

# FROM DECRIMINALISATION TO CRIMINALISATION AND BACK AGAIN: three decades of drug possession regulation in the Czech Republic

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## Czech Republic



Population approx. 10.5 million

**A bit of recent epidemiological data**  
(population 15-64 years)\*

- Lifetime prevalence:** any drug: 35%
- cannabis drugs: 30%
  - meth/amphetamines: 8%
  - cocaine: 8%
  - heroine: 4%

Estimation of **high-risk drug users (HRDU)** number: **46.5 thousand**

- 37.2 thousand HRDUs use methamphetamine
- 9.3 thousand use opioids, mainly buprenorphine (5.1 thousand) and heroin (3.0 thousand)
- 42.7 thousand use drugs by injection

\*Source: Czech National Monitoring Centre for Drugs and Addiction

## Drug offences

**Possession of drugs for personal use\*\***



\*\*Source: Police of the Czech Republic; Ministry of Justice of the CR

## Development of legislation

### 1961 PENAL ACT

- until 1990: possession of a drug was punishable regardless of the quantity, type of drug or whether the person possessed the drug for their own use or for another
- 1990 (extensive changes in criminal legislation in connection with the fall of the communist regime): possession of a drug for personal use is no longer a criminal offence (regardless of the quantity possessed and the type of drug)
- 1998: the introduction of the criminalisation of the possession of a drug for personal use in an „**amount greater than small**“ (the determination of this threshold in specific cases was left to case law)

Note: the use of drugs as such has never been criminalized in the Czech Republic !

### 2009 PENAL CODE (replaced 1961 Penal Act)

- significant conceptual changes – the introduction of “categorisation” of drugs and lower penalties for possession of cannabis drugs for personal use
- **“the amount greater than small”** defined by the Government Order (in 2012 it was annulled by the Constitutional Court for violation of the nullum crimen sine lege principle and the term has consistently presented application challenges);
- the introduction of the offence of Unauthorised Cultivation of Plants Containing Narcotic Drugs or Psychotropic Substances

## Research on impact of criminal law changes on the drug situation

### “Impact analysis of new drug legislation (PAD)”

- the intervention represented by the introduction of the punishment for possessing drugs for personal use had hardly any impact on drug-related problems in the Czech Republic;
- during the first two years of the application of the amendment, penalizing possession of illegal narcotic and psychotropic substances for personal use had been enforced in a very selective manner, randomly and occasionally

(Zábranský et al., 2001)

### “Drugs and Penal Code”

- the adoption of the new Penal Code has not led to any significant departure from the existing approach in the area of drug crime prosecution, either in terms of legislation or its practical effects;
- the number of registered drug offences reflects much more the intensity and focus of police work in searching for and detecting crime than the actual level of drug crime

(Zeman et al., 2015)

## Current development

- new Government (since 2021) is more open to a liberalization of drug policy, incl. decriminalization/depenalization, especially when it comes to cannabis (with the exception of the Christian Democrats, who are one of the 5 parties in the governing coalition)

### - two main legislative initiatives

- (a) the introduction of a regulated cannabis market along the lines of the alcohol and tobacco markets (i.e. decriminalization of handling of cannabis at all)
- (b) as a part of major changes of the Penal Code and the Code of Criminal Procedure, the significant mitigation of criminal sanctions for handling of any drug (esp. cannabis), mainly when it comes to the handling for personal use (i.e. depenalization) – there are two versions of this proposal, when the one from the Government Council for Addiction Policy Coordination goes much further and the other one from the Ministry of Justice is more of a compromise

## Conclusions

- the approach of Czech criminal law to the possession of drugs for personal use has evolved considerably in recent decades, from complete decriminalisation through relatively strict criminalisation to its current state

- although these changes were presented as significant, no clear impact on the drug use or drug crime was found

- with the exception of full criminalization or decriminalization, changes in criminal legislation can be considered rather parametric and without a major impact on the drug situation

