

Unlawful use of narcotics

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Unlawful use of narcotics was added to the penal code in 2001. A person who uses or for personal use possesses or attempts to obtain a small amount of a narcotic substance is guilty of unlawful use of narcotics. Importing, producing and cultivating illegal substances are still narcotics offences, even if they are linked to personal use only. With unlawful use of narcotics, a penalty order is possible. The police can issue a penalty order on the scene, that is, write a fine. The penalty order must then be confirmed by the prosecutor. The penalty for unlawful use of narcotics is a fine or up to six months of imprisonment.

Before the reform came into operation on September 1st 2001, cases of unlawful use of narcotics went through court proceedings and were heard by full court, which was considered an unnecessarily lengthy and complicated way of handling them.

With cases of unlawful use of narcotics, the aim is to implement the penalty order practice in a reasonable way. The penalty order is not served at the scene of the crime; instead, the police report the offence, identify and weigh the narcotic substance, and question the suspect at the police station. The focus of the hearing is, above all, to uncover circumstances that would enable waiving of measures.

In cases where legislation specifically calls for the possibility of waiving of measures, the police do not issue a summary penal order, but the matter is turned over to the prosecutor for consideration of charges. The goal is to ensure that the prosecutor and the police act congruently. Regardless of whether the case is handled through the penalty order procedure or in court, the end result should be the same. The prosecutor can decide to waive measures in the penalty order procedure in the same way as when charges are considered.

The provision on the waiving of measures states that punishment can be waived if the offence is considered minor or if the user has sought treatment approved by the Ministry of Social Affairs and Health. The treatment centre needs to provide a written statement that the offender has sought treatment; a treatment plan is not required. A central goal is to encourage drug addicts to seek treatment voluntarily. The offence can be deemed minor based on the amount and type of the substance used, the situation where it was used, and other circumstances relating to the use.

Even if the offence is not minor, punishment can be waived if the offender is under age and it is deemed that the crime was a result of thoughtlessness or imprudence.

Punishment can also be waived when the principles of unreasonableness or concurrence are applied. Punishment is considered unreasonable, above all, in cases where the drug user is a prisoner who has already been sentenced to prison for the same crime.

Principle of concurrence pertains to situations where the punishment for unlawful use of narcotics would not significantly impact the overall punishment. These cases of unlawful narcotics use are usually connected to other drug offences, such as selling drugs. Two groups of drug users have been given a special status with regards to unlawful use of narcotics: those under the age of 18, and problem users. In these cases, the prosecutor is required to evaluate particularly carefully if other measures besides punishment should be taken. If the user is under the age of 18 and has been caught for the first time, a hearing is organised. The goal of the hearing is to give the offender a verbal caution and make it possible to waive charges. It is hoped that the intervention will put an end to the drug use at an early stage, and also that it will prevent the young person from being labelled as a drug criminal. The prosecutor, the police, social services and the guardian(s) of the young person should all take part in the hearing. The aim is to explain to the young offender why the deed was criminal and reprehensible, and to focus on what the young person's situation is like and which measures should be taken.

A penal order should not be issued before the offender has been referred to treatment and his willingness to participate in the treatment has been established. In cases of long-term or hard drug use, punishment can usually be waived only if the offender agrees to seek treatment. Waiving of measures in penalty orders makes it possible to prevent situations where drug addicts are issued fines that they cannot pay and that are consequently converted to imprisonment.

The third special group consists of adults who do not wish to seek treatment. The offender may not be prosecuted if the

offence was minor: the amount of narcotic drugs found equivalent to a few instances of personal use. In addition, one of the special circumstances that support waiving of measures should be present. Such circumstances include the age of the offender, and also if it is their first offence.

Criminal punishability of drug use has been a controversial issue when changes in the penal code have been discussed. It was feared that along with the introduction of the offence of unlawful use of narcotics, punishments would become more severe.

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References ►

HE 213/2000. Hallituksen esitys Eduskunnalle rikoslain täydentämisestä huumausainerikoksia täydentävillä säännöksillä (Government proposal to Parliament concerning supplementary provisions for the penal code on narcotics offences).

Kainulainen, Heini (2002): Pitääkö huumeiden käyttäjää rangaista? (Should drug users be punished?) In Hakkarainen, Pekka & Kaukonen, Olavi: Huumeiden käyttäjä hyvinvointivaltiossa. (Drug user in a welfare state) Helsinki: Gaudeamus.

LaVM 13/2001. Lakivaliokunnan mietintö n:o 13 hallituksen esityksestä rikoslain täydentämisestä huumausainerikoksia täydentävillä säännöksillä. (Legal Affairs Committee Report on the Government proposal concerning supplementary provisions for the penal code on narcotics offences)

Nuutila, Ari-Matti (2002). Huumausainerikokset. (Narcotics offences) In Heinonen, Olavi et al: Rikosoikeus. Oikeuden perusteokset. Helsinki: Werner Söderström Lakitieto Oy.

VKS:2002:3. Valtakunnansyyttäjän määräykset ja ohjeet seuraamuksen määräämisestä huumausaineen käyttörikoksesta. (Prosecutor General's instructions and guidelines on the offence of unlawful use of narcotics) (5.1.2005).

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