a period not exceeding one year. In the case of failure the Court may impose the sentence (Sec. 39 NDPS Act).

Indonesia

possession of opium poppy and other narcotics (Sec. 23/1a, 23/3a)

imprisonment 10 years
fine Rp. 15,000,000

possession of coca or cannabis plants (Sec. 23/1b, 23/3b)

imprisonment up to 6 years
fine Rp. 10,000,000

Japan

illicit possession

diacetylmorphine, its salts or narcotic drugs containing any of them (NCL Art. 64-2 or stimulants (SCL Art. 41-2/1)

penal servitude 1 month-10 years

if the offence is committed for profit (NCL Art. 64-2/2, SCL Art. 41-2/2)

penal servitude 1-15 years

and possible fine up to Y. 3,000,000

narcotic drugs other than diacetylmorphine (NCL Art. 66), raw material for stimulants (SCL Art. 41-3/5), opium, or poppy straw (OL Art. 52)

penal servitude 1 month-7 years

if the offence is committed for the purpose of gain (NCL Art. 66/2, OL Art. 52/2, SCL Art. 41-3/2)

penal servitude 1-10 years

and possible fine up to Y. 1,000,000

cannabis (CCL Art. 24-2)

penal servitude 1 month-5 years

For establishing a presumption of possession for the purpose of trafficking following amount of drugs is determined: 10 grammes of heroin or amphetamine, 20 grammes of cocaine and 100 grammes of cannabis resin.

Saudi Arabia

illicit possession of narcotics

imprisonment 2-5 years

and fine Rls 10,000

Sri Lanka

(See punishments for illicit trafficking; the same penalties apply to illicit possession of drugs).

Thailand

Illicit possession of narcotics

Category I

possession up to 20 g. (NA Sec. 67)

imprisonment	1-10 years
and fine	B. 10,000-100,000

possession up to 100 g. for disposal (NA Sec. 66/1)

imprisonment	5 years to life
and fine	B. 50,000-500,000

possession for disposal more than 100 g. (NA Sec. 66/2)

imprisonment	life
or death penalty	

Category II

possession of narcotics (NA Sec. 69)

imprisonment	up to 5 years
and fine	up to B. 50,000

for disposal (NA Sec. 69/2)

imprisonment	1-10 years
and fine	B. 10,000-100,000

(possession of more than 100 g. of pure substance in Category II is regarded as for disposal)

possession for disposal if *corpus delicti* is opium, morphine or cocaine up to 100 g. (NA Sec. 69/3)

imprisonment	3-20 years
and fine	B. 30,000-200,000

more than 100 g. (NA Sec. 69/4)

imprisonment	life
and fine	B. 50,000-500,000

Category IV

possession of chemical used for producing drugs Categories I and II (NA Sec. 74)

imprisonment	up to 5 years
and fine	up to B. 50,000

for disposal (NA Sec. 74/2)

imprisonment	1-10 years
and fine	B. 10,000-100,000

Category V

illicit possession of narcotics Category V (including marijuana, but excluding kratom plant) (NA Sec. 76/1)

imprisonment	up to 5 years
and fine	up to B. 50,000

illicit possession of kratom plant (*Mitragyna speciosa*, KORTH) (NA (2), Sec. 8/3)

imprisonment	up to 1 year
and fine	up to B. 10,000

illicit possession of narcotics Category V (including marijuana, but excluding kratom plant) for disposal (NA Sec. 76/2)

imprisonment	2-15 years
and fine	B. 20,000-150,000

if kratom plant involved (NA (2) Sec. 8/4)

imprisonment	up to 2 years
and fine	up to B. 20,000

Illicit possession of psychotropic substances (SCL Sec. 106)

imprisonment	up to 1 year
or fine	up to B. 20,000

b) *African countries*

Côte d'Ivoire

possession of narcotic drugs

imprisonment	3 months – 5 years
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Egypt

possession of any drug with a purpose of trafficking or consumption

imprisonment	3-15 years
fine	LE. 500-3,000

with leniency

imprisonment	not less than 6 months
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The law does not differentiate between narcotic possession for the purpose of consumption and narcotics consumption *per se*.

Kenya

possession or attempt to supply others with opium, cocaine, heroin

imprisonment up to 10 years

Nigeria

possession of cocaine, LSD, heroin or similar drug

imprisonment 2-10 years

Punishments for illegal drug consumption

illicit drug consumption is frequently punished as illegal possession.

a) Asian countries

India

Does punish illicit consumption of narcotic drugs or psychotropic substances by the same punishment as illicit possession of drugs in a small quantity

illicit consumption of cocaine, morphine, heroin or other dangerous drugs specified by the Central Government (Sec. 27a)

imprisonment 1 year
and/or fine

illicit consumption of narcotic drugs other than those specified in Clause A (Sec. 27b)

imprisonment up to 6 months
and/or fine

When the addict is found guilty for illicit consumption the Court may, instead of sentencing him, with the offender's consent, direct him conditionally for medical treatment.

Indonesia

consumption

coca or marijuana plants (Sec. 23/7)

imprisonment 2 years

other drugs (Sec. 23/7)

imprisonment 3 years

Japan

Illicit consumption

diacetylmorphine, its salts or narcotic drugs containing any of them (NCL Art. 64-2)

penal servitude 1-15 years

narcotic drugs other than diacetylmorphine (NCL Sec. 66);
smoking opium (OL Art. 52)

penal servitude up to 7 years

illicit consumption of stimulants (SCL Art. 41-2/3)

imprisonment with forced labour up to 10 years

Sri Lanka

Persons guilty of an offence relating to drug abuse (including illicit consumption of narcotic drugs or psychotropic substances — Art. 52/2 of the Ordinance) are liable to:

summary conviction by a magistrate

imprisonment up to 1 year
and/or fine SL Rs. 1,000

on conviction by a District Court

imprisonment up to 3 years
and/or fine up to SL Rs. 5,000

on conviction by the Supreme Court

imprisonment	up to 10 years
and/or fine	up to SL Rs. 10,000

Every non-summary proceeding for an offence against the Ordinance should be initiated with the written consent of the Attorney-General

Thailand

Illicit consumption of narcotics

Categories I and II

diacetylmorphine, its salts and drugs containing any of them; morphine, cocaine, codeine, opium ("hard" drugs) (NA Sec. 91)

imprisonment	6 months-10 years
and fine	B. 5,000-100,000

Category III

"Soft" drugs (except kratom plant) (NA Sec. 92)

imprisonment	up to 1 year
and fine	up to B. 10,000

illicit consumption of kratom plant (NA (2) Sec. 9)

imprisonment	up to 1 month
and fine	up to B. 1,000

Thailand does not punish illicit consumption of narcotics if the offender has undergone treatment before arrest. Three-time offenders can be confined in closed health institutions. No penalties are imposed on those who abuse psychotropic substances.

b) *African countries*

Egypt

consumption of drug

imprisonment	3-15 years
and fine	LE. 500-3,000

with leniency

imprisonment	minimum 6 months
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Instead of prison, sanatorium treatment can be ordered until approved release after 6 months to 3 years. A two-time offender treated and released will not be readmitted a third time. Legal action is not taken against offenders who volunteer for treatment.

Nigeria

illicit consumption (smoking, inhaling or injecting) of drugs such as cocaine, LSD, heroin or any other similar drug

imprisonment	2-10 years
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Côte d'Ivoire, and Kenya

punish illicit drug consumption as illegal possession.

LATIN AMERICA

Latin America is an exceptionally interesting and important area for investigating the phenomenon of drug abuse. It is a region with a climate suitable for cultivation of drugs, and consumption and trafficking have become traditional practices, especially of marijuana and coca. The processing and movement of drug products lead to richer countries of the north. The amounts are large as confirmed

by the data on the seizing and eradication of the crops and drugs in Latin America and in places of destination, especially the United States. The population of Latin America itself is affected, too, particularly that of the so-called Andean subregion, where illegal cultivation of the coca bush has considerably increased during the last decade. The leaves and basic cocaine paste are used as the first drug by the local population, not only in rural settlements but also in cities.

Although the epidemiological studies are insufficient, the data available point to relatively high prevalence and rates of drug abuse in these countries. In Bolivia, up to five percent of juveniles are habitual cocaine users. In Colombia, drug abuse was the seventh leading cause of psychiatric morbidity in 1984. In Peru, 37% of secondary-school students use drugs.

In Ecuador, the coca plant is grown on an area of approximately 135,000 ha., which is 13 times more than the area required for cocaine destined for legal use. For young people and other drug addicts there are no difficulties in obtaining narcotics, because illicit production and processing of drug is not easy to control in large areas of Latin America.⁸

Our research covered Argentina, Colombia, Costa Rica, Ecuador and Venezuela. All these countries have special legislation on drugs, in which penal regulations are built-in. Venezuela passed a special law in 1984 on narcotic drugs and psychotropic substances, replacing the corresponding relations of substances and process criminal law.

Evaluation by some Latin American countries of their drug-abuse situation in response to questionnaire

	Extremely serious	Serious	Moderately serious	Not serious	Non- existent
Argentina		X			
Colombia			X		
Costa Rica			X		
Ecuador			X		
Venezuela		X			

⁸ R. Flores Agreda, *Drug abuse problems in countries of the Andean subregion*, Bulletin on Narcotics, Vol. XXXVIII, Nos. 1 & 2, 1986.

These data illustrate that the situation is estimated as serious in Argentina and Venezuela, while the estimates received from the remaining three countries (Colombia, Costa Rica and Ecuador) point to a moderately serious situation.

Hereunder, are listed, in order of seriousness, different forms of the drug-abuse phenomenon:

Argentina: drug possession; illicit cultivation;

Colombia: illicit production; trafficking;

Costa Rica: illicit trafficking; drug possession and consumption.

Penal measures for illicit production and cultivation of drugs

Illicit production of drugs is punishable in all the Latin American countries included in the sample.

Argentina

(Legislation: Especial sobre Tráfico de Estupefacientes, No. 20.771, 3/X/1974)

Cultivation, manufacture or production of drug (Art. 2)

imprisonment 3-12 years

financing or organizing such production (Art. 3/6)

imprisonment 3-15 years

Colombia

(Legislation: Estatuto Nacional de Estupefacientes, Ley 30 de 31 enero 1986)

cultivation (small holder) 20 to 100 plants (Art. 32/2)

imprisonment 1-3 years

and fine 1-40 monthly salaries

cultivation (plantation) or financing cultivation of prohibited plants (Art. 32/1)

imprisonment	4-12 years
and fine	10-400 monthly salaries

cultivation (organized group) (Art. 44)

imprisonment	6-12 years
and fine	10-1,000 monthly salaries

Costa Rica

(Legislation: Ley General de Salud — No. 5395 de 30 oct. 1973 — and Criminal Code Art. 372)

cultivation of any plant for drug extraction (Art. 371)

imprisonment	6-12 years
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Ecuador

(Legislation: Ley de Control y Fiscalización del Tráfico de Estupefacientes, 1971)

cultivation or processing (Art. 30)

imprisonment	8-12 years
fine	S/. 10,000-50,000

Venezuela

(Legislation: Ley Orgánica sobre Sustancias Estupefacientes y Psicotrópicas, No. 3411, 17 julio 1984)

cultivation of prohibited plants (Art. 32)

imprisonment	10-20 years
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Penal measures for illicit drug trafficking

With respect to severity of sanctions, for Latin American countries as for other countries in the study, illicit trafficking and illicit drug production are given equal punishments.

Argentina

trafficking (basic offence) (Art. 2)

imprisonment 3-12 years

trafficking (organizing, financing) (Art. 3/6)

imprisonment 5-15 years

and fine \$a. 3,000-600,000

Colombia

trafficking (basic act) (Art. 33)

imprisonment 4-12 years

fine 10-100 monthly salaries

trafficking if amount does not exceed (Art. 33/2):

1 kg. marijuana

200 g. hashish

100 g. cocaine or derivative

200 g. metacualone

imprisonment 1-3 years

and fine 2-100 monthly salaries

Costa Rica

export, import, trafficking (basic act) (LGS Art. 372)

imprisonment 5-12 years

organized trafficking (CL Art. 372)

imprisonment 10-15 years

Ecuador

trafficking, commercial transactions (Art. 30/c)

imprisonment 8-12 years

and fine S/. 10,000-50,000

Venezuela

trafficking or financing (Art. 31)

imprisonment 10-20 years

Punishments for illicit drug possession

Illicit drug possession is punishable in all Latin American states covered by our survey. However, the punishments vary subject to drug possession destined for trafficking or for personal use. Two methods are used for determining the nature of drug possession: a legal determination of drug amounts acceptable for personal use and a court ruling to determine the purpose for which the drug was used or might have been used.

Argentina

possession (Art. 6/a)

imprisonment 1-6 years

fine up to \$a. 3,000

(according to some operators of the criminal justice system in Argentina, Art. 6 conflicts with Art. 19 of Argentinian Constitution in which is stated that individual actions which do not offend morality or third parties are exempt from state intervention)

Colombia

possession (first offence) (misdemeanour)

imprisonment	1 month
and fine	up to half monthly minimum salary

possession (second offence within a year) (Art. 51)

imprisonment	1 year
and fine	half to one monthly minimum salary

quantities determined for personal use up to:

- 20 g. marijuana
- 5 g. hashish
- 1 g. cocaine or derivative
- 2 g. metacualone

larger quantities considered as intent to trafficking

Costa Rica

possession of narcotics for personal use is not punishable, but court must determine quantity; 15 marijuana cigarettes are allowed if intent to traffic is not proved — the consumers will undergo security measures and treatment (Art. 387)

possession aimed at trafficking

imprisonment	5-12 years
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Ecuador

possession (Art. 9)

imprisonment	up to 1 year
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(can also require compulsory treatment)

Venezuela

possession for personal use (subject to ruling)

not punishable

illicit possession of drugs not aimed at personal use (Art. 33)

imprisonment 6-10 years

Punishments for illicit drug consumption

Contrary to the instance of illegal drug possession, the Latin American countries covered by the survey do not incriminate "simple" drug consumption. This means that illicit drug consumption is punishable only if it occurs under special circumstances, i.e. in a public place, by military persons, by involving minors, and so on.⁹

Costa Rican legislation foresees compulsory treatment for drug addicts; in Venezuela this measure is envisaged in cases of recidivism. In Ecuador treatment is mandatory and the police are authorized to take any person suspected of being under the influence of narcotics to a psychiatric hospital.

OTHER RELATED ISSUES

Other forms of drug-related crimes (basic tendencies and criteria for their formation)

The basic task of the present study is to compare those forms of drug abuse such as illegal production and cultivation, as well as illicit trafficking, possession, and consumption. However, in order to obtain a complete picture of the phenomenology of criminal acts as well as of the functioning of the subsystems of criminal law and

⁹ The possession of a dose for personal use is a misdemeanor in Colombia.

criminal procedure in cases of drug abuse. We have also summarized those modalities of punishable actions outside previously observed forms of drug abuse and covered other drug-related crimes, often connected with illicit production, trafficking, possession, and consumption of drugs.

First of all, it is obvious that the international Conventions on narcotic drugs and psychotropic substances have played an exceptionally important role in national criminal legislation. In addition, these Conventions were adopted in the period when the wave of drug misuse spread worldwide, and the international community considered the necessity of co-operation on the matter as a priority task. All this caused new national strategies to be created in this field. One important element is repression, although there are frequent warnings that very repressive measures, undertaken without corresponding measures to prevent or to treat and rehabilitate drug addicts, cannot solve the problem. Drug abuse is not only a socially pathological — that is, a criminological — phenomenon but also a phenomenon having such broader social and medical dimensions.

The peak of the drug abuse phenomenon during the 1960's and '70s resulting in improved international co-operation has caused considerable modification in the ways and means of repression. This has been primarily expressed in considerably more severe penal sanctions. Some countries have developed a harsher legislation during that period, especially to confront international smuggling. Because of the demand for narcotics, smuggling has become a highly organized international criminal activity, earning enormous sums of money giving criminal elements great financial power that often influence local power structures. In that first reaction to the wave of organized crime, punishments have in some countries been increased by legislation equalling those for the most serious forms of criminal acts against the health or life of human beings. In addition, in order to improve efficiency in combatting these criminal acts internationally and nationally and to interrupt the amassing of money involved in international drug

smuggling, large powers of national law enforcement services have been conceded. Special drug-investigation departments have been created, international and regional police co-operation through ICPO/Interpol and other means have been intensified. In addition, these services have been provided with more discretionality than those foreseen under the standards and rules of regular criminal procedure. This repressive activity in the field has thus acquired some characteristics of special penal law, in regard to both procedural and substantive law. In volume and importance, these modifications can be said to have created a special criminal-legal subsystem, applying especially to those countries where criminal acts as well as all other penal regulations have been systematized into special laws, regulating in a complex way, control of production, trafficking, prevention, treatment, and rehabilitation. This is already noticeable as a dominant tendency in the world, causing more frequent transfer of criminal-legal norms from criminal laws or codes into special legislation.

Specific characteristics of substantive law

International Conventions caused significant re-examinations of national legislations, among which are the inclusion of preparatory acts and financial operations as crimes in connection with the offences referred to in Paragraph 1, Article 36 of the 1961 Single Convention. Furthermore, it was also recommended that foreign convictions for drug-related crimes should be taken into account for the purpose of establishing recidivism and that national jurisdiction be extended to some acts committed abroad, that is, offences enumerated in Article 36 should be considered as distinct offences, subject to extradition even though between the parties concerned there is no specific extradition treaty.

It can be reported that the countries signatory to the Convention, especially those establishing new drug laws based on the international legislations, have followed

these obligations and recommendations accepted by the international community. This is, for example, expressed as punishments for attempts and preliminary actions as criminal association, i.e., conspiracy. This is particularly important in those systems where criminal agreements and association are not punishable under general regulations, as is usually the case in more serious offences. Punishment of preliminary actions as independent criminal actions.

Punishment of preliminary actions for special acts by general clause is less represented. However, a series of legislations has described as independent criminal acts some typical preliminary phases of drug abuse: for example, possession of seeds for drug cultivation; means and equipment for producing narcotics; procuring and possessing raw materials and chemicals to be used for production or manufacture of drugs; and possessing drugs for trafficking.

The signatory countries have also in significant measure accepted the Convention recommendation that all forms of participation in such activities, not only by the principal offenders but also by their accomplices, should be prosecuted. In that domain are included, in addition to using general rules of national criminal laws on punishing the assistants, instigators, and co-perpetrators, those persons providing cover, members and organizers of groups, and criminal associations. Thus are being defined independent criminal acts punishable directly and not by means of general legal rules. In nearly all laws, punishment for association not only is being equalized with punishment for a performed criminal act but also is being considered more severely, especially in cases of organizing international associations for drug smuggling, financing such activities, or belonging to a band if leaders and organizers of international smuggling gangs are concerned. Some specific assistants and accomplices have been covered by special incriminations relating to officials, especially those responsible for controlling frontiers and trafficking of narcotics or for law enforcement in that field, or relating to other persons who put premises, clubs, or vehicles at the

disposal of drug criminals or who are as managers, directors, or owners of property, buildings, and vehicles knowledgeable of criminal activity but who fail to denounce such illegal behaviour. Special incriminations have also been provided for physicians and medical staff, who are, by neglect, supporting drug abuse and consequently benefitting from it. This includes, for example, those issuing drugs without medical justification to unauthorized persons.

Finally, mention should be made of a whole series of "regulatory offences" providing punishments under criminal or administrative procedure for all violations of regulations on legal traffic (export, import, transit, sale, distribution), on evidence of movement and use of drugs, on submitting reports, on dates for renewing various permits or licences, and on limits of permitted operation with regard to amounts and types of drugs. Consequently, in this series are covered not only individual persons but also juridical persons, such as companies, corporations, manufacturing and commercial enterprises, and the like. The penal regulations for these offences are very differentiated, many of them seem sometimes to have been formed casuistically, as shown by this comparative analysis, and are too complex for systematized presentation and probably for application, too.¹⁰

Discussed thus far in this analysis of the summary survey are those elements most frequently forming special entities, i.e., independent criminal acts. Not discussed are those circumstances regularly increasing punishment for the same actions but performed under changed objective or subjective circumstances. These would include the following:

- cases of exceptionally large amounts of drugs;
- acts performed by engaging or including minors, women, or persons *non sui juris* in crime;

¹⁰ There are in Japan 42 different offences for illicit production, traffic, possession and use of drugs — in 4 Laws; in Côte d'Ivoire — only 1 offence.

— actions conducted in educational institutions, public institutes, and prisons and houses of correction by teachers, tutors, or counsellors;

— acts committed by recidivists or multirecidivists.

Some general acts, which in cases of drug abuse have a character of special incrimination, are also not discussed for example, stealing narcotics, procuring narcotics by means of forged prescriptions or false descriptions of health conditions or by giving false information in order to obtain drug prescriptions by physicians, and so on.

We are, within the framework of adapting substantive law to specific problems pertaining to drug abuse, classifying also the legal possibilities for increasing repression, that is, the punishments to be increased one-third owing to certain circumstances, or one-half or two-thirds or doubling the punishments if, for instance, minors have been included in international smuggling cases, or if enormous property benefits have been obtained, or in cases of multirecidivists.

Special attention is thereby deserved for endeavours to institute legal assumptions for determining intention of drug trafficking if the amount of drug exceeding that required for personal use has been found in the possession of the offender. It has been noticed that legislators' criteria concerning this aspect are rather different, and certainly no uniform attitudes can be achieved if solution of that problem is left by legislators to the courts and other criminal judiciary institutions.

There is a certain advantage in separating criminal acts in their various phenomenon forms as well as in their lighter and more serious forms, because this regularly follows statistically only the forms defined legally as criminal acts according to sections and subsections. It enables more detailed and statistical follow-up of the phenomenology and dynamics of certain phenomena and the study of penal policy. This has been obviously established also during our attempt to provide by statistical analysis with a high level of validity and comparability a much wider survey of

phenomenology, dynamics, recidivism, and penal policy. However, this cannot be provided using only the statistics made available by the countries covered in the survey.

Specificities of procedural law

The specificities of repression for drug abuse have caused certain modifications of general process rules directed at improving efficiency in discovering criminal acts and in international co-operation on this matter. On the other hand, it has proved necessary to deviate from national process rules in extending powers for giving up prosecution and punishment for some groups of "petty offences", primarily cases of illicit possession and consumption of small amounts of drugs. This must be done in the legal systems accepting the principle of legality in prosecution.

Special legislation on drugs in some countries, however, is expanding the powers of law-enforcement agencies, primarily in connection with searching persons, premises, vehicles, especially at national frontiers, ports, railway stations, and in places and means assumed to be used for keeping, transporting, or misusing drugs. There are also changes in provisions for intercepting communications of international smuggling bands, whether by writing, telegraph, or telephone.

There are also some changes in legislations dealing with the problem of proof, shifting to the accused the burden of proving certain facts. This issue concerns the legality of drug possession, which is frequently relevant to responsibility, punishment, conditions and severity of sanctions. It also regards some solutions concerning legal presumption on existing intentions of drug trafficking in cases of legally determined amounts and types of drug. With respect to the specificities of proof mention may be made also to the phenomenon of recognizing validity of process actions in drug trafficking if these actions have been undertaken by the judicial organs of a foreign country; although such actions,

from a formal standpoint, have not been implemented in conformity with the procedural rules of the country where such evidence will be used subsequently, i.e., in cases when it is not possible to provide the direct bringing of evidence in a country where a process is being conducted.

Criminal policy

It has already been pointed out that criminal policy has during the last decade adapted exceptionally quickly to the problem of drug abuse. This is confirmed by dynamic legislative activity, induced by the adoption of international Conventions and the acceptance of a very wide criminal-political concept. This covers prevention, control, treatment, rehabilitation, and repression as equal factors and goals of international co-operation in preventing drug abuse. Nevertheless, history during the last two decades shows that much has been expected from repression. This has been considerably differentiated recently in regard to illicit production and international trafficking and in respect of persons requiring medical and social help and support. These problems have been addressed and solved in differing ways depending on national socio-economic conditions (i.e., personnel, material possibilities, legal standards, moral and other social values) and on perceived dangers threatening society attributable to crime in general and drug abuse in particular.

To the question of whether the national criminal-political orientation is being evaluated as mostly repressive, socio-medical, or balanced we have received various answers:

European countries

The answers of European countries to the questionnaire tend to describe the situation as mostly balanced between repressive and socio-medical orientations. They point out the following authoritative indicators: differentiated approach to drug dependents but more severe attitudes

toward those involved in illicit trade of drugs; possibility of waiving prosecution; discharge of those only consuming drugs, i.e., possession for personal use only; providing warnings and alternative measures to persons possessing and consuming drugs, i.e., conditional suspension of prosecution, reprimand, fine and suspended sentences requiring compulsory treatment as out or in patients.

Asian and African countries

Their answers (excluding those of India and Saudi Arabia) express the opinion that the orientation, not only of law enforcement agencies but also of legislation itself, is mostly repressive. The same criterion has been used for estimating the basic orientation of penal policy, i.e., punishment of drug consumption and absence of alternative measures, although it is recognized that both these areas are characterized by specific phenomena pertaining to traditions concerning drug-growing and consumption arising from culture, customs and social-value systems.

Latin American countries

The systems of Argentina, Colombia, and Costa Rica are marked as balanced systems, while others are estimated as mostly repressive.

It would be wrong, however, to evaluate legal systems according only to the contents of normative solutions while not taking into consideration the general indices of penal policy and of actual application of legislation. Answers from the relevant countries show that, in spite of strong socio-medical orientation of legislation (with emphasis on treatment and rehabilitation as a basic alternative approach to dealing with drug addicts in criminal cases), no real conditions for such treatment have always been established within the framework of social and medical protection for addicts while not in custody, nor is there sufficiently effective treatment and rehabilitation at penal-corrective

institutions. Follow-up studies illustrate that treatment results are still poor and considerably subject to acceptance of such treatment by the drug addict himself. However, the answers do appear to indicate that criminal-political orientation, consisting of strict punishment for illicit drug activity and more intensive international collaboration in combatting such phenomena, on the one hand, and providing for treatment and cure of drug addicts (even compulsory treatment), on the other, is the only acceptable response to the challenge facing all social communities in the contemporary world.

The justification of the given estimates on the more or less repressive orientation of some systems may be at least partly confirmed or denied by means of some basic statistical indices.

Drug-related crime in judicial praxis

From the data collected on drug related crime and sentencing policy in judicial praxis the following conclusions can be made:

West European countries

The number of convicted persons increased during 1980-84, there being an indication of increase or oscillation during the past two years.

persons convicted

— Austria	1980: 1,294 / 1983: 1,909 / 1984: 1,736	increase 34%
— Denmark	1980: 3,071 / 1984: 5,606	increase 82%
— France	1979: 4,206 / 1983: 8,831	increase 109%
— Italy	1980: 1,926 / 1984: 5,864	increase 204%
— The Netherlands	1980: 1,462 / 1983: 2,379	increase 63%
— Sweden	1980: 3,232 / 1982: 4,295 / 1984: 3,135	(oscillating)
— United Kingdom	1980: 18,448 / 1984: 24,716	increase 40%
		(82.5% for illicit drug trade)

East European countries

- German Democratic Republic highest number of persons convicted 1980: 66
- Hungary persons convicted 1984: 54
- Poland persons convicted 1980: 130 / 1981: 125 / 1982: 259 / 1983: 276 / 1984: 228

(Similar movements can be expected owing to modification of criminal legislation)

- Yugoslavia highest number of persons convicted 1982: 226

(Data vary from year to year without clear trend)

Asian, African, and Latin American countries

- Costa Rica 1980-1984: increase of 34%
- Egypt persons convicted 1980: 3,165 / 1982: 3,527 / 1984: 2,821
- India persons convicted 1980: 7,332 / 1984: 1,905
- Côte d'Ivoire persons convicted 1980: 248 / 1984: 455
- Japan 1980-1984: increase of 28%
- Kenya persons convicted 1982: 5,775 / 1984: 7,488
- Thailand persons convicted 1980: 27,066 / 1984: 39,072

Except in rare cases, the number of sentences is obviously increasing. The increase may be affected by different factors such as more intensive detection, investigation and more energetic prosecution. On the other hand, overcrowded penitentiary institutions and courts procedures may have differing standards for judging lighter forms of these acts. In considering the above, data readers should bear in mind that in some countries the mildest but most massive forms of illegal drug activity — possession of small amounts for personal use — do not represent actions punishable by courts.

However, in spite of a general tendency to increase or at least to maintain the number of sentences at the aforementioned level in some countries, researchers emphasize that criminality of that type does not participate considerably in general criminality of the major part of countries. This means that the numbers, as quantitative indices, although not revealing certain tendencies, do not reflect all serious-

ness of danger of drug abuse. It can be manifested in a relatively smaller number of most serious crimes (primarily, in case of smuggling, distribution and sale of large amounts of drugs). It points out that, in any case, more serious acts should be statistically separated from less serious ones as this is the only way to estimate the character of drug-related crimes and establish rational, efficient and adequate penal and general criminal policies as well as criteria for preventive and repressive action.

The data now available consequently allow an insight into basic tendencies of penal policy, that is, court reactions to drug-related crime within the framework of legally stipulated penal measures, only for the period 1980-1984:

*cumulative figures
for a five-year
period (1980-1984)*

West European countries

— Denmark	imprisonment	23.6%
— France	imprisonment for illicit trade	90.0%
	for illicit possession	73.9%
— Italy	imprisonment	73.2%
	suspended sentence, obligatory fine	26.8%
— The Netherlands	imprisonment	42.0%
— Sweden	total cases:	
	imprisonment	37.0%
	fines	24.9%
	conditional sentences and probation	24.0%
	other sanctions	14.1%
	for drug trafficking:	
	imprisonment	45.2%
	fines	20.3%
	conditional sentences and parole	21.6%
	others	12.9%
	for drug possession:	
	imprisonment	27.3%
	fines	34.3%
	conditional sentences and parole	22.8%
	others	15.6%

*cumulative figures
for a five-year
period (1980-1984)*

for illicit production:		
imprisonment		56.5%
finest		0.5%
conditional sentences and probation		17.0%
others		26.0%
for illicit possession and trafficking:		
imprisonment		50.7%
finest		11.8%
conditional sentences and probation		25.9%
others		11.6%
— United Kingdom total cases:		
imprisonment (immediate custody)		13.0%
finest		64.0%
suspended sentences, probation, supervision orders and other measures		14.0%
absolute and conditional discharge		9.0%
for drug trafficking:		
imprisonment		45.0%
finest		30.0%
suspended sentences, probation, supervision orders and other measures		22.0%
discharge		3.0%
for drug possession:		
imprisonment		7,5%
for illicit production and cultivation of prohibited plants:		
imprisonment		6.0%
finest		70.0%
suspended sentences, probation, supervision orders and other measures		14.0%
absolute and conditional discharge		10.0%

East European countries

— German		
Dem. Republic	imprisonment	92.0%
— Hungary		
	imprisonment	29.4%

*cumulative figures
for a five-year
period (1980-1984)*

— Poland	imprisonment	29.4%
Yugoslavia	imprisonment	69.2%

Asian, African and Latin American countries

— Costa Rica	imprisonment	93.0%
	suspended sentence	6.1%
	others	0.9%
— Côte d'Ivoire	imprisonment	80.0%
	compulsory treatment	20.0%
— Egypt	imprisonment	100.0%
	no suspended sentence but obligatory fine	

imprisonment or other confinement for: *No. of persons*

	illegal production and cultivation	life term	122
	illicit trafficking	provisional life	643
	possession	long term	2,027
		3-year maximum	5,499
— Kenya	for illicit production and cultivation	only fines	
	for other acts:		
	imprisonment		35.6%
	finer		63.4%
— Japan	imprisonment		51.8%
	suspended sentence		48.2%

For this survey on the tendencies of penal policy for drug-related crime, we did not go into the duration of the pronounced punishments by imprisonment. This would necessitate the analysis of very different systems of penitentiary policy toward the persons serving sentence, reduction of punishment by conditional release, release on parole and similar actions), thus, requiring new, very sophisticated and intensified empirical research.

Recidivism

As already mentioned, recidivism and multi-recidivism occur within the context of drug-related crimes in various forms:

- recidivism is almost always considered an aggravating circumstance irrespective of whether general or special recidivism is concerned;

- recidivism in some legislations leads to increases in both minimum and maximum legal limits for punishment and thus is changed from an aggravating circumstance to a qualificatory one;

- in cases of recidivism the measures of waiving prosecution or conditional suspension of prosecution can often not be applied.

This means that the number of recidivists cannot be determined by court statistics if the normal processing of statistical forms and the methodology of assessing criminality do not provide such data, which, however, are very important from both criminal and political standpoints, as they point to the effectiveness of prevention and rehabilitation. This is especially true if recidivism has been studied among persons condemned for illicit production or illicit trafficking of drugs and particularly for possession or consumption of drugs, because a considerably higher ratio of recidivists can be expected to occur for these categories.

According to the literature, it is claimed that there is a high number of recidivists related to drug abuse; such beliefs are sometimes also supported by data from criminological research. This is so not only for offences of drug addicts, directly and without doubt related to drug abuse, but also for recidivists convicted for other criminal acts such as property crimes, the forging of documents, and other offences frequently but not exclusively performed by drug addicts in order to obtain drugs. This requires additional research into the influence of drug-related crime on other forms of criminality and, consequently, the

participation of recidivists, especially of recidivist-drug addicts, in various forms of criminality.

The 1985 study of the Polish scientist Wierrbicky, which covered 116 persons convicted for drug-related crimes in 1983, contains data on all persons sentenced to imprisonment. All had previous criminal records, and this means that all of them were recidivists.

Professor F. Röter has pointed out that in The Netherlands there is an exceptionally high number of recidivists among traffickers, i.e., 70%. Somewhat more precise are available data from Austrian judicial statistics registering specific recidivism among those dealing with large illicit drug production, import, export, and trafficking (possibly even in cases of personal drug consumption). In these cases (Article 12 Suchtgesetz) it has been determined that, over a five-year period, 21% of the persons prosecuted had already committed such acts previously.

Court statistics in Yugoslavia register various general and specific recidivism for all criminal acts. Yugoslav statistics illustrate for the period 1980-84 that of the persons convicted of drug abuse, 21.4% of them are general recidivists. Not a single person was reported to be a special or specific recidivist during this period. (In 1985, however, a specific recidivist was identified.)

The examples from Poland, The Netherlands, and Austria, with different characteristics of drug abuse, illustrate the extent of influence of phenomenology and etiology on recidivism. The small number and absence of specific recidivists in Yugoslavia can be explained by the fact that this is a country where drug consumption is not punishable, while drug possession is punishable only in cases of drugs destined for trafficking. In addition, Yugoslavia is, by its character, a transit country, while the acts reported have frequently been — and particularly during the first half of the observed period — committed by foreigners, who, in addition to receiving longer prison terms, are expelled from the country and prohibited from re-entering it. This practically eliminates them from being

possible recidivists in drug-related crimes in Yugoslavia. The problems of recidivism need to be handled by special and more detailed criminological studies based not only on statistics but also on court files, and always within the context of other characteristics of the offenders.

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

This survey includes a detailed presentation of national legal systems as well as criminal sanctions classified by region. A preliminary analysis of the "law in action", based on the limited information acquired by the project on this matter, is also given. In the annex to this survey there is a graphical presentation of the most salient features of the data gathered on sanctions. The analytical work undertaken by the project would appear to warrant the findings, conclusions and recommendations set out below:

All countries covered by the present survey have, in implementing the international legal instruments (the Single Convention on Narcotic Drugs and the Convention on Psychotropic Substances), determined criminal responsibility for illegal conducts and illegal activities specified by these Conventions as criminal acts.

While establishing criminal responsibility and developing penal measures for drug-related crimes, the countries of Western Europe, Asia and Africa, and Latin America have recently, for the most part, developed special legislation on drugs, either in a single law or several laws dealing individually with types of drug. The exceptions to the main trend are the legislations of Denmark and Turkey, which continue to contain the basic penal regulations for drug-related crimes within the penal code.

The characteristics of the East European socialist countries is that they continue to include the regulations on these questions within the penal code, exceptions being the German Democratic Republic and Poland since their latest reforms.

The model of special legislation provides better linkage between repressive and other control measures of the state and society in general on the one hand and medical treatment and rehabilitation of drug addicts on the other. Such legislation has the effect, to some extent, of modifying the general principles and provisions of substantive and procedural law in order to strengthen the efficacy of the penal sub-system for drug-abuse problems.

The creation of special legislation also permits a comprehensive study of different forms of drug abuse, especially in cases of illicit production, illicit cultivation, illicit trafficking, export, or import and illicit possession and consumption of drugs. This facilitates a more detailed statistical monitoring of the phenomena and subsequently a more adequate evaluation of criminal and sentencing policy. Moreover, this approach facilitates an identification of priorities for prevention and a more reliable evaluation of both national and international strategies in terms of penal policy.

It should be noted, however, that because of differences in the descriptions and classification of drug-related offences, present statistical methodologies available in the majority of the surveyed countries do not permit a sufficiently wide comparative analysis.

In relation to substantive criminal law, special drug-abuse legislation has entailed in general the following modifications:

a. Expanding the competence of national legislation and jurisdiction for certain drug offences committed abroad, thereby extending national jurisdiction.

b. Expanding criminal responsibility for preparatory actions and attempted crimes, very often transforming these preliminary phases into independent completed crimes.

c. Enlarging the circle of criminally-liable accomplices to all persons who in some way or the other induce, organize, assist, shelter, or finance illicit production, illicit cultivation, illicit trafficking, illicit acquisition and possession, illicit

consumption of drugs or illicit administration of drugs to others.

d. Criminalizing (in just a few countries so far) the acquisition, possession, transfer or laundering of proceeds derived from or used in illicit trafficking, thus enlarging jurisdiction to confiscation and seizure of bank accounts, possessions, land, vehicles, equipment and other ways and means of illicit drug commerce.

Several modifications of procedural norm and of criminal justice organization institutions may also be noted:

a. Expanding expediency powers to law enforcement officials to search and seize premises, vehicles and persons and to intercept postal communications and telephone conversations of suspected persons.

b. Broadening powers to suspend the charge or proceeding in cases when alternative measures with regard to drug addicts and other offenders are justified.

c. Widening the powers given to judges with regard to suspension of sentences and to penitentiary authorities in modifying the regime of execution and duration of imprisonment or to medical authorities for alternative treatment of addicts.

d. Shifting, in some cases and some countries, the burden of proof to the accused especially if the motive of possession is relevant.

e. Organizing special law enforcement services and institutions with special investigative powers created solely to enforce more effectively the laws regarding drug abuse violations and crimes. These tendencies to broaden social and state interventions are manifested also in the creation of national boards or councils at the national governmental level specifically to respond to the need for a wider interdisciplinary approach and to create a national strategy for the drug problem.

It would be important to underscore the importance of the following consideration: special legislation on drugs

should not disrupt the coherence of the entire system of criminal law and, in particular, it should not depart from the accepted fundamental principle of due process, the safeguarding of the basic rights of the offender in criminal proceedings and the rights of drug addicts in treatment.

All countries, irrespective of differences in models of criminal legislation, have a common approach to evaluating and punishing *illicit production and illegal trafficking of drugs*. They consider these crimes as most serious and, within their respective systems, provide to them the *harshest* sanctions.

The basic act is most frequently punished by imprisonment of up to five years, while the more serious offences are punished within a range of ten to fifteen years. The punishments for the most serious offences especially in the case of internationally-organized illicit trafficking and smuggling or similar aggravating circumstances, reach in some countries the level of sanctions foreseen for the most serious criminal offences. The lowest maximum of imprisonment for these types of most serious criminal offences is ten years (except in Côte d'Ivoire where it is five years). This lowest maximum has been specified in the legislations of Denmark, the German Democratic Republic, Hungary, Kenya, The Netherlands, Sweden and Yugoslavia.

The maximum for such offences in Latin American countries is 12 years (Argentina, Colombia, Costa Rica, Ecuador) except for Venezuela, where it is 20 years.

In Asia, the average maximum is 20 years with the exception of Japan, where it is life imprisonment. In Sri Lanka and Thailand it is the death penalty for most serious cases.

The death penalty and life imprisonment can be imposed in Egypt and Turkey, and life imprisonment in New South Wales (Australia), Greece, and the United Kingdom. In France, the maximum for most serious offences is 20 years and in Italy 24 years.

Some legislations have accepted the concept of "petty offence", mostly in relation to small quantities of drug or to

manufactured or cultivated drugs whether imported or exported exclusively for personal use. It should be noted, however, that penalties in these cases vary greatly, ranging from a fine (alternatively with imprisonment for not more than 3 months in Switzerland or 6 months in Sweden) to five years imprisonment in France, with other modalities and variations in other countries.

It should be noted that the sentencing practices in most of the countries surveyed do not approximate the maximum penalty provided for in the legislation.

While the legislations surveyed are somewhat similar in regard to the penal approach to illicit drug production and trafficking, there are pronounced differences with respect to *illicit possession and consumption*. There are legal systems where illicit acquisition and possession is punishable only in cases where drugs have been procured, stocked and/or possessed for the purpose of illegal trafficking or disposal. In such cases, penalties approach the level of those for illicit trafficking.

Although many countries incriminate drug possession *per se*, the sentences imposed often depend on whether possession is exclusively for personal use or whether the drugs involved are destined for trafficking or gain. Irrespective of these differences, all systems face the problem of determining motives for possession, either in order to establish a basis for criminal culpability or for differentiating between possession for personal use and for trafficking.

Consequently, the determination of the motive for drug possession is a key question, its solution being primarily based on the type and amount of drug possessed. In many countries, the legislation explicitly determines the amount and type of drug according to objective criteria (*prae-sumptio juris et de jure*). This is a further departure from some general principles of the law and more specifically from the fundamental grounds for criminal culpability. In other countries, the determination of motive is left to the

judiciary, which solves this question as *quaestio facti* for each individual case, taking into account both objective and subjective circumstances and the opinions of experts.

Both approaches described appear in the legislation with respect to amounts of certain types of drug ("small", "large" and "commercial") which could be regarded as elements for the constitution of the independent offence or as extenuating or aggravating circumstances of the offence. However, it is noted that quantities of drugs, whether determined explicitly by law or by the judiciary, vary greatly in the different systems.

For incrimination and determination of sanctions there is also great diversity, particularly with respect to the "*dangerousness*" of drugs. (Colloquially this is referred to as "soft" and "hard" drugs, although no one legislation covered by this survey explicitly contained this classification.) Some legislations (e.g. Italy, Japan, The Netherlands, New South Wales (Australia), Poland, Thailand, Turkey, the United Kingdom and USSR) define criminal offences and their sanctions on the basis of the "*dangerousness*" of the drug, under group, category or type, classified and presented in schedules. This differentiation is especially evident in the case of cannabis and other hemp products, kratom plant, and opium poppy, which are considered "soft" drugs, and heroin, cocaine, opium and morphine which are considered "hard" drugs. This classification is not always made for psychotropic substances.

In spite of the great difficulty in collecting empirical data on the phenomenon in reference to the type of offence processed at the judicial level and the consequent judicial sanctions, the study seems to indicate that there is a notable difference between "law in the books" and "law in action".

The processing of drug offences at the judicial level is, to a considerable extent, influenced by preliminary police actions and prosecution decisions. In many countries there are guidelines determining law-enforcement policy which

may reduce the caseload of the courts to only the more serious offences. It may be noted that, in order to control the use of discretion in decision concerning prosecution or non-prosecution and thus ensuring more unified application of the penal law, such guidelines have been recommended at several international expert meetings *.

Concerning the sanctions, implemented by the courts, it should be noted that the sentencing practices in most of the countries surveyed do not approximate the maximum penalty provided for in the legislation. It is evident, also, that in spite of quite harsh legislation there are a great number of suspended sentences and fines.

The efforts of the researchers to obtain from participating countries statistical data on sentences for drug-related crimes during the 1980-84 period were not rewarded by the hoped — for volume of information. Present statistical systems at the disposal of the countries of Europe, Asia, Africa and Latin America do not, with some exceptions (Costa Rica, Egypt, Japan, Sweden, Thailand and the United Kingdom), yield separate (one of the main consequences of the lack of separate data is the difficulty in obtaining information concerning recidivism) data on sentencing practices and penal policy for these phenomena. Court statistics record the dispositions of criminal acts frequently covering these actions *en bloc*; thus, there are most frequently available only total data on convictions which are not classified or analysed by offence. This raises the question of the need to establish minimal international standards in order to obtain comparable statistics on judicial activity and of connected international collaboration under the programme of preventing drug abuse.

* European Seminar on Non-Prosecution, organized by The Helsinki Institute for Crime Prevention and Control, Affiliated with the United Nations, 22-24 March 1986.

For evaluations of sentencing policy there is a clear need for research on the "law in action". Such research should examine the sequential operation of the criminal justice system agencies within the framework of national socio-economic, political and legal milieux.

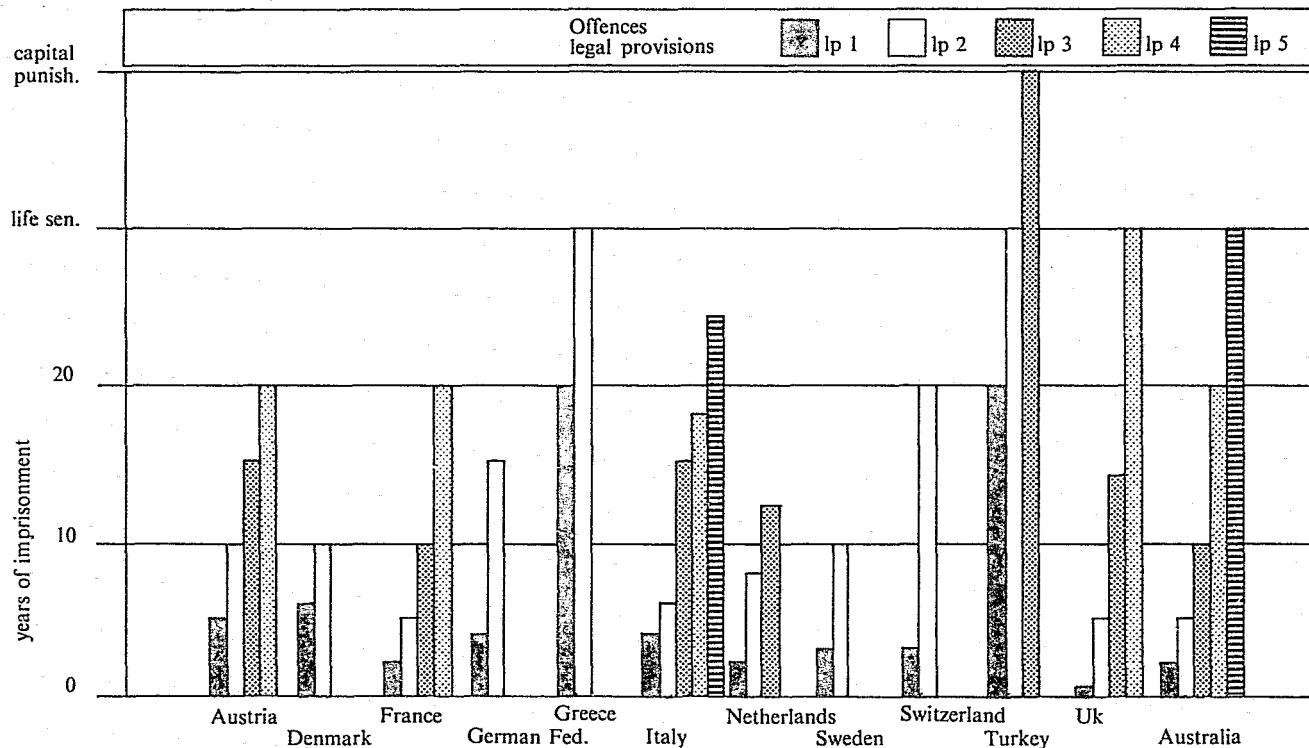
These findings and conclusions could contribute to an evaluation of current trends in drug-related penal policy and practice and could be used to promote a more harmonious approach in areas where there are major differences on basic issues. Moreover, these could promote a more extensive application of treatment and rehabilitation measures as viable, appropriate alternatives to the punishment of drug addicts.

The study could also be conducive to additional "law in action" research, which could serve as an input toward a more rational criminal policy approach at national, regional and international levels. This would lead also to the strengthening and improved implementation of the United Nations strategy as expressed in existing international documents.

CHARTS

Chart 1. Western Europe & Australia

Penalties for typical modalities of illicit
production (cultivation or manufacturing) and trafficking of drugs
(including export & import, excluding small quantities)



Austria

Suchtgiftgesetz, Novelle 1985.

L.P.1 Par 12/1/

L.P.2 Par 12/2/

L.P.3 Par 12/3/

L.P.4 Par 12/4/

Denmark

Criminal Code

L.P.1 & L.P.2 Art 191 CC

Art 88 cc (particularly aggravating circumstances)

France

Code de la santé publique / livre
III Titre IV/h

Loi No. 86-76 du 17. janvier 1986

L.P.1 Art 626/1

L.P.2 Art 627/2

L.P.3 Art 627 (disposal)

L.P.4 Art 627 (export, import,
production)

German Federal Republic

Das Gesetz über den Verkehr mit
Beträubungsmitteln (28.7.1981)

L.P.1 Sec 29/1,1,2,5

L.P.2 Sec 29/3, 30/1,1

Greece

Legislative Decree No 743 concern-
ing the punishment of persons
violating the laws relating to
narcotic drugs (Official Gazette
263, vol. 1, 10 Dec. 1970)

L.P.1 Art 3, 5, g, h

L.P.2 Art 5

Italy

Law 685 (22.12.1975)

L.P.1 Art 72/2

L.P.2 Art 71/4, 72/1

L.P.3 Art 71/1, 75/2, 75/3

L.P.4 Art 71/2, 71/3

L.P.5 Art 74, 75/1,4,5

Netherlands

Opium Act (1976) as amended

L.P.1 Art 11/2

L.P.2 Art 10/3

L.P.3 Art 10/4

Sweden

Narkotikstrafflag 1968, as amended
1985.

L.P.1 Par 1-5,6

L.P.2 Par 3

Switzerland

Loi Fédéral sur les stupéfiants
(1951), as amended 1975.

L.P.1 Art 19 al.1-4

L.P.2 Art 19/1 and 2

Turkey

Criminal Code

L.P.1 Art 403/1,3,4,5

L.P.2 Art 403/2

L.P.3 Art 403/5,6,7

United Kingdom

Misuse of Drugs Act (1971),
Chapter 38, rev. 1979 Section 25,
Schedule 4

L.P.1 Sec 4/2 &3, summary mode of
prosecution, Drug A & B Class
Sec 6/2 (Cannabis)

L.P.2 Sec 4/2 &3, Sec 5(3), indict-
ment, Class C drug involved

L.P.3 Sec 4/2/3, Sec 5(3), indict-
ment, Class B drug involved Sec
6/2 (Cannabis)

L.P.4 Sec 4/2 &3, Sec 5(3), indict-
ment, Class A drug involved

Australia

Drug Misuse and Trafficking Act,
No. 226, 1985. Part II, div. 2

L.P.1 Sec 30/1, Sec 31

L.P.2 Sec 32/h

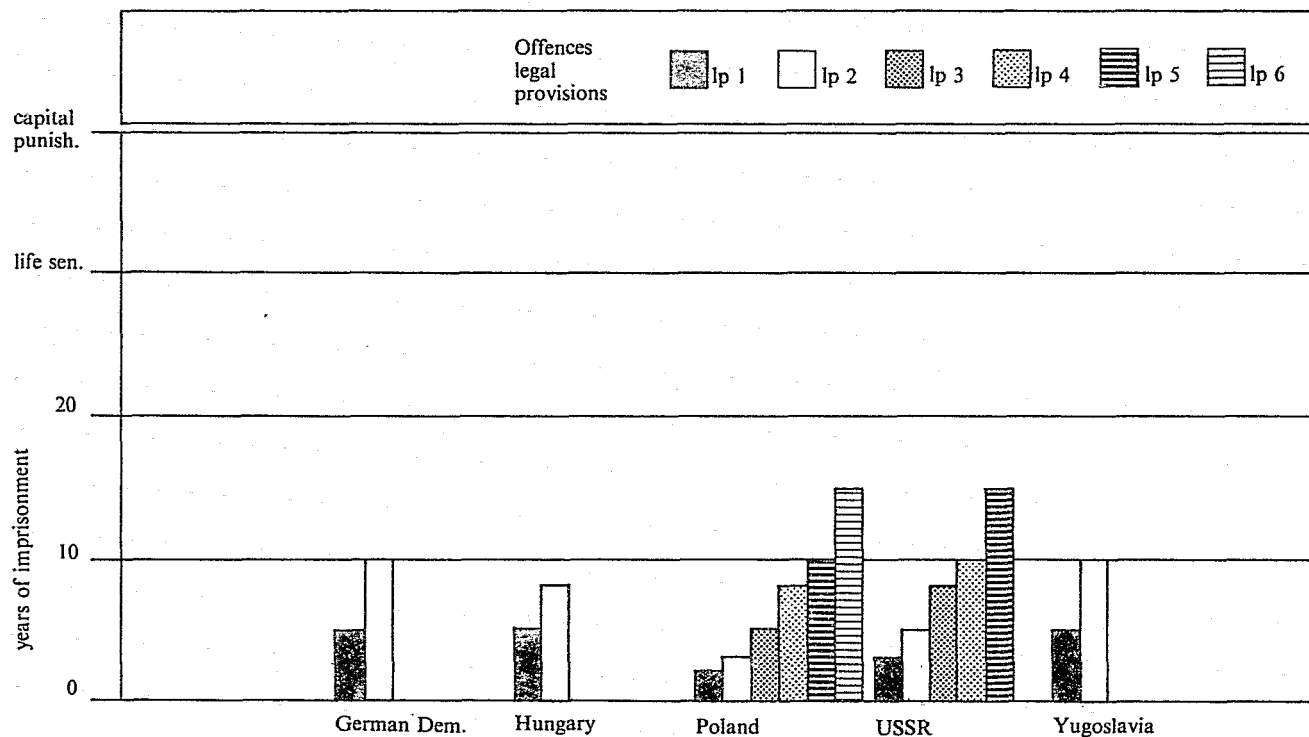
L.P.3 Sec 32/g

L.P.4 Sec 33/h

L.P.5 Sec 33/g

Chart 2. Eastern Europe & Yugoslavia

Penalties for typical modalities of illicit
production (cultivation or manufacturing) and trafficking of drugs
(including export & import, excluding small quantities)



German Democratic Republic

Narcotic Drug Act (19.12.1973)

L.P.1 Sec 10/1a,b

L.P.2 Sec 10/3

Hungary

Criminal Code

L.P.1 Art 282 Par 1

L.P.2 Art 282 Par 3

Poland

Drug Abuse Prevention Act (1985)

L.P.1 Art 26/1,2, Art 28, Art 32/2

L.P.2 Art 27/1

L.P.3 Art 27/2, Art 29/1

L.P.4 Art 30/1

L.P.5 Art 30/2, 32/1

L.P.6 Art 29/3

USSR

Criminal Code RSFSR

L.P.1 Art 224/3

L.P.2 Art 224/4, Art 225

L.P.3 Art 225/2

L.P.4 Art 224

L.P.5 Art 224/2

Yugoslavia

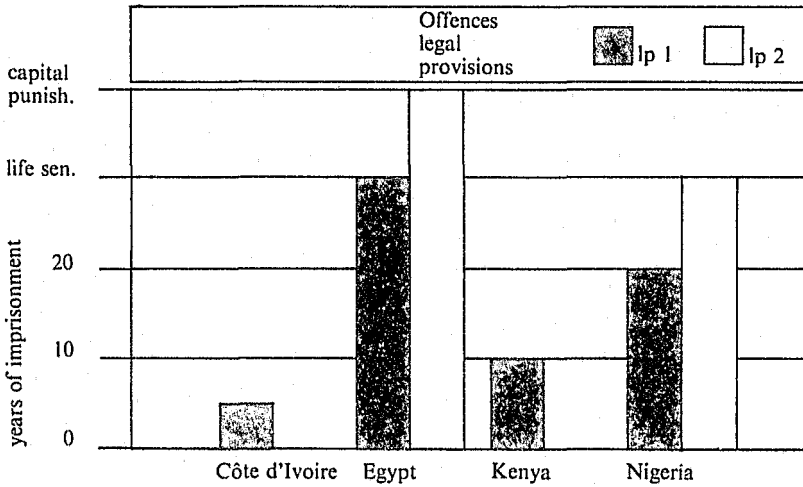
Criminal Code of SFRY, 1976

L.P.1 Art 245 Par 1

L.P.2 Art 245 Par 2

Chart 3. Africa

Penalties for typical modalities of illicit
production (cultivation or manufacturing) and trafficking of drugs
(including export & import, excluding small quantities)



Côte d'Ivoire

Code de la Santé Public

L.P.1 Art 628

Egypt

Law 182/1960

L.P.1 Sec 33,34

L.P.2 Sec 33,34

Kenya

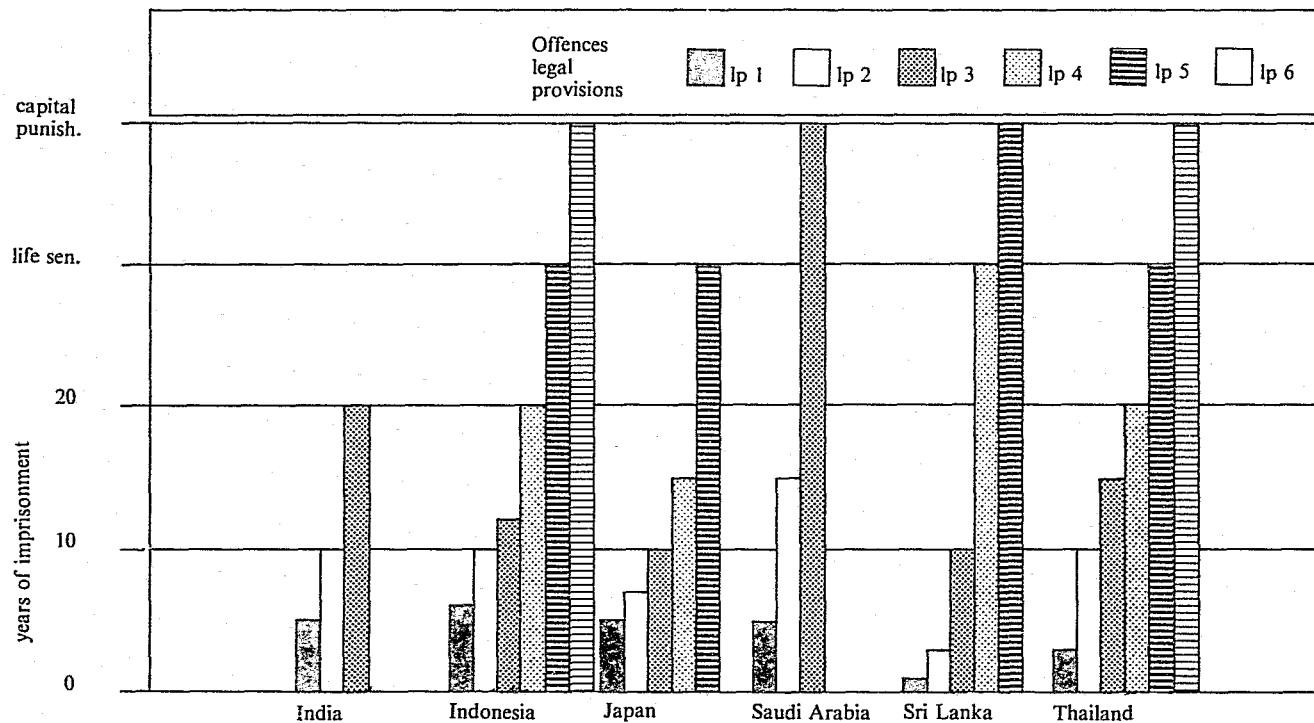
Dangerous Drugs Act

Nigeria

Dangerous Drugs Act, The Food and Drug Act

Chart 4. Asia

Penalties for typical modalities of illicit
production (cultivation or manufacturing) and trafficking of drugs
(including export & import, excluding small quantities)



India

Narcotic Drugs and Psychotropic Substances Act, 1985 Chapter IV, Sections 15-30

L.P.1 Sec 201

L.P.2 Sec 30

L.P.3 Sec 15,16,17,18,19,20ii,21 and 22

Japan

Narcotic Control Law (NCL), 1977
Opium Law (OL), 1977

Stimulants Control Law (SCL), 1977

Cannabis Control Law (CCL), 1977

L.P.1 CCL Art 24-2

L.P.2 NCL Sec 66; CCL Sec 24/1 & 2; OL Sec 52

L.P.3 NCL Sec 64-2/1/, 65, 66/2/; OL Sec 51/1/; Sec 52/2/

L.P.4 NCL 64, 64-2/2/, 65/2/; OL 51/2/; SCL 41, & 41/-2/2

L.P.5 NCL 64/2/; SCL 41/2/

Saudi Arabia

Council of Ministers Provision No. 11/2.1.1374 (1954), amended in 1987. (The original Saudi Law imposed 15 years imprisonment; 20,000 Saudi Ryals and forfeiture for drug smuggling. This Decree was amended in 1987 and the death penalty has become the punishment imposed against drug smuggling)

Sri Lanka

Poisons, Opium and Dangerous Drugs Ordinance, 1956, rev. Act. No.13 (1984)

L.P.1 Summary Conviction by Magistrate, Sec 78/5

L.P.2 Conviction by District Judge, Sec 78/5

L.P.3 Conviction by Supreme Court, Part III Art No.13

L.P.4 Act No.13, Part III

L.P.5 Act No.13, Part III

Thailand

Narcotics Control Act B.E.2519 (1976) (NA1)

Narcotics Act (no.2) B.E.2528 (1985) (NA2)

Psychotropic Substances Act B.E.2518 (1975) (PS1)

Psychotropic Substances Act (No.2) B.E.2528 (1985)

L.P.1 NA1 Sec 69

L.P.2 NA1 67, 68, 69 Par 2, 73, PS1 98 Par 2, 99

L.P.3 NA1 75, 76 Par 2, PS1 98

L.P.4 NA1 Sec 69 Par 3, PS1 89

L.P.5 NA1, NA2 Sec 65, 66, 68 Par 2, 69 Par 4

L.P.6 NA1, NA2 Sec 65 Par 2, 66 Par 2

Indonesia

Law on Narcotics, 1967

L.P.1 Sec 23/1b

L.P.1 Sec 23/1a

L.P.1 Sec 23/2b

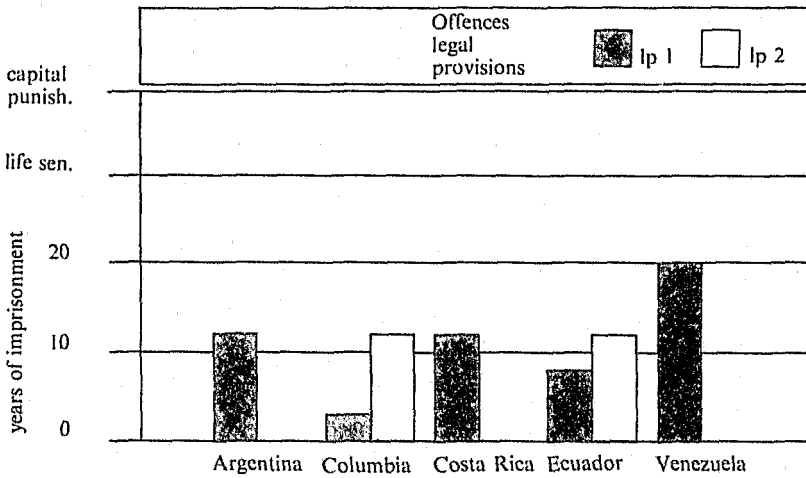
L.P.1 Sec 23/2a, 4b, 5b

L.P.1 Sec 23/4a, 23/5a >
> alternatively

L.P.1 Sec 23/4a, 23/5a >

Chart 5. Latin America

Penalties for typical modalities of illicit
production (cultivation or manufacturing) and trafficking of drugs
(including export & import, excluding small quantities)



Argentina

Legislación Especial Sobre Tráfico de Estupefacientes, No. 20771 (y modificatorios)

L.P.1 Art 2/5 Ley No.20771

Colombia

Estatuto Nacional de Estupefacientes (ley 30 do 1986) incor. al Título V del libro 20 del C.P.

L.P.1 Art 32

L.P.2 Art 32,33

Costa Rica

Ley General de Salud: ley num. 5395 del 30 Octubre de 1973 - Artículos, 371 y 372

L.P.1 Art 371

Ecuador

Ley de Control y Fiscalización del Tráfico de Estupefacientes, 1971

L.P.1 Art 30

L.P.2 Art 30

Venezuela

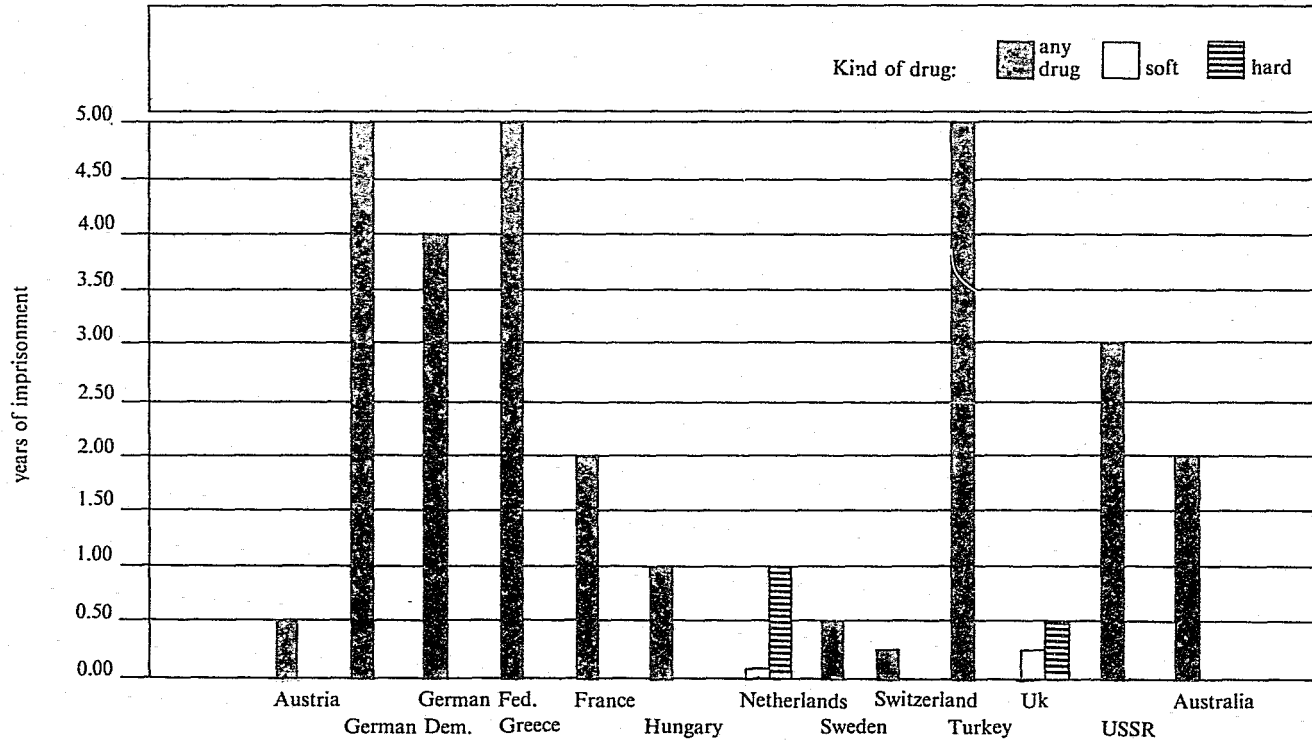
Ley Orgánica Sobre Sustancias Estupefacientes y Psicotrópicas (1984)

L.P.1 Art 31

Chart 6. Europe & Australia

Penalties (maximum imprisonment) for illicit possession
of small quantities of drugs for own personal use

(Not punishable in Denmark, Italy, Poland & Yugoslavia)



Austria

SGG, 5-16/1

German Democratic Republic

NDA, Sec 10(2)

German Federal Republic

BMG, Sec 29/1-3

Greece

Legislative Decree 743 Art 7/1

France

CSP, Art 626

Hungary

CC Par 282/5

Netherlands

soft drugs OPA, Sec 11/2-1

hard drugs OPA, Sec 10/5

Sweden

NSL, Par 52

Switzerland

LFSI 19/1-5

Turkey

CC, Art 404 Par 2

United Kingdom

soft drugs, class C - MDA, Sec 25, Schedule 4 (summary prosecution)

hard drugs, class A&B - MDA, Sec 25, Schedule 4 (summary prosecution)

USSR

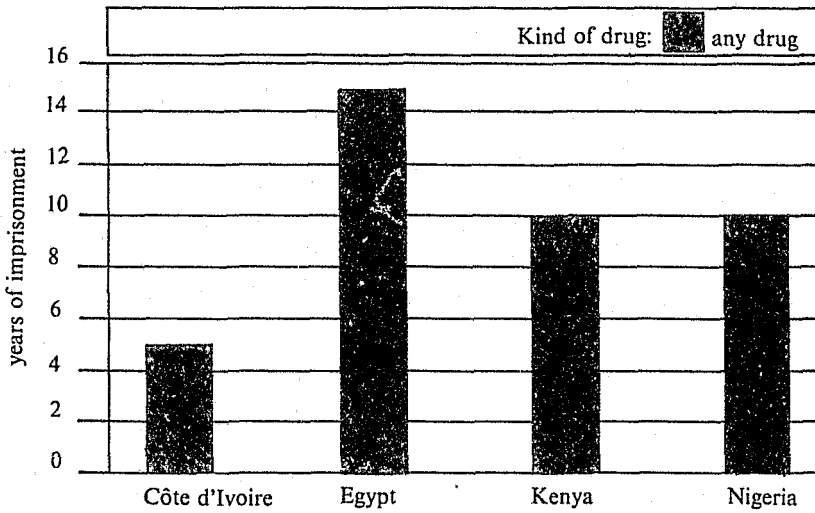
CC RSFSR, Art 224

Australia

DMATA, Sec 10(1)

Chart 7. Africa

Penalties (maximum imprisonment) for illicit possession
of small quantities of drugs for own personal use
(irrespective of the quantity for Nigeria)



Côte d'Ivoire

punishable (CSP-628) as consumption

Egypt

Law 182/1960, Art 38(a)

Kenya

DDA

Nigeria

DDA

Chart 8. Asia

Penalties (maximum imprisonment) for illicit possession
of small quantities of drugs for own personal use



India

soft drugs NDPSA, Sec 27b
hard drugs NDPSA, Sec 27a

Indonesia

soft drugs LN
hard drugs LN

Japan

soft drugs CCL, Sec 41-3
opium OL, Sec 52
heroin NCL, Sec 64-2, StCL, Sec 41-2

Saudi Arabia

CMP

Sri Lanka

soft drugs PODDO, Sec 54a
hard drugs PODDO, Part III
heroin PODDO, Part III

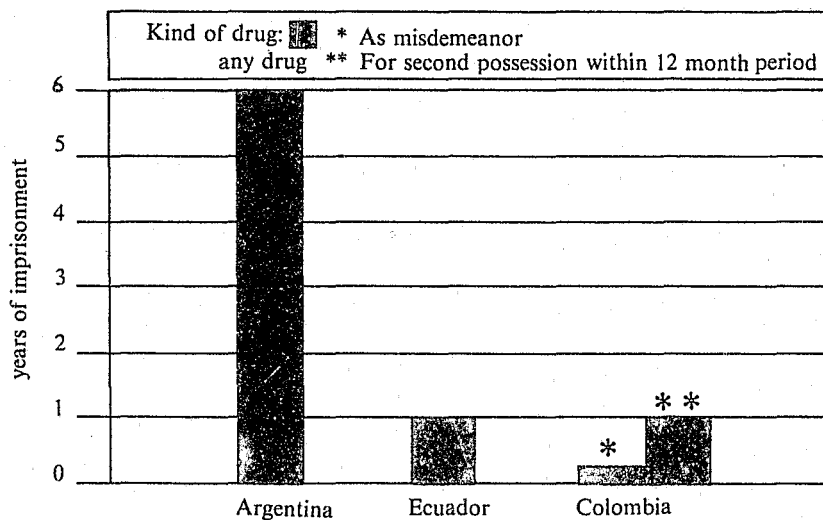
Thailand

soft drugs PSA1, Sec 106
hard drugs NA 69, 74, 76
heroin NA 67

Chart 9. Latin America

Penalties (maximum imprisonment) for illicit possession
of small quantities of drugs for own personal use

(Not punishable in Costa Rica & Venezuela)



Argentina

Ley No.20771 (Art 6/N)

Colombia

ENE (Ley 30) (Art 5i)

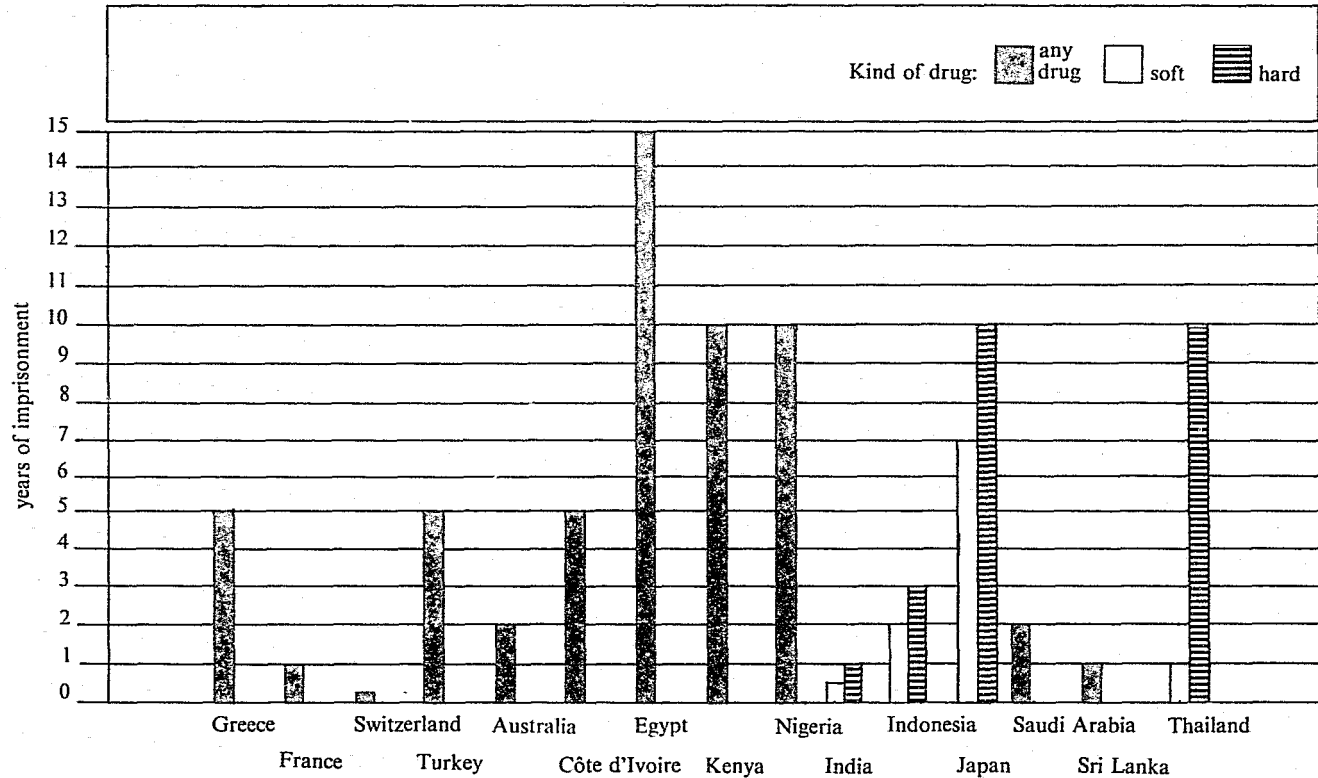
Ecuador

LCFTE (Art 9)

Chart 10. All countries

Penalties (maximum imprisonment) for illicit consumption of drugs

Consumption of drugs is not a punishable act in all Latin American countries as well as in most of Europe (Austria, Denmark, German Dem., German Fed., Hungary, Italy, Netherlands, Poland, Sweden, UK, Yugoslavia) in 6 Soviet Socialist Republics it is an offence punishable up to 1 year



France

CSP, Art 628

Greece

Legislative Decree 743, Art 7

Switzerland

LFSt, Art 19a

Turkey

CC Art 404, Par 2

Australia

DUTA (No.226-1985), Sec 12(1)

Côte d'Ivoire

CSP, Art 628

Egypt

Law 182/1960

Kenya

DDA

Nigeria

DDA

India

Sec 27 a &b

Indonesia

soft drugs LN, Sec 23/7

hard drugs LN, Sec 23/7

Japan

opium OL, Sec 52, NCL Sec 66

heroine NCL, Sec 64-2, StCL Sec 41-2

Saudi Arabia

CMP

Sri Lanka

PODDO (summary)

Thailand

soft drugs NA, Sec 92

hard drugs NA, Sec 91

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¹ Out of print.

² Also published in French and Spanish.

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¹ Out of print.

² Also published in French and Spanish.

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⁴ At the request of the Government of the Kingdom of Saudi Arabia, UNSDRI published English, French and Spanish editions of this publication.

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⁵ In collaboration with the International Association of Judges.

⁶ In collaboration with the Arab Security Studies and Training Center.