8. Drug Control as an Exception in a Humane and Rational Criminal Policy in Finland

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Three Stages of the Modern Finnish Criminal Policy

Following the criminological analysis of David Garland (2001), three different stages in the development of Finnish criminal policy can be identified: mitigation of repression, the punitive turn and conflicting policies. In this chapter, we will scrutinize how these general trends of criminal policy are reflected in the development of drug control policy.

We will begin our examination from the 1960s, when the conditions for humane and rational criminal policy were laid out in Finland. The motivation behind such a policy was to temper the role of the criminal justice system in the resolving of societal issues. From this perspective, the issue of drugs is seen as an anomaly; it has been termed a paradox, since anti-drug measures have been primarily repressive.

In the 1990s, the criminal policy took a punitive turn, which could be partly attributed to increased concerns about organized and international drug-related crime. Governments clamped down and stringent measures were implemented not only in drug control but also within the criminal justice system in general.

Thirdly, it can be concluded from Garland's analysis that the concept of conflicting policies describes the current system rather well: the punitive turn has *not* become predominant since measures intended to reduce or mitigate the role of the criminal justice

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system have also been implemented.[54] However, we will show in this chapter that such reductions or mitigation have barely had any effect for drug offenders. We will explore how the special role approach reserved for drugs has been evident in a strong reliance on the criminal justice system and, in particular, the directing of strict control over those who use drugs.

Towards a Humane and Rational Criminal Policy during the 1960s and 1970s

During the 1960s, a lively debate began in Finland over control policy. The debate drew attention to how the exercise of power in society resulted in the isolation of marginalized groups of people for extended periods of time without guarantees of due process (Eriksson 1967). This debate questioned the use of a punitive penal system. In the Nordic context, one of the most vocal critics was Nils Christie (1968), who pointed out that the rate of imprisonment in Finland was many times higher than in the other Nordic countries.

The debate over criminal policy was ideologically linked to the emergence of a welfare state that sought an equitable allocation of costs and benefits. This approach formed the basis for a humane and rational criminal policy that sought to minimize the suffering and other costs of crime, and of the control of crime, and to allocate these costs fairly among the various stakeholders (Lahti 1972; Lappi-Seppälä 2001; Törnudd 1996: 33–36).

The aim of humane and rational criminal policy was to reduce repression and to use criminal law as sparingly as possible in the management of social problems (Anttila 1967; Lång 1966). In the spirit of a welfare state ideology, particular attention was paid to vulnerable members of society and services provided by social policy were to be enhanced (Lappi-Seppälä 2007). This was also considered a priority within the framework of the tools of criminal

[54] Similar developments have been found in various Western and Nordic countries, but their manifestation, intensity and timing tend to vary, see e.g. Lappi-Seppälä 1998; Lappi-Seppälä 2016; Snacken & Dumortier 2012; Tham 2019; Tonry 1998; Ugelvik & Dullum 2012; Victor 1995. For critique on Garland's analysis, see e.g. Matthews 2002.

policy. The slogan, 'Good social policy is the best criminal policy' expresses the essence of this approach (Kinnunen 2008: 69). The criminal justice system is not the only or even the most important system for controlling crime. Better results can be achieved by reducing social marginalization and welfare inequalities (Lappi-Seppälä 2001: 107–109; Joutsen, Lahti & Pölönen 2001.)

One of the concrete objectives of a humane and rational criminal policy was to reduce the number in the prison population, which had proven to be high in comparison to the other Nordic countries. In this spirit, a fundamental reform of legislation began in the 1970s. The scaling back of the use of imprisonment was widely accepted in legal praxis, and the prison population began to decline. Compared to the 1950s, the number of Finnish prisoners decreased almost by one half during the 1970s, and by the end of the 1980s the prison population had fallen to the same level as in the other Nordic countries (Lappi-Seppälä 2016: 18, 26).

From an international perspective, achieving such a change is exceptional. Tapio Lappi-Seppälä (2001) has found several different explanations behind the change. One explanatory factor he has suggested is that, at the time, criminal policy was not of general political interest in Finland, and instead the debate was expert-driven. Many of those who criticized the repressiveness of control policy played important roles in society during the 1970s and were actively involved in the liberalization of the legislation on criminal justice and the system of sanctions (Lappi-Seppälä 2007). It was also at this time that a reform was undertaken of the outdated criminal law, which had originally been drafted in the 1800s. It is very clear from the report of the Committee on Criminal Law (1976) that the *ultima ratio* principle on which criminal law was built was taken seriously, and the intent was that the use of criminal law was to be the last resort. The purpose of the overall reform of the Criminal Code was to provide a critical assessment of the content of all penal provisions, seek to reduce the number of criminalizations and reduce the penalties for them (Anttila & Törnudd 1992; Lahti 2017.) From this point of view, the drug issue can be seen as an exception. This has been called the paradox of Finnish criminal policy (Kinnunen 2008), which still remains unsolved.

Total Ban on Drugs

The special way in which drugs were dealt with had a long history. When the first wave of drugs washed over Finland (among other Western countries) in the 1960s, new legislation was passed to combat the situation. When the 1972 Narcotics Act was enacted, the need to criminalize the production, trafficking and distribution of drugs was widely recognized, while the question of whether or not drug use should be criminalized became a matter of controversy. The Single Convention on Narcotic Drugs of 1961 did not require parties to make drug use a punishable offence; rather it encouraged treatment and care.

At various stages in the drafting process, views were expressed both for and against the criminalization of use. Following a series of very close votes, in 1972 it was finally decided to criminalize the use of drugs (Hakkarainen 1992; Hakkarainen 1997: 131–150; Kainulainen 2009: 42–59; see also chapter Hakkarainen & Kainulainen in this book). It was recognized that the criminalization of use would cause harms, and in order to avoid these, the police, prosecutors and judges were encouraged to apply the provisions on the waiving of measures so that users would not be punished for their personal consumption. In spite of the recommendations to interpret the legislation thus – with a heavy focus on depenalization[55] – waiving the measures was rare throughout the 1970s and 1980s (Kainulainen 2009: 62–65, 73–82).

The Narcotics Act showcased a repressive stance towards the issue of drugs, which was further enhanced by the strictness of its implementation. The end of 1960s saw the police force improving its skills to the effect that it could detect drug-related crimes that would have been otherwise left uncovered. Drug crime investigation became a special branch, new investigation methods were adopted through foreign influence, undercover operations were attempted, interrogation skills were developed and good relationships were established with the actors working in the illegal markets. The increased number of drug offences in the statistics was the reason why the police was allocated more

[55] Depenalization means that the use of drugs remains a criminal offence but punishment is, in practice, no longer imposed.

human resources and equipment to drug units (Kainulainen 2009; Kainulainen, Savonen & Rönkä 2017; Kontula 1986). However, the number of drug offences was pretty small when looking at recorded crime as a whole.

When the 1972 Narcotics Act was enacted, some experts in criminal law had opposed the criminalization of drug use. Since drug use was criminalized despite this opposition, a few experts continued to raise the issue. Recommendations were presented on how the provisions on the waiving of measures should be applied, but they had little effect on enforcement praxis. For example, within the practices of the police and prosecutors, it was de facto a dead letter (Kainulainen 2009: 73–82).

From the 1980s there was increasing criticism in the legal literature. The criticism was directed in particular against the way in which the Narcotics Act was applied. What faced criticism in the literature alongside strict user control was the way criminal responsibility was established in cases of more aggravated crimes pertaining to drug distribution. Some criminal law experts were also concerned with the possibility that criminal liability was being extended too far with respect to drug offences. The case-law seemed to be consistently producing cases in which exceptions were made to the general doctrine of criminal law, and the principles limiting criminal liability in general were compromised on the grounds of the 'special nature' of drug crime (Lahti 1985; Träskman 1995; Utriainen & Hakonen 1985). The question was also raised whether quite heavy sentences were being imposed on defendants for drug offences with a very low threshold of evidence. When a person was convicted of a drug offence, the quantity of drugs involved was generally not determined by what had been found in his or her possession but on what his or her accomplices had said about the quantity of drugs that he or she had handled (Kainulainen 2007: 49; Kainulainen, Savonen & Rönkä 2017: 137–139; Kontula 1986: 235).[56]

[56] From this point of view, it can be noted that during the 1990s, after the police were gradually permitted to use a variety of undercover policing methods (like phone tapping), the evidence pertaining to the quantity of drugs has diversified and the legal protection of defendants has, to some extent, improved.

The way in which drugs were being controlled was also criticized in criminological studies that dealt with police, prosecutorial or court practice. The police played quite an active part on the drug front. Drug users were observed, arrested and brought before courts for punishment (Kainulainen, Savonen & Rönkä 2017). Attention was paid to the intensity of the use of coercive measures in criminal proceedings, for example in the form of the very long periods that individuals could be held under arrest (Kontula 1986: 57; Träskman 1986: 22–23). Indeed, it was only after Finland acceded to the European Convention on Human Rights in 1989 that the maximum period of arrest was shortened. During the 1970s and 1980s drug users could be held under arrest for up to 17 days, but in practice it could be even longer before a court ruled on whether or not the suspect could be held in pre-trial detention (Heinonen 1989: 76–79; Kainulainen, Savonen & Rönkä 2017: 126–129).

Furthermore, in addition to the fine imposed on the drug offender, he or she was ordered to pay the state for the value of the drugs that the offender had used. This practice was not abolished until the criminal law was amended in 1992. The purpose of the Narcotics Act was to concentrate crime control around the distributors, who were seen to represent professional and organized crime. However, the research of police practices shows that for decades the police control has focused on catching drug users (Kainulainen 2009; Kinnunen 2008; Kontula 1986). Interviews of those who had been apprehended for using drugs showed that they objected to the prohibition on drug use and stated that being the subject of control had had many negative consequences. Indeed, there was an accumulation of official and unofficial sanctions, which easily initiated a process of exclusion that was difficult to reverse (Heinonen 1989; Kainulainen, Savonen & Rönkä 2017).

A Punitive Turn: The Tightening of Control in the 1990s

Like in many other Western countries, the Finnish criminal policy remained fairly moderate during the 1980s, but the 1990s brought a shift in the debate on criminal policy.[57] The ideological

[57] The punitive turn seems to be similar in Western societies, but when analyzing more closely, differences between countries can also be found (see

basis of the welfare state began to crumble due to the economic depression in the 1990s. The criticism stated that welfare states increase problems rather than solve them, and that such states are too expensive, inefficient and passivating. Also as part of the discussion, the starting points for humane and rational criminal policy began to be undermined (Lappi-Seppälä 1998).

One way in which this policy was undermined was criticism of the fact that the participants in the debate on criminal policy had been limited to a small and influential group of experts who shared one another's views. For example, some right-wing politicians were vocal in airing their views in the media on the need to tighten control. Their demands received some political weight and support, which was reflected in more punitive amendments to the Criminal Code. One example of this was that the statutory definitions of violent offences were made more punitive and the accompanying penal latitudes were raised, which was soon reflected in an increase in the number of prisoners (Lappi-Seppälä 2007; Lappi-Seppälä 2012; Lappi-Seppälä 2016).

When the repression was being mitigated in the 1970s and 1980s, drug-related crimes received wide coverage in the press and generally sparked public interest, but they were *not* at the centre of criminal policy decision-making. The number of cases and 'drug convicts' was relatively low compared to other types of crime, such as property crimes or drink driving. For example, the report of the Committee on Criminal Law (1976) contains only a few scattered references to drugs. Achieving the main goal of criminal policy, which was the reduction of the prison population, was to be done by focusing, above all else, on those offenders who were filling the prisons, such as those who had been convicted of property offences.

However, in the debate on criminal policy, the focus was now turned to the drug issue from another angle, since the control of drugs appeared to have an impact on the choice of tools used in other areas of criminal policy. One of the drivers of this debate was 'Den gode fiende', the book written by Christie and Bruun (1985) that was published in Finnish in 1986. In their critical analysis, the authors highlighted how drug-related crime had been

Garland 2001; Hermansson 2019; Pratt 2007; Tham 2019; Victor 1995; von Hofer & Tham 2013).

at the forefront as the grip of the mechanisms of control had been strengthened and the range of measures used by the control authorities had been expanded (see also Träskman 2004).

In an article published by Per Ole Träskman in the joint Nordic book, 'Varning för straff' ('Beware of Punishment'), he uses the term 'dragon's egg' to illustrate the phenomenon identified by Christie and Bruun. According to Träskman (1995), organized drug crime was used as the rationale for injecting elements into the criminal justice system that were foreign to the Finnish legal system and that seriously jeopardized the legal protection of suspects. Pressure was soon exerted to expand the scope of these elements to other types of offences. In the end, according to Träskman, the control of drugs has had a significant impact on the entire criminal justice system and on the punitive turn in this system (Träskman 1995; Träskman 2003; Träskman 2004).

The police took an active role in defining the nature of illegal drug markets, which further consolidated the linkage between drugs and criminal activity. The review of law enforcement authorities painted the picture of professional, organized and international drug crime, which in turn called for an increase in the coercive measures available for use. Consequently, the police were given a set of new undercover policing methods, like cellphone surveillance, bugging, undercover operations, pretended drug purchases, use of data sources and controlled delivery.

After the mid 1990s, the prisoner rate in Finland, which had remained low, began to grow again. This was the result of stricter policies, starting with drug offences and later including violent offences. The change could be seen not only in the growth of the number of prisoners convicted of drug offences and violent offences, but also in the longer length of sentences given (Lappi-Seppälä 2012). According to Lappi-Seppälä, this was a clear consequence of the punitive turn, which had led to a tightening of control (Lappi-Seppälä 2001; Lappi-Seppälä 2007). However, the increase in the number of prisoners convicted of drug offences is also explained by changes in the drug market.

The significance of drugs in the criminal justice system also increased due to the considerable changes that took place in

the amount and nature of drug crime. This was influenced by a second wave of drug use (Partanen & Metso, 1999; Partanen 2002), which resulted in an expanded drug market. This, in turn, could be seen in an increase in the supply of drugs, the emergence of new drugs on the market, and a strong increase in the demand for drugs. According to the police, drug-related criminality in the 1990s began also to have more common features with organized crime, and its connections to international criminality deepened. The changed drug situation was soon reflected in the criminal justice system. The number of drug offences recorded in the statistics increased. The number of seizures multiplied, as did the quantity of drugs seized. The movement of large quantities of new substances classified as dangerous, such as ecstasy and buprenorphine products (generally, Subutex), which was later used in drug substitution treatment, was reflected in the penal system. The number of prisoners serving sentences for drug offences increased, and they were being sentenced to very long terms of imprisonment (Kainulainen 2007).

Drug Control Remains Strict

The penal provisions on drug offences were reformed at the beginning of the 1990s as part of a comprehensive reform of the penal code. The 1988 Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances also played a part in improving international cooperation to combat illegal drug sales. It required the extension of criminal responsibility to facilitate the access to the factors that uphold the drug industry. One of the key aims was the prevention of money laundering.

In terms of drug use, there was no strong attempt to carry out a critical assessment of the justifications for the criminalization of the use of drugs. The main debate at the time was over what would be the appropriate penal latitude for the use of drugs. The Working Group on Drug Offences, chaired by Träskman, proposed a petty form of the basic offence – a drug infraction punishable only with a fine. The Minister of Justice was concerned that such an approach would convey the wrong message – that the

control of drugs was being eased – which would, in turn, tempt young people to become new users of drugs and would bring in more people as drug dealers. Also, members of Parliament joined in the debate. In the total reform of criminal law, offences were generally set out on three levels of seriousness, with a petty form, a basic form and an aggravated form, however a different approach was adopted with respect to drugs. The use of drugs remained part of the basic drug offence, for which the penal latitude continued to range from a fine to imprisonment for two years. However, the rationale for the possibility of the waiving of measures was regarded as so strong that a special provision on this was taken into the criminal law. The intention was that measures would be waived more often, particularly in cases where a drug user sought treatment, but also in other petty cases of drug use. Thus, depenalization now received strong support by penal code (Kainulainen 2009: 95–122; Kainulainen 2017).

This time there was a change in the application of law, and prosecutors began to decide much more frequently to waive measures in the case of drug offences. The increasing use of the waiving of measures prompted lively debate. Some deemed it a good way to prevent the exclusion of drug users, in particular of young people, while others were concerned about the blurring of the line between what is allowed and what is prohibited. The Finnish Prosecutor's Association proposed to the Ministry of Justice that a petty form of the offence be incorporated into the Criminal Code. Since this would have a narrower penal latitude, offences involving the use of drugs could be dealt with through summary penal proceedings (Kainulainen 2001; Kainulainen 2009: 134–137; Kainulainen 2017).

Indeed, the provisions criminalizing the use of drugs were amended at the beginning of the 2000s, but this reform did not call into question the need for criminalization. Nonetheless, an approach based on fundamental and human rights had increasingly gained ground in the debate on criminal law, even though this was not reflected in the formal opinions given by criminal law scholars on the use of drugs as an offence. It is possible that a form of *Realpolitik* thinking may have been behind this approach. Although some experts might well have opposed the criminaliza-

tion of the use of drugs, they did not raise the issue because they did not believe that this view would have prevailed in political decision-making.

Setting the use of drugs apart from the basic drug offence, as a petty form of the offence, is in itself a positive development. Under pressure from the police, the penal latitude was set as a fine or imprisonment of up to six months, so that the police retained the right to carry out searches of the premises of people suspected of drug use. From a criminal law perspective, the severity of the penal latitude should be based on the reproachful nature of the conduct in question, and not on the needs of the police. However, the amendment of the law to provide for a separate, petty offence of drug use led to a tightening of the penal system, with the good start that had been made towards a shift to the wider use of the waiving of sanctions quickly ending (Kainulainen 2009: 359–360; Kainulainen 2017.)

Hence, following the amendment of the law to provide for a separate offence of drug use, the penal system was tightened. The simplification of the procedure for imposing fines has led to the police imposing a fine for drug use in a rather schematic manner. Following the amendment, it has been very rare that measures have been waived. When the amendment was enacted, the authorities were encouraged to waive measures, particularly for two groups of people. The Office of the Prosecutor General and the National Police Board jointly drafted guidelines for the implementation of this position, and the guidelines have recently been revised (VKS 2018: 2). Young people who were apprehended experimenting with or using drugs should be cautioned rather than fined. Problem drug users should be encouraged to seek treatment, in which case they would not be fined. Studies of enforcement practices have shown that various arrangements for cautioning minors have been organized in different municipalities and in general they have not been fined. On the other hand, the diversion of adult problem drug users to treatment has not succeeded and, consequently, the number of such decisions to waive measures has remained very small (Kainulainen 2009: 346–380).

For decades, the police have considered it important to tackle drug use. This is also stated in recent instructions to the police: ‘In

order to maintain both general and special deterrence, it is important that the police intervene in all cases of drug use and that these also be recorded as criminal offences known to the police' (PO-2018-49612). These same instructions refer to the possibility for the police to decide to waive measures. A caution by the police is considered sufficient for very petty incidents of drug use involving the possession of a small quantity of drugs or where the drugs have been used only at home. The police do not publish statistics on the number of cautions it has issued. According to police, such decisions are rarely made, even if suitable cases for the waiving of measures can be found among drug offences. Indeed, since the 1960s, the police have been reluctant to waive measures for drug use (Kainulainen 2001; Kainulainen 2009; Kainulainen 2017).

Indicators of the Control of Drugs

Drug offences are graded according to three different degrees of severity, according to the seriousness of the offence. Drug offences involve the illegal production of drugs, import, export, transport, distribution and possession of drugs. The sanctions are a fine or a maximum of two years imprisonment. The drug offence is aggravated if it involves very dangerous drugs or a big quantity of them, if substantial financial profit is sought, the offender acts as part of organized group, the offence causes severe danger to the health or life of several people, or the drugs are distributed to minors or otherwise in un unscrupulous manner. The penalty is imprisonment from one to ten years. In the reform of 2001, the new prerequisites were introduced for petty drug offences. It includes the use of drugs and the possession of drugs or attempt to acquire minor quantities for own use. The least severe drug offence, the use of drugs, may be punished with a fine or a maximum of six months imprisonment. In addition to this, the Penal Code contains penal sanctions for the preparation and promotion of drug offences (see Penal Code 50:1–4).

Recorded drug offences increased steeply during the 1990s, and the increase has continued. Figure 18 shows that the majority of drug offences recorded by the police continue to involve drug use. In recent years, the police have recorded around

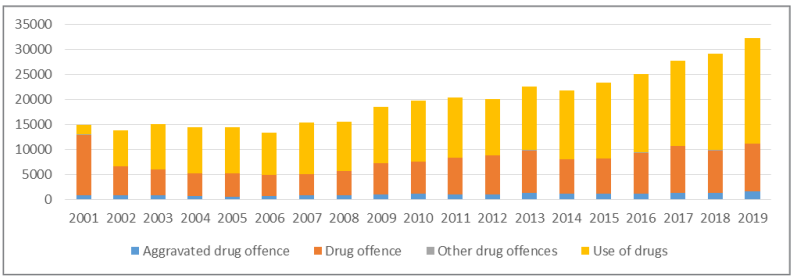

Figure 18. Recorded drug offences (unlawful use of drugs; drug offence; aggravated drug offence; other) in Finland, 2001–2019.
Source: Statistics Finland (1).

30,000 drug offences, of which about 20,000 have been drug use. This means that more than half of the drug offences recorded by the police have involved drug use. The punishment has usually been a fine imposed by the police. Very few decisions have been taken to waive measures.

Since the 1960s, police have kept statistics on the number of drug seizures they have made and on the quantities of various drugs seized. Data on drug seizures (see Table 16) can be used to form a picture of changes in the drug market, such as the availability of different drugs or fluctuations in the amounts. However, the reliability of a timeline analysis is undermined by the lack of statistics on the potency of the drugs that have been seized. For example, if one year the amphetamine found on the market was typically low-grade, but in the following year very strong amphetamine was seized, this information is not revealed by the statistics, and the data on amphetamine seizures from one year to the next cannot be compared.

In the Finnish drug market cannabis has been the most commonly seized by the law enforcement agencies. Also, amphetamine and methamphetamine, ecstasy and buprenorphine-based opioid substitution medications (especially Subutex®) are common, whereas heroin and cocaine are rarer, although this seems to be changing.

Very little statistical information is available on coercive measures used by the police. In addition, the police do not keep statis-

Table 16. Quantities of seized drugs in Finland, 2015–2019.

	2015	2016	2017	2018	2019
Cannabis (inc. hashish kg)	271	332	1.015	399	612
Cannabis-plant (N)	23,000	18,900	15,200	13,100	15,900
Amphetamines (kg)	300	192	259	202	177
Ecstasy (tablets N)	23,660	127,680	66,420	219,350	265,510
Heroin (kg)	0.42	0.3	0.36	0.08	7.8
Cocaine (kg)	9.2	18.5	7.3	10	223
Subutex® (tablets N)	42,950	73,670	24,510	63,130	56,470

Source: Police.

Table 17. Drug offenders* apprehended, arrested and remanded in Finland, 2016–2020.

	2016	2017	2018	2019	2020
Apprehended	1959	2418	2574	2866	3192
Arrested	1614	1747	1749	1857	1906
Remanded	565	555	520	558	496

(*) unlawful use of drugs, drug offence, aggravated drug offence and other drug offences.

Source: Statistics Finland (2).

tics on whether they only stop drug users on the street and seek to determine whether or not they have drugs in their possession. It is only if a person is brought to a police station and he or she, or his or her clothes, are searched in order to detect drugs that there is usually a record of the apprehension. The number of persons apprehended, arrested and remanded for trial each year can be seen in Table 17. In 2020, a total of 3200 apprehensions were made. The number of arrests was 1,900 and remands 500. In traffic, the examinations to detect drug use have increased markedly. From 2013 to 2020 the number of examinations increased from 4,500 to 12,000.

The police publish selected data on their use of undercover policing methods, such as interception of telecommunications or

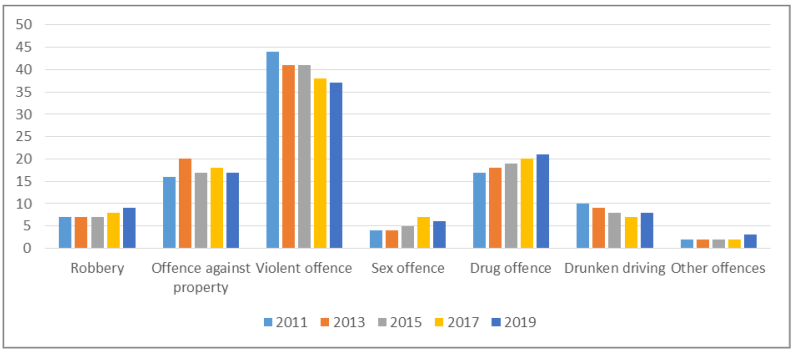

Figure 19. Prisoners in Finland, 2011, 2013, 2015, 2017, 2019 (100 %) (principal offence of sentenced prisoners).
Source: Criminal Sanctions Agency.

technical surveillance. An annual report on the use of covert coercive measures is prepared for the Parliamentary Ombudsman. According to these reports, very many of these cases have involved the investigation of drug offences. According to the assessment of the police themselves, the use of covert coercive measures has been very useful in the detection of drug offences. The police are not at all forthcoming on their covert activity and the use of pseudo-purchases. They also do not report on their covert collection of intelligence.

During the 1990s, the number of prisoners serving a sentence for a drug offence as their main offence began to increase (see Figure 19). In 2019, 20 per cent of prisoners had been convicted of a drug offence as their main offence (N = 464). The number of all sentenced prisoners was 2260. Of the prisoners with a foreign background, almost one half had been convicted of a drug offence. The conversion of unpaid fines into imprisonment was reduced by a reform implemented in Finland in 2008. However, the law is once again being tightened and the trend is reverting to what it was before. No statistics are available on what offences had led to the original unpaid fine, which was subsequently converted into imprisonment. Nonetheless, it can be presumed that some of the offenders serving a sentence of imprisonment for unpaid fines had been guilty only of drug use.

Surveys of the health of prisoners show that a significant proportion of them suffer from alcohol and drug problems

(Obstbaum-Federley 2017). From the mid 1990s there was a relatively rapid change in Finnish prison services and rehabilitation programs were introduced. As the number of drug-using inmates continued to rise, as did the number of inmates sentenced for drug offences, there was a strong need to establish drug treatment programs in prisons (Kainulainen, Kinnunen & Kouvonen 2001). The programs reflect a dual-track policy in which drug-using inmates are seen either as criminals who are to be punished and controlled more harshly, or as rehabilitating drug users who are entitled to welfare services (Kolind et al. 2013). The substance control of prisons has been intensified significantly in recent years. In addition, measures related to training, information, rehabilitation and health care have been implemented.

Statistics do not necessarily provide information on the intensity of the control of drugs. From this point of view, studies that examine those involved in control are of interest. There have been a few studies on the drug police. There have also been a few studies that have contacted those who have been the subject of control. For decades, the police have attached great importance to intervening in the behavior of drug users. In addition, the police have rather intensively monitored those people that they have identified as being of interest (Kainulainen 2009; Kainulainen, Savonen & Rönkä 2017; Kinnunen 2003). This explains, in part, how the police are able to apprehend drug users, as does the fact that some of those involved in the illegal drug market are quite active in the commission of many different types of offences. However, the criminal justice system has succeeded rather poorly in responding to the needs of those who are caught in a cycle of drugs and crime.

The Failure to Lower the Level of Repression in Respect of Drugs

With respect to drugs, it has proven to be difficult to launch a debate that would provide a critical assessment of drug control and its consequences, as well as alternatives to the use of the penal system and criminal law. Träskman (2004) has pointed out that while the prevailing severe control of drugs and its harmful effects have indeed been criticized, it has not had a positive influence in

the development of criminal policy, since politicians have not been convinced of the need for mitigation. On the contrary, for a long time, the trend has been towards a tightening of control rather than a relaxation of it. In addition, international models and the need for amendment of the law in line with EU requirements have typically been referred to precisely when a tightening of controls has been desired.

During the 1990s, when a general debate arose that emphasized fundamental and human rights, it would have been a good opportunity for criticism of the control of drugs and, in particular, for easing the prohibition on the use of drugs. Fundamental and human rights were no longer just an internal constitutional issue. Instead, human rights thinking pervaded all areas of law, including criminal law (Melander 2008; Pirjatanniemi 2011). When examined from the point of view of fundamental and human rights, it would have been very difficult to justify, for example, a prohibition on the personal use of drugs.

Amnesty International has examined drug control and prohibition from the human rights perspective, and came to the conclusion that the current repressive control has been inefficient, leading to numerous violations of human rights. On a global scale, the violations include capital punishment; the coercive use of arms; and corruption and repeated questionable actions by the law enforcement that have been either unlawful or 'in the grey area', leading to the neglect of legal protection. The vulnerable people in society are typically those who resort to drug use and suffer from it. However, the current repressive control does not focus on seeing to their social rights or right to health, but rather exacerbates the issues through stigmatization, alienation and marginalization of users (Amnesty 2019).

The criminal justice system can be developed not only by amending legislation, but also by changing the way in which the law is interpreted or applied. For example, the Supreme Court has sought to reduce the sentences imposed on persons who had been apprehended in the smuggling of drugs on the grounds that they had not been responsible for the planning of the drug trafficking (Supreme Court precedents 2017:9; 2018:45; 2020:45). However, the Supreme Court has upheld a strict attitude towards

the penalization of drug use – the scope for waiving of measures has been narrowed to a great extent (Supreme Court precedents 2002:111; 2003:62).

Conflicting Policies in the 21st Century

Garland (2001) states that one of the characteristics of the current state of affairs is that, after the punitive turn, there has been no unified vision of criminal policy. Societies have conformed to high levels of criminal activity and the public sector no longer strives to solely prevent crime. Today, we simultaneously resort to numerous different criminal policy measures that are based on very different ideological starting points – even at odds with one another.

Nordic criminal policy has been characterized as extraordinary, since it has remained humane and rational in spite of the punitive requirements (Pratt 2008a; 2008b). The Nordic penal exceptionalism has gained admiration in international discussion, but it has also engendered criticism, according to which such exceptionalism does not exist. The tone of the discussion varies based on which countries are used as points of comparison, what kinds of questions are being asked and to whom the message of the current state of criminal policy is directed. Moreover, when the focus is placed on the target of the repression, more aspects are revealed that are open to criticism. For example, the UN Committee against Torture has drawn the Nordic countries', and especially Finland's, attention to the large amount of time individuals spend on remand and the harsh circumstances at the police station cells (Barker 2013; Ugelvik & Dullum 2012). Minors are rarely found in Finnish prisons, but the number of out-of-home placements has been on the increase.

Lappi-Seppälä argues that various structural and cultural factors can be found behind the moderate criminal policy. The question is about a constant commitment to the Nordic welfare state, which aims for solid safety nets and an even distribution of income. Citizens and the government trust each other, and politics strives for consensus rather than conflict (Lappi-Seppälä 2007). Although there have been signs of a chilling of the criminal policy climate in Finland, it should be noted that the debate in Finland

does not seem to be as emotional or politicized as it is in many Anglo-Saxon countries, or even in Sweden (Hermansson 2019). This has been reflected in the program of many political parties and in the criminal policy initiatives of politicians, which have not sought to appeal to the general public through populist crackdowns (Boucht 2020; Häkkinen 2020; Kainulainen, Honkatukia & Niemi 2021; Lappi-Seppälä 2012; Lappi-Seppälä 2016).

The general public, in turn, does not seem to be getting very heated about crime. This can be seen, for example, in a recent study of public attitudes towards punishment, according to which the respondents would, in general, have imposed sentences that were even lighter than the prevailing sentencing practice (Balvik et al. 2015; Kääriäinen 2017). Many respondents also welcomed the idea of developing treatment-oriented alternatives to prison for offenders with substance abuse problems. The general debate on criminal policy in recent years seems to have focused on certain limited crime themes, such as offences committed by immigrants, in particular, sexual offences. On these issues, the tone of the debate has become sharper.

Using Garland's idea on conflicting policies we can point out that the punitive turn has manifested itself as strict continuous amendments to the Criminal Code: the scope of penal provisions has been broadened and the sentence scale heightened. This trend is especially visible for violent crimes and sex offences, which have been made stricter several times during the last few years. The number in the Finnish prison population began to rise at the turn of the millennium, but it levelled off shortly after and has since reduced. Lappi-Seppälä sees that this is partly due to the development of the sanctions system, which has been on par with the approach of humane and rational criminal policy. When the Criminal Code has been made more severe, the common reaction has been to mitigate the sanctions system. According to Lappi-Seppälä, in many cases, changes and innovations in the system of sanctions functioned as a safety valve, easing the pressure created by politically motivated reforms in the realm of criminalization (Lappi-Seppälä 2007: 219, 2016: 31).

Indeed, in the penal system, legal experts have actively begun to seek alternatives to imprisonment. Community service was the

first such alternative to be introduced, followed by the juvenile penalty for young offenders, and the most recent reform that introduced a form of supervision as punishment, which offenders serve in their own home. Intensive abuse of substances or drugs, or homelessness, can be a bar to community service or supervision. Thus, the relaxation of the penal system in recent decades has not been to the benefit of vulnerable persons who have been apprehended for drug offences.

The more lenient approach in the system of sanctions is also represented by the use of mediation in the case of less serious offences; successful mediation usually results in a decision to waive prosecution. Mediation is not possible at all in the case of drug offences because there is no victim in the offence who would be the other party to the mediation. Some years ago, plea bargaining was introduced in an attempt to reduce the expenses incurred by the criminal process, whereby the perpetrator could participate in defining the proceedings he or she is prosecuted in, which would mitigate the punishment. Plea bargaining is applied only in more serious charges; however, the bargaining is not applicable to aggravated narcotics offences.

The number of imprisoned drug addicts is considerable. The Imprisonment Act, which was introduced in 2006, placed an emphasis on drawing up an individual sentence plan. The number of rehabilitation programs in prison has been increased, but their implementation has been met with many problems, for example, not all drug addicts are recognized or are deemed to profit from such programs (Obstbaum-Federley 2017). The programs also rarely accept those on remand, convicts serving short sentences and those who are serving a conversion sentence due to unpaid fines in prison.

Discussion

New participants have entered the debate of criminal policy, and the debate has become more diverse. This is also reflected in drug policy. The 'role' of drugs is being redefined internationally, which can be seen particularly with regard to cannabis. The need to control the distribution of drugs is generally agreed on in the

EU, which in turn has strengthened international cooperation. However, the member states are not in full agreement as to the view towards the use and users of drugs. Some states emphasize the role of penal control, others the need to weaken adverse effects. However, several member states have depenalized the use of drugs, which ensures that punishments are not necessarily included in the political agenda: it is understood that there are ways to apply the criminal legislation and simultaneously employ mitigation and leniency in the proceedings (Chatwin 2011; Hughes & Stevens 2010).

The drug control policy in Finland has been built on the criminal justice system ever since the 1960s. Compromises have been made to the principles of humane and rationale criminal policy. The penal provisions regarding drug-related crimes have been broadened, more efficient drug control has been enforced and the application of Criminal Code has been extremely stringent. When the sentence scale was narrowed down in an amendment pertaining to drug abuse, the penal practices were, in turn, made stricter. Even though mitigation has been employed within the criminal justice system (e.g. with mediation and plea bargaining) and alternatives have been devised for imprisonment, those convicted of drug-related crimes have hardly been able to benefit from these changes. The number of such convicts has been on the increase in prisons, and generally the number of addicted people has been shooting up. It has been noted that these people usually come from poorer circumstances than those who end up applying for non-prison rehabilitation services. Bringing rehabilitative elements into the practical life of prisons is not simple, however, and hitherto there has not been enough political will in Finland to adopt, for example, the contract treatment (kontraktsvård) model used in Sweden.

From the perspective of humane criminal policy, the use of the penal system should not be discriminatory. Regardless, penal control has been concentrated on drug users who are in vulnerable positions. Some of these people are constantly involved in criminal proceedings, both because of their drug use and because of other crimes. The dominant repressive system of control has an adverse effect on drug users. A ban on drug use can make it more difficult

to get help, support or treatment, as well as remain in treatment when the relapses during a normal treatment process are defined as criminal. Mistrust, control and sanctions can easily make their way into the common practices of drug user rehabilitation. The current ban on drug use has numerous adverse consequences, and it makes it more difficult for drug users to act as full members of society. Now would be a good time to assess the necessity and fairness of the ban, and to set the wheels in motion to achieve a decriminalization reform. Concurrently, there is a need to fully assess the content, expenses and effects of the current repressive drug control system.

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