

## **Curia cases: Drug trafficking and consumption**

We are going to discuss drug trafficking and drug consumption and the area where these two meet. The main characters in today's case are a young couple from a small town, Kisvárdá, who brought drugs to Hungary to sell here through the woman's Belgian contact. The authorities followed and caught them. Both are drug users and tried to use this in their defence in court. They hoped to receive a lighter sentence by assuming the role of victims as they could receive life imprisonment for the quantity of the smuggled drugs. This strategy, however, does not exonerate them even if the judge does see the unfortunate, ill-fated sick drug user behind the criminal. During the trial the woman lied that she knew nothing and her lawyer cited the deficiencies of the Criminal Code, thus the case came before the Curia as a matter for review. We will see in the course of the discussion that one cannot get away with either consumption or trafficking and it will become clear how easily the judge saw through the false argument, particularly as they were caught in the act. Of course, the overall conclusion of the case is that there is no hopeless situation in life for which drug use and trafficking could be a good answer. Our guests are three outstanding professionals. Allow me to introduce first Judge Ákos Székely, head of the Curia's Criminal Department. Also with us are the sociologist Róbert Csák and the toxicologist Gábor Zacher.

Judge, what is the most important lesson of this case for you?

The main principle is that, if a perpetrator is found to be both trafficking and in possession of drugs, and this includes consumption, then consumption is of no importance; it is not considered, and criminal liability relates only to trafficking.

There is one other protagonist in our conversation, the smuggled drug itself, which was slightly over two kilos of amphetamines. What are amphetamines?

Amphetamine is an old, well-known stimulant. This two-kilo quantity is an awful lot to use everyday language. Thus the penalty in this case, as the judge has implied, is also considerable. Moreover, I do not think it is realistic or an established practice among drug users that someone buys themselves two kilos on one occasion and puts it in the larder and goes there every day for a dose like an old woman taking her medicine from the cabinet. It is quite certain that such a quantity is for dealing as well. But taking some from this for the drug user's own daily needs is entirely realistic.

What is a sociologist's view of this situation? They were in effect caught with the smuggled quantity immediately in Kisvárdá. Most likely the authorities followed them from the nearby border. The couple's social status must be of interest for the sociologist.

Here consumption itself is immaterial. Trafficking and use differ in that consumption does not cause harm to others while trafficking is an action that can affect others, mainly because it can be linked to organised crime.

In the defence the second defendant claimed that the drugs would be for personal use and she did not know about them – but some facts had already been mentioned that made this argument false. Moreover, there was a stated amount of the profit they expected from the sales, which the court was aware of.

In every case the judicial deliberation proceeds from fact to fact reaching conclusions. Events happen in the world. These are found out by the authorities and it is established that there was a phone call to a foreign number, a trip abroad, returning to Hungary and drugs were in the boot. These are facts that happened and from them the statement of facts of the judgment develops. At another level it needs to be examined whether the statement of facts of the events is covered by the statutory definition. What is the offence to be punished? In this specific case it is known that the second defendant knew the Belgian individual and spoke on the phone with that person, and the couple specifically travelled there. It cannot be established that she put the drugs in the car but, based on the facts, she must have known that this was not a small quantity of drugs but its value was in the order of 10 million Hungarian forints. What is more, it is documented that they hoped to make a clear profit of 600 000 Hungarian forints from selling the drugs. In such circumstances the court could only conclude that the second defendant was fully aware of the crime and there was no question of being mistaken.

Let's look at the defendants' argument in greater depth. What is the physical and mental state when a drug user is not punishable?

I believe that such a situation must be seen from the aspect of conscious trafficking conduct. Someone gets in contact with a selling network in Belgium, travels there and strikes a deal – which side can this story be approached from? In this case it is the seller's side because a dealer was arrested who probably had a group to sell the drugs to. It is an interesting question whether amphetamine use in Kisvárda disappeared as a result of the couple being caught and sentenced. Or did someone else appear the next day and carry on dealing? Not a lot happened on the buyers' side and a shortage in the market could not develop.

How recognisable was the victim role the couple overemphasised? To what degree do you regard them as victims?

The description of the case does not mention the financial circumstances or the qualifications of the couple and their social status is not evident. At the level of users, the negative character of the dealer is typically known to users or is a friend of them and not the type of figure portrayed in films.

Legally speaking, does trafficking subsume consumption?

Yes, this is called subsidiarity in criminal law, which means that, if a more serious offence is not committed, only consumption, this is simply a misdemeanour carrying a sentence of up to two years' imprisonment. However, if a more serious drug-related crime is committed, then consumption is of no importance. Thus this is a very good innovation of the effective Criminal Code because the constant efforts to demonstrate how much someone has used over the last 4 or 5 years gave rise to calculations with rather dubious foundations in reality. That has now gone and consumption does not need to be taken into account.

When users are caught with small quantities and they choose the drug diversion scheme to avoid a heavier sentence, could that be a solution?

This has been in Hungary for a good few years now. Many people already in the police phase state that they prefer diversion but the question is whether this is not just a means of getting away with it.

For something like diversion to be effective, those taking part must be motivated to change their drug-taking habits. Another important thing is that it is not necessarily the high-risk drug users who take part in the diversion scheme.

In truth this is an issue of legislation rather than of the application of the law. It is prescribed by government decree, statute and in the interpretative provisions of the Criminal Code when the content of the pure active substance is particularly significant, significant, or a small amount. The defendant in this case received 5 years' imprisonment, which is the legal minimum, and in a medium- rather than high-security prison.

Let's continue with the penalties imposed. What is a sociologist's view of them? Are they a deterrent?

What punishment should be given is not a general truth. This at present is a rule made by the decision-makers.

What does these two people being caught show? That it is possible to sell amphetamines in Kisvárdá and its environs. The punishment does not have a real dissuasive effect. Rumours probably circulated in the small town – “They got 5 years in gaol. Whoa, I don’t want that.” – but the case will not act as a deterrent. The social significance of this is much deeper than simply stating that from now on there will be no drugs in Kisvárdá.

Some legal response must be given to the situation drugs cause. Let’s turn to the overall lessons: what can we learn from this case? What kind of typical situations were presented in the defence?

We must start earlier with proceedings at first instance and appeal proceedings prior to coming here to the Curia for review proceedings. In the review the facts could no longer be disputed. Here the established facts matter. It cannot be argued that I knew nothing about it. The defence claimed that the charge was unlawful; that the consumption side of the story was not properly examined. This was unsuitable for review. The other argument was whether it could be established based on the chain of evidence how much the second defendant knew. This too had already been decided at first instance and on appeal.

It is interesting why precisely such rules are created. Are considerations of public health taken into account or not? But this is a far-reaching issue, part of a long-term strategy.

A toxicologist would probably prefer to deal with amphetamines on a day-to-day basis but instead we now have to consider designer drugs.

Today’s world has changed radically. Returning to the previous question, it is terribly important from society’s point of view that the law provides a framework for our lives. However, this will not solve the drugs problem. There are countries where capital punishment is meted out to persons convicted of drug-related crime but still it persists there. We should try to remain within this legal framework but in reality we should not expect legislation to solve the drugs problem. There are some countries where consumption is not punishable, but neither there have they managed to eliminate drug use entirely. Regrettably, it should be stated that we need to learn to live together with drugs. However, it is clear that the aim should be for as few people as possible to make the wrong decision and start taking drugs. As to your question, today’s world is not always about amphetamines but about new substances that we know nothing about. We know a structural formula, some physiochemical properties and we know that the ‘gear’ can be bought anywhere. If someone is caught with a bag of such stuff, the police rightly asks the expert: what do you know about this new drug? And I have to admit I know nothing yet the police seek our advice precisely to find out how to act in a particular case. At such times it is very difficult to give an expert opinion that is professionally accurate and remains realistic. In cases like this one tries to compare the

substance to other drugs and obtain information. It is not impossible but we are lagging behind compared to drug production.

The appearance and distribution of the new psychoactive substances is not independent of the legal environment. The classic drugs are strictly punished, from which it follows that people try to use substances which may not entail such sanctions.

I slightly disagree, because a good expert finds the danger in these drugs as well. For example when synthetic cannabinoids appeared and the first death due to taking the “facebook” pill occurred in Debrecen, this was a substance we knew nothing about. This is the category of “placing harmful substances on the market”, and in this case this is the expert’s responsibility because – although it is not on the list of prohibited substances – it needs to be recognised that anyone who uses it may die. New substances come out because people always seek something novel. Human curiosity plays a part in this, which can lead to unfortunate consequences.

The previous Criminal Code was introduced in 1978, thus it was 40 years old. During those 40 years the classification and practice of offences related to narcotics has had many permutations. From our perspective, more lenient or stricter punishment has not resulted in any positive progress, so for this reason I do not agree with decriminalisation. The opportunity arose for the Curia to express and lay down in its decision in principle that, if there is trafficking, consumption bears no relevance. This is perhaps the lesson of this case and is why the case was published.

Thank you for your analysis and for your attention.