

DRUGS CRIMES: FORWARD LOOKING EXPECTATIONS AND CHALLENGES

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Abstract. *Drug phenomenon is relatively new in our country; it became relevant only in the ninth decade of the last century. A new phenomenon or a process is usually dynamic in the initial stages and only later does it acquire features of stability and the main trends that have become prominent several years ago remain unchanged.*

The author shows the data of drugs crime and other indicators and the aspects of their perspectives. In the article, a question about drug crimes in Lithuania is considered in all aspects. The author maintains that the rapid emergence of many new non-controlled psychoactive substances represents an increasing challenge for current models of drug control.

Keywords: *crime investigation, crimes, narcotic and psychotropic substances, new psychoactives substances.*

1. Drug Law Offences

Overview of the criminal situation. Compared to the previous years, there has been no major shift in the balance between drug law offences related to use and those related to supply. In most European countries, offences related to drug use or possession for use continued to comprise the majority of drug law offences in 2009, with Estonia, Spain, France, Hungary, Austria and Sweden reporting the highest proportions (81–94%). Offences related to the supply of drugs have remained stable from 2007, although they show an estimated increase of about 7 % in the European Union during the period 2004–2009¹.

With reference to the data of the Information Technology and Communications Department under the Ministry of the Interior, compared to 2009, the number of all criminal acts registered in Lithuania decreased by 6.7% (77 734 and 83 273 accordingly) or increased by 7%, compared to 2002 (i.e. 72 646), when the country recorded the lowest percentage of criminality throughout the last decade. Even though in the general criminal context, criminal acts related to illicit possession of drugs make up only 2.86% (criminal acts against property make up more than a half of all crimes), contrary to the tendency of the general criminality decrease, the number of registered criminal acts related to drugs is higher. Last year, the number of such registered criminal acts was only 1.2% higher, compared to 2009. The density of criminal acts of that kind for 100 thousand inhabitants has accordingly changed scarcely, i.e. from 65 to 67 acts.

In 2010, 2220 acts related to illicit circulation of drugs were registered, i.e. 131 acts or 19.2% more than in 2009 (2189). With reference to the statistics provided by the Information Technology and Communications Department under the Ministry of the Interior, 2220 criminal acts registered in 2010 related to the possession of drugs include:

1318 – due to illicit possession of drugs and psychotropic substances with no aim of distribution (1313 in 2009, 1042 in 2008) – Article 259 of the Criminal Code of the Republic of Lithuania²;

821 – due to illicit possession of drugs and psychotropic substances with an aim of distribution (835 in 2009, 747 in 2008), 87 of which concerned distribution of large quantities – Article 260 of the Criminal Code of the Republic of Lithuania;

21 – due to distribution of drugs to minors (15 in 2009, 14 in 2008) – Article 261 of the Criminal Code of the Republic of Lithuania;

5 – due to the manufacture of equipment for the production of drugs and psychotropic substances (2 in 2009, 2 in 2008) – Article 262 of the Criminal Code of the Republic of Lithuania;

2 – due to seizure of narcotic and psychotropic substances (2 in 2009, 7 in 2008) – Article 263 of the Criminal Code of the Republic of Lithuania;

1 Annual report 2011 [interactive]. [accessed on 18-12-2011]. <[ww.emcdda.europa.eu/events/2011/annual-report](http://www.emcdda.europa.eu/events/2011/annual-report)>.

2 Law on the Approval and Entry into Force of the Criminal Code. *Official Gazette*. 2000, No. 89-2741.

10– encouragement (persuasion) to use drugs (8 in 2009, 8 in 2008) Article 264 of the Criminal Code of the Republic of Lithuania;

14 – due to unlawful cultivation of poppies or cannabis (9 in 2009, 8 in 2008) – Article 265 of the Criminal Code of the Republic of Lithuania;

7 – due to illegal possession of precursors of drugs and psychotropic substances (precursors) of 1 category (3 in 2009, 3 in 2008) – Article 266 of the Criminal Code of the Republic of Lithuania;

16 – due to drug smuggling (4 in 2009, 3 in 2008) – Article 199 of the Criminal Code of the Republic of Lithuania.

Distribution of criminal acts related to the illicit circulation of drugs in the territory of the country is constantly varying, however, more than 63% of them are still registered in five largest cities, a third of all the crimes of this kind registered in the country are registered in the capital (35% in 2009, 33% in 2008). The activeness of such criminality is preconditioned by the following unbiased reasons: concentration of people (especially youth), the greatest income, offer of entertainment and development of infrastructure; the largest forces of law enforcement agencies are also based in Vilnius.

Administrative offences related to drugs. In 2010, 5008 (in 2008- 2281, in 2007- 2515) administrative offences³ related to illicit trafficking or use of drugs or psychotropic substances were registered (Table 1).

Table 1. Administrative offences related to illicit trafficking of drugs or psychotropic substances, 2009–2010

Administrative offence	Number of offences			
	2009		2010	
	Total	Incl. juvenile	Total	Incl. juvenile
Illicit acquisition or disposal of drugs or psychotropic substances in small amounts without intention to sell or otherwise distribute or Use of drugs or psychotropic substances without doctor's prescription (Article 44, Lithuanian Administrative Code)	2380	81	4783	126
Illicit cultivation of opioid poppies, cannabis or coca trees (Article 107 ² , RL Administrative Code)	606	–	225	1
Total	2986	81	5008	127

3 Administrative Code. *Official Gazette*. 1985, No. 1-1.

Other drug-related crime (property crimes, violence under the influence of drugs). Thus, a mutual reinforcement effect between criminal involvement and drug use may exist, with those involved in a deviant criminal subculture being at elevated risk of developing drug problems and those with drug problems being at elevated risk of becoming involved in criminal acts. For example, according to the data of the Information Technology and Communications Department under the Ministry of the Interior, in 2010, 1342 criminal activities related to the use of drugs and psychotropic substances were registered (631 in 2009, 718 in 2008), including 1050 (465 in 2009, 500 in 2008) criminal acts committed by drug addicts, and 279 (166 in 2009, 218 in 2008) criminal acts committed by persons intoxicated with drugs or psychotropic substances. Analysis of these data leads to the assumption that, first, law enforcement authorities effectively apply the pre-trial disclosure and examination recommendations and investigate physical conditions of detained persons. This helps evaluating the mechanisms of crime and other facts. In addition, the number of individuals dependent on drugs and forced to commit a crime because of the need of material resources necessary for the acquisition of drugs has increased (Table 2).

Table 2. Detection of persons suspected (accused) of having committed criminal acts while intoxicated with drugs or psychotropic substances, 2007–2010

Date	2007	2008	2009	2010
Detected persons suspected (accused) of having committed criminal acts, including:	22703	23249	24122	24512
– by persons intoxicated with drugs or psychotropic substances	175	191	192	279
1) murders, incl.:	294	306	302	295
– intoxicated with drugs or psychotropic substances	7	0	9	5
2) thefts, incl.:	7701	8067	8584	8203
– intoxicated with drugs or psychotropic substances	43	44	36	39
3) robberies, incl.:	2093	1967	1892	1608
– intoxicated with drugs or psychotropic substances	11	11	10	9
4) property destruction or damage, incl.:	958	1081	1260	1275
– intoxicated with drugs or psychotropic substances	8	8	3	10

Offenders. With reference to the data of the Information Technology and Communications Department under the Ministry of the Interior, 1704 individuals (who committed criminal acts related to the possession of narcotic or psychotropic substances) were registered in 2010 (1513 in 2009, 1226 in 2008, 1113 in 2007), 211 of them were

women, 19 citizens of foreign countries and 5 stateless persons. The males detained make up 87%, last year they made up 83%.

The characteristics of the detainees for the illicit circulation of drugs have remained unchanged, these are usually young persons under 30 years of age (65%), having scarce education (79%), unemployed and not engaged in any studies (48 %). The latter characteristics is not identical to that of persons having committed crimes in general, criminal acts related to illicit circulation of drugs are likely to be committed by younger people (from 20 to 40 years of age), compared to other criminal acts.

Narcotic and psychotropic substances. According to the analysis of various indicators, the situation of illicit drug market in Lithuania is characterised by the following trends:

- wide range of drug supply, there is no competition among psychoactive substances of different effect: one distributor possesses several substances: heroin, cannabis or amphetamine-type stimulating (ATS) substances;
- cannabis and ATS substances are the most popular among users;
- methamphetamine is the most popular of all ATS substances;
- in 2010, recovery of amphetamine market is observed;
- the quantity of MDMA tablets is decreasing, they are superseded by mCPP and other psychoactive tablets;
- there is illegal production of ATS substances;
- small-scale cultivation of cannabis (usually for private needs) in artificial conditions is spreading;
- heroin is the most popular intravenous drug, but its consumption in the country is spread unequally;
- popularity of *mephedrone* and ‘spice’ is increasing, however, it still has little competition with regard to ‘traditional’ substances;
- distribution of new, usually uncontrolled psychoactive substances in specialised or online shops.

After successful long-term international operations in the country in 2010, top quantities of cocaine and hashish were withdrawn from circulation, however, these consignments were shipped through Lithuania in transit, and thus they did not have any influence on the local market.

Based on the analysis of the amounts of drugs and psychotropic substances seized during the last years the following trends were observed:

a) *cannabis (marihuana) and hashish.* The same as last year, cannabis remained the most popular drug in Lithuania. According to the data of EMCDDA⁴ annual report 2010, in Lithuania 1.2% of all inhabitants took cannabis during the last month of the year. This number is one of the lowest in Europe. In 2010, almost 68 kg of cannabis were withdrawn in Lithuania. In most cases (even 76% of all the cannabis withdrawal cases) the weight of the cannabis withdrawn did not exceed 10 g.

4 EMCDDA -The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) was established in 1993. Inaugurated in Lisbon in 1995, it is one of the EU’s decentralised agencies [interactive]. [accessed on 18-12-2011]. <<http://www.emcdda.europa.eu/about>>; Annual report 2011, *supra* note 1.

In Europe, estimated 354 000 seizures of herbal cannabis were made in 2009, amounting to estimated 99 tonnes, of which Turkey accounted for over one third (42 tonnes), a record amount; in addition, record seizures were reported by Greece (7 tonnes) and Portugal (5 tonnes)⁵.

As in the rest of the world, rise in the cultivation of cannabis in artificial conditions has been observed in Lithuania. This is influenced by different factors, however the main of them are the following: availability of information on cannabis cultivation, possibility to order cannabis seeds and the necessary equipment from foreign countries. Having made a search of the key word 'cannabis in doors' in one of the many search engines on the Internet, even 2 270 000 Internet pages were found which provided detailed description of indoor cannabis cultivation methodology, offers were given on where and how to purchase seeds and equipment.

In 2010, 11 cases of cannabis cultivation in artificial conditions were disclosed in Lithuania. There is no data indicating that these facts are connected with organised crime.

In 2010, 24 cases of hashish detention were recorded in Lithuania. Even 271 kg of hashish was withdrawn from illicit circulation, in 3 cases of which 100 kg, 92 kg and 75 kg of hashish were withdrawn during successful operations. These numbers seem impressive and may show more activity in hashish market, but they have to be assessed objectively and only along with other indicators. The Lithuanian hashish market is not extensive. Large amounts of hashish detained were not intended for the Lithuanian market, presumably they were supposed to be shipped to Russia. Those detentions only confirm once again that really huge amounts of drugs are transported through Lithuania in transit. In 2010, 8 cases were disclosed in which hashish was found in separate doses. Compared with cannabis, hashish makes up 3% of the 'soft' drug market. Moreover, operational investigations conducted by law enforcement agencies are often long-term and sometimes it takes more than one year from their beginning to the successful investigation. Even though the role of the Lithuanian citizens as drug couriers (including hashish) in the illicit worldwide market cannot be disputed, these detentions indicate professionalism of the Lithuanian law enforcement officers and should be assessed positively.

Cannabis distributed in Lithuania is either cultivated in Lithuania or brought from Spain or the Netherlands. Hashish which is not popular in our country is brought from Spain and Morocco by vehicles. A part of hashish shipped by the Lithuanian citizens is meant for the Baltic countries, Nordic countries and Russia.

b) *Amphetamine type stimulant (ATS) substances*. In Lithuania and Europe ATS is the second most widespread narcotic substance among consumers after cannabis. It is preconditioned by the fact that these substances are popular in youth entertainment places. Amphetamine and methamphetamine are the most popular ATS substances in Lithuania with similar influence and appearance, thus, consumers often find it difficult to distinguish them and distributors deceive buyers. The price of these drugs does not

5 Annual report 2011, *supra* note 1.

differ either. With reference to the data of 2010 and previous years showing detentions, it can be stated that it is methamphetamine that is mostly distributed in Lithuania and the influence of it is stronger (it is also more harmful).

It can be seen from the above diagram that the number of detentions does not directly affect the amounts of substances withdrawn. It can be concluded that methamphetamine detained in 2010 was in smaller quantities, but it happened quite often, amphetamine, however, was detained less often, but in larger quantities (detentions of couriers and wholesalers). Compared to the last two years, there was a slight increase in the number of amphetamine detentions in 2010.

Amphetamine and methamphetamine are listed among the most popular psychotropic substances in Lithuania, the illicit production of which exists in Lithuania on a small scale and it is shipped through/from Lithuania through Latvia and Estonia to Scandinavian countries, also to Belarus, Russia and Ukraine⁶. Germany is probably a transit territory for amphetamine produced in the Netherlands and in the north-east hub (see below), especially in Poland and Lithuania, and smuggled to Nordic countries, including Sweden⁷. Amphetamine is brought to Lithuania from the Netherlands, Belgium and Poland. As far as methamphetamine is concerned, Lithuanians are recruited by aliens from Asia (e.g. Iranians residing in Sweden) to ship it even to Japan or New Zealand. The number of detentions of ecstasy (MDMA, mCPP, 2-CB and the like) in the country is decreasing; law enforcement authorities are aware of only one detention of a citizen of the Republic of Lithuania abroad with this substance on him in 2010; ecstasy is brought to the country from the Netherlands.

c) *Heroin*. In Europe, estimated 59 000 seizures resulted in the interception of 24 tonnes of heroin in 2009, two thirds of which (16.1 tonnes) were reported by Turkey. The United Kingdom (followed by Spain) continued to report the highest number of seizures. While Turkey reported doubling in the quantity of heroin seized between 2004 and 2009, the amount seized in the European Union has shown a limited decline during this period, mainly due to decreases reported in Italy and the United Kingdom, the two countries seizing the largest quantities in the European Union⁸.

Heroin is the most frequently used intravenous drug in Lithuania. Contrary to other narcotic and psychotropic substances, heroin causes strong addiction and tolerance (longer consumption requires larger doses), thus, its demand and supply cannot change rapidly. This substance is mostly detained in doses; in 73% of all heroin detention cases the quantity of the substance withdrawn was less than 1g. Last year, there was only

6 *Amphetamine: A European Union perspective in the global context*. EMCDDA–Europol joint publications No 3. Publications Office of the European Union. Luxembourg, 2011, p. 16; Krawczyk, W.; Kidawa, M.; Strzelecka, A. *Problem amphetamine use, related consequences and responses*. Warsaw: Centrum informacji o narkotykach i narkomanii, 2009; Svensson, B. *Problem amphetamine and methamphetamine use, related consequences and responses*. Swedish National Institute of Public Health, 2009, Chapter 12.

7 Nilsson, R.; Kegö, W. (eds.) *The impact of drugs trafficking, corruption and organized crime. How to strengthen cooperation around the Baltic Sea*. Stockholm: Institute for Security & Development Policy, 2009.

8 Annual report 2011, *supra* note 1.

one case when more than 1 kg of heroin was detained, i.e. it was a 5.5 kg consignment smuggled from Russia to Lithuania.

The illicit drug market has almost no concentrate of poppies and their parts which used to be the most popular intravenous drug in the past. In 2010, only 11 cases were disclosed where this substance was withdrawn from circulation.

In 2010, 11.4 kg of heroin were withdrawn from illicit circulation in Lithuania, even though it was a much larger amount, compared to 2009 (3.7 kg), but smaller compared to 2008 (14 kg). The quantities of drugs withdrawn cannot be separately assessed as indicators of supply, thus, no conclusions on the decrease or increase of supply can be made. In part, a more reliable indicator of supply is substance purity. In Lithuania, heroin withdrawn from illicit circulation is of rather high purity, in most cases of detention heroin purity exceeded 30% and only in 14% of all cases the purity was lower than 20%.

In 2010, Lithuanians were detained for heroin smuggling in Australia and China.

d) *Cocaine*. The number of cocaine seizures in Europe has been rising for the last 20 years, and more notably since 2004, reaching estimated 99 000 cases in 2009⁹. The total quantity intercepted peaked in 2006, and has halved since then to an estimated 49 tonnes in 2009. This fall is largely accounted for by decrease in the amounts recovered in Spain and Portugal, though it is unclear to what extent this is due to changes in trafficking routes or practices, or in the law enforcement priorities. In Europe, cocaine consumption has not declined, however, this drug is not frequently used in Lithuania. High price of the drug must be the main reason for its low circulation in our country. Costs of cocaine delivery are high, consumer market is small, thus, more frequently this substance is shipped via Lithuania and even more frequently Lithuania is avoided and cocaine is shipped directly to the destinations.

The fact that cocaine supply is limited in Lithuania can be inferred from rare detentions of this substance and detention geography: in 2010, almost half of all cocaine detentions happened in Vilnius, no withdrawals from circulation were made in Tauragė, Marijampolė, Utena and Šiauliai counties. The fact that there were no cocaine detentions in the latter county and the residents of that county were the most active couriers in cocaine shipment from South America to Europe, may confirm the conclusion that the organisers of cocaine smuggling are not always the Lithuanian organised criminal groups. This presumption can be confirmed by the results of a joint investigation conducted with the Swiss colleagues.

Lithuanian nationals were recruited as cocaine couriers by an organised group of one of the African countries active in Europe. Law enforcement agencies are aware of 4 cases (2010) where Lithuanians were detained while shipping large consignments of cocaine by ships (yachts), however, only in one of those cases the Lithuanians acted as organisers of smuggling, in the other cases they were there for logistic matters only. In 2010, a top amount consignment of cocaine was detained in Klaipėda Sea Port – 396.4 kg from South Africa, however, the drugs were not meant for the Lithuanian market¹⁰.

Cocaine is brought to Lithuania from South Africa, West Africa, the Netherlands and Spain. However, in terms of popularity, cocaine is being replaced by amphetamine-

9 Annual report 2011, *supra* note 1.

10 *Review of illegal drug trafficking in Lithuania 2010*. Lithuanian Criminal Police Bureau, 2011.

type stimulants in Lithuania, essentially due to its expensiveness. Despite the fact that several large consignments of this drug were detained last year, the cocaine was not meant for the Lithuanian market. It is thought that it was supposed to reach Russia and Western Europe. Lithuanian citizens recruited as drug couriers by OCGs of other countries ship drugs to Western Europe from South America by avoiding Lithuania.

Sources of supply and trafficking patterns within countries. This section presents the information known to the law enforcement agencies about the detentions of Lithuanian citizens related to illicit circulation of drugs in foreign countries. Detentions are reported by the related foreign services, Europol, Interpol and diplomatic and consular representations of the Republic of Lithuania. However, not all countries expeditiously provide such information, especially if the detention takes place in provinces of the country, and a consular representation learns about the detention only upon request of a detainee, or relatives of a detainee for some reason address a consular representation.

As every year, we have conducted an overview of illegal activity related to drug circulation of citizens of the Republic of Lithuania abroad. In 2010, law enforcement agencies became aware of 144 cases of detention (147 in 2009) and 203 citizens of the Republic of Lithuania were detained (195 in 2009)¹¹. In 2010, an increase of quantities of cocaine, amphetamine and khat (*catha edulis*) and decrease of quantities of hashish, cannabis, heroin and methamphetamine withdrawn from illicit circulation was noted. Unfortunately, data of law enforcement agencies regarding detentions abroad are not extensive for there are cases that are not reported or reported with a considerable delay, e.g. the next calendar year (Figure 1).

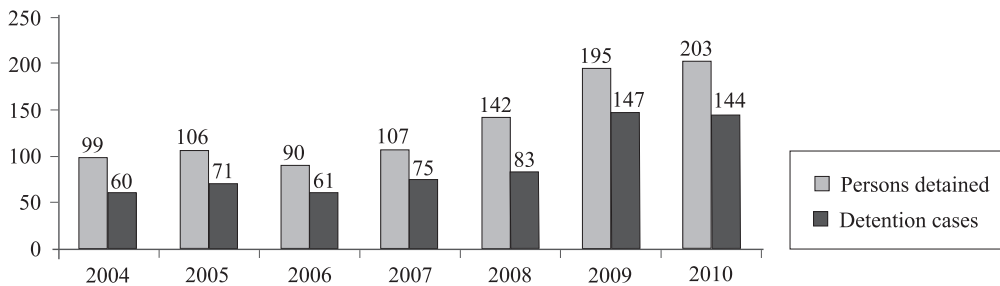


Figure 1. Ratio of the number of citizens of the Republic of Lithuania arrested and arrests abroad, 2004–2010

After overviewing the statistics of recent years indicating detentions abroad, it is obvious that new countries appeared in the statistics of 2010, in which no previous detentions of the Lithuanian citizens were registered. The list of countries was expanded by the following states: New Zealand, Japan, China, Uruguay and Grenada. Nevertheless, the main countries in which Lithuanians are detained have remained the same: countries of Scandinavia and South America, Russia and Belarus.

In 2010, as in the previous years, most detentions had to do with cocaine (32%) and the lowest number of them was related to ecstasy (1 detention). Even though the percentage of detentions for cocaine smuggling slightly decreased, it is too early to state that the number of cases of smuggling of this kind will also be decreasing in the future. When cocaine is smuggled from South America to Europe by carrying it inside the human body or in certain items, the Lithuanians are hired as couriers and organisers of smuggling usually come from OCGs of other countries. The Lithuanians are also hired for courier recruitment purposes. Cocaine couriers may be hired not only by the Lithuanian citizens, but also by foreign citizens or by the citizens of the Republic of Lithuania living abroad, as cocaine smuggling is not organised by single persons but by international organised criminal groups¹². The cocaine shipped by the Lithuanians is usually meant for the markets of the United Kingdom, Spain and Holland.

Generalisation of criminal activity of the citizens of the Republic of Lithuania related to transnational illicit drug circulation:

- The main distribution countries to which drugs are trafficked by the citizens of the Republic of Lithuania: Scandinavia, the United Kingdom, Russia and Belarus;
- New smuggling route – smuggling of heroin from Turkey to Europe and smuggling to Scandinavia;
- New and exotic destinations: Japan, China, New Zealand;
- 78% of all detainees were related to smuggling;
- One third of the citizens of the Republic of Lithuania detained were related to cocaine smuggling;
- The average age of the detainees was 30 years;
- The declared place of residence of most of the detainees was in Vilnius county.

Finally, it can be maintained that changes in the illicit drug circulation during the last year are the following:

1. The number of MDMA tablets is decreasing, they are being replaced by mCPP and other psychoactive tablets.
2. Slight revival of amphetamine is observed.
3. Slight increase in the popularity of mephedrone and ‘spice’; however, its influence on the competitiveness of ‘traditional’ substances is still low.
4. Smuggling of the uncontrolled precursor 4-methoxy-BMK (substitute for BMK) of synthetic drugs.
5. Active role of the citizens of the Republic of Lithuania in international illicit circulation of drugs and precursors.

2. Overview of the Lithuanian Courts and Sentencing Statistics

While comparing the drug policies of the Member States of the European Union, the level of penalties set out in national laws is a frequently discussed topic. Member States’

12 Gutauskas, A. Economic crisis and organized crime in Lithuania. *Jurisprudencija*. 2011, 18(1): 303–326.

drug control laws may provide for sanctions for the offences of drug use or personal possession that range from no sanction at all to life imprisonment, while the maximum penalties for supply or trafficking offences range from one year to life imprisonment.

In 2010, 18 014 criminal cases were completed in the Lithuanian courts of first instance (16 832 cases in 2009), including 1306 cases (1135 cases in 2009) where accusations regarding illegal disposal of drugs or psychotropic substances and their precursors were brought, i.e. ca. 6 percent of all criminal cases received (5% in 2005).

Out of 1317 completed cases, where adopting a penal order or conviction in **1111** cases charges were brought according to Article 259 of the Criminal Code of Republic of Lithuania (hereinafter – the Lithuanian CC), entitled ‘Illegal disposal of drugs or psychotropic substances without a purpose to distribute them’, in **292** cases charges were brought according to Article 260(1) of the Lithuanian CC, entitled ‘Illegal disposal of drugs or psychotropic substances with a purpose to distribute them’, in **88** cases charges were brought according to Articles 260(2) and 260(3) of the Lithuanian CC, entitled ‘Illegal disposal of drugs or psychotropic substances in large or very large quantities’, in **16** cases charges were brought according to Article 261 of the Lithuanian CC, entitled ‘Distribution of drugs to juveniles’, in **5** cases charges were brought according to Article 263 of the Lithuanian CC, entitled ‘Theft, exaction or any other illegal overtake of drugs or psychotropic substances’, in **8** cases charges were brought according to Article 264 of the Lithuanian CC, entitled ‘Pressure to use drugs or psychotropic substances’, in **13** cases charges were brought according to Article 265 of the Lithuanian CC, entitled ‘Illegal cultivation of poppies and cannabis’, and in **5** cases charges were brought according to Article 266 of the Lithuanian CC, entitled ‘Illegal disposal of category I precursors of drugs and psychotropic substances’ (Table 3).

Table 3. Report on criminal cases related to illegal disposal of drugs or psychotropic substances completed in the Lithuanian courts of first instance, 2005-2010

	2005	2006	2007	2008	2009	2010
Total number of criminal cases brought:	888	894	926	886	1135	1306
Completed criminal cases with imposed sentence:	800	871		880	838	1317
Convicted natural persons, including:	960	970	1023	1123	1454	1346
– females;	152	137	162	173	201	192
– juveniles.	38	23	27	41	52	61
Acquitted natural persons*	25	8	19	14	11	10
Persons with regard to which the proceedings were terminated	15	8	8	17	23	24
Persons that were applied involuntary medicinal measures	7	7	1	2	2	5

* The main cause of the acquittal – absence of criminal elements in the actions of the inductees.

The persons convicted of crimes related to illegal disposal of drugs were imposed the following sentences as provided below (Table 4).

Table 4. Analysis of sentences imposed on persons for crimes related to illegal disposal of drugs and psychotropic substances, 2005-2010

Types of sentence	2005	2006	2007	2008	2009	2010
Public works	18	27	18	23	16	19
Confinement	35	40	66	61	120	108
Imprisonment	203	458	462	492	633	565
Arrest	345	133	110	171	158	152
Fines	337	394	396	390	527	502

For example, the majority of countries would apply fines (some apply warnings and some – community work orders) for offences committed for personal use, however in the Central and Eastern European countries where possession was not treated as an administrative offence, there was a clear preference for suspended imprisonment sentences. Across much of Europe, immediate imprisonment was a possible outcome for personal use offences. Imprisonment was the most common reaction for supply offences, though this was suspended in the large number of cases¹³.

The analysis of convictions in 2005–2010 resulting in imprisonment shows that the average term of imprisonment imposed by courts was about 5 years, and the term of the arrest exceeded 1 month and 10 days (Table 5).

Table 5. Dynamics of the average term of imprisonment and arrest of persons who committed crimes related to illegal disposal of drugs and psychotropic substances, 2005-2010

Year/Type of sentence	Imprisonment	Arrest
2010	5 years 10 months and 16 days	1 month and 4 days
2009	6 years 0 months and 1 day	1 month and 27 days
2008	5 years 2 months and 8 days	2 months and 6 days
2007	4 years 7 months and 17 days	1 month and 14 days
2006	4 years 8 months and 5 days	1 month and 25 days
2005	4 years 10 months and 24 days	1 month and 15 days

However, in reality the term of imprisonment was shorter and the statistical data analysis showed that in average the convicts stayed in the correctional institutions for a

13 *Drugs offences: sentencing and other outcomes*. Luxembourg: Office for Official Publications of the European Communities, 2009, p. 14.

period of 2 years and 1 month and those convicted with arrest – for 1 month and 3 days (Table 6).

Table 6. Dynamics of the average of the actual continuance of the convicts punished by imprisonment or arrest for committing crimes related to illegal disposal of drugs and psychotropic substances, 2005–2010

Year/Type of sentence	Imprisonment	Arrest
2010	2 years 3 months and 27 days	1 month and 4 days
2009	2 years 2 months and 27 days	28 days
2008	1 year 9 months and 2 days	1 month and 4 days
2007	1 year 11 months and 25 days	29 days
2006	2 years 2 months and 11 days	1 month and 8 days
2005	2 years and 29 days	1 month and 9 days

Analysis of the convictions and their actual execution shows that the convicts execute the term of the arrest, however, in reality the imprisonment convicts execute only half of the punishment term. For example, the average length of sentence for use or personal possession offences was only over one month for both suspended and immediate imprisonment in Denmark, while France reported an average period of immediate imprisonment of five months. The United Kingdom reported average sentences for possession offences in England and Wales of about three months for cannabis, five months for cocaine, seven months for ecstasy and 10 months for heroin, while possession offences in Northern Ireland received an average of seven months imprisonment for Class A drugs, two months for Class B and three months for Class C. Cyprus supplied data on individual cases that allowed calculations of mean sentences of 15 months for possession of Class B substances and 29 months for possession of Class A substances; while in Poland an estimation of the mean of grouped data for the different periods of immediate and suspended imprisonment resulted in average of eight months for each¹⁴.

The legal issues relating to imposing of and serving a sentence are governed by the Criminal and Penal Codes of the Republic of Lithuania. According to Article 77(1) of the Lithuanian CC '*Release on probation from imprisonment before the term and replacement of unserved part of the sentence with a milder punishment*', **the court** may release a person serving an imprisonment punishment before the term or replace the unserved part of the imprisonment sentence with a milder punishment (except the fine) if a person:

- (1) has served:
 - at least half of the punishment imposed for negligent, **minor or semi-serious** premeditated crime or;
 - at least two thirds of the imposed punishment for a **serious** crime, or;

14 *Drugs offences: sentencing and other outcomes*, supra note 14, p. 15.

- at least three fourths of the imposed punishment for a **grave** crime, or if the person is a **habitual criminal**, or;
- at least one third of the imposed punishment for the negligent, minor or semi-serious premeditated crime committed by a pregnant woman, also by a **single farther (mother)** having a child up to 7 years of age or two and more juvenile children in cases where he/she has not been subject to a restriction imposed by the court on parental rights;

(2) has fully compensated the material damage caused by the crime, or has compensated it in part or eliminated it and undertook to fully compensate or eliminate it during the period of the unserved punishment;

3) his **behaviour or work at the time of serving an imprisonment sentence has justified** his release on probation before the term or the substitution of the imprisonment with a milder punishment.

According to Article 157(3) of the Lithuanian Penal Code, entitled '*Conditions for the release on probation from correctional institutions*', release on probation from correctional institutions can be granted to:

(1) persons sentenced to imprisonment up to 6 years inclusively for negligent offences, also persons sentenced to imprisonment for **minor** crimes in open colonies, juveniles, pregnant women, also persons having **children up to 7 years of age or two and more juvenile children** (if their parental rights have not been restricted), - when they have actually served at least one third of the imposed imprisonment sentence;

(2) persons kept in correctional institutions in the conditions of the free group, as well as persons convicted with over 6 years of imprisonment for negligent offences to be served, – when they have actually served at least half of the imposed imprisonment sentence;

(3) persons kept in correctional institutions in the conditions of a general group, - when they have actually served at least two thirds of the imposed imprisonment sentence;

(4) persons kept in the prison in the conditions of a general group, as well as dangerous habitual criminals, - when they have actually served at least three fourths of the imposed imprisonment sentence.

Assessment of the legal aspects of the crimes associated to drugs and psychotropic substances and their precursors enables to see that such crime as 'illegal disposal of drugs or psychotropic substances with no intent to distribute them' (CC, Art. 259(1)) may be recognised as a **misdemeanour** crime, 'manufacturing of the devices to produce drugs or psychotropic substances <...>' (CC Art. 262), 'theft, exaction or any other illegal overtake of drugs or psychotropic substances' (CC, Art. 263(1)), 'pressure to use drugs or psychotropic substances' (CC, Art. 264(1)), 'illegal cultivation of poppies and cannabis' (CC, Art. 265(1)), 'illegal disposal of category I precursors of drugs and psychotropic substances' (CC, Art. 266(1)) – as **semi-serious** crimes, and other crimes of this type may be acknowledged as serious and grave crimes.

Thus, such legal governance prescribed for the imposition of punishment for criminal acts associated with the illegal disposal of drugs, psychotropic substances and their precursors and for the release before the term creates legal preconditions for

persons who committed such criminal acts to serve only a part of the imprisonment sentence imposed by the court.

The differences in penalties for personal use and supply offences, which were obvious in the majority of the countries, may perhaps reflect the differences between countries as to how strongly they draw the line between users as individuals requiring treatment or counselling, and traffickers as criminals.

3. The Future and Challenges of Drug Crimes

The new drugs market is distinguished by the speed at which suppliers respond to the imposition of control measures by offering new alternatives to restricted products.

Since the 1980s, new psychoactive substances¹⁵ have been referred to as ‘designer drugs’, though in recent years the term ‘legal highs’ has become popular. ‘Legal highs’ refers to a broad category of unregulated psychoactive compounds or products containing them that are marketed as legal alternatives to well-known controlled drugs, usually sold via the internet or in smart shops or head shops. This term is applied to a wide range of synthetic and plant-derived substances and products, including ‘herbal highs’, ‘party pills’ and ‘research chemicals’, many of which may be specifically designed to circumvent existing drug controls. The term itself, though in common usage, remains problematic.

New psychoactive substances appearing on the drugs market in Europe have historically belonged to a small number of chemical families, with the *phenethylamines* and *tryptamines* accounting for the majority of reports to the early-warning system.

Recent developments allowing organic chemicals to be synthesised cheaply, combined with the information exchange and marketing possibilities afforded by the internet, have led to new psychoactive substances becoming widely available at an unprecedented pace. Between 1997 and 2010, more than 150 new psychoactive substances were formally notified through the early-warning system¹⁶, and are now being monitored. Over this period, the rate at which new substances appear on the market has increased, with record numbers of new substances being reported in the last two years — 24 in 2009 and 41 in 2010 (142).

Most new psychoactive substances reported to the early-warning system have been either stimulants or synthetic cannabinoids, largely reflecting the market for illicit drugs in Europe¹⁷. It is likely that new substances of these types will continue to

15 New psychoactive substance - a new narcotic or psychotropic drug, in pure form or in preparation, that is not controlled by the 1961 United Nations Single Convention on Narcotic Drugs or the 1971 United Nations Convention on Psychotropic Substances, but which may pose a public health threat comparable to that posed by substances listed in these conventions.

16 The European Union’s early-warning system has been developed as a rapid-response mechanism to the emergence of new psychoactive substances on the drug scene. Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk assessment and control of new psychoactive substances (OJ L27, 2005, p. 32).

17 Annual report 2011, *supra* note 1.

enter the market. In addition, producers appear to be exploring other substances with a psychoactive action that may be attractive to consumers. Much accessible research literature exists that can be exploited for this purpose, and there is a concern that the results of pharmaceutical research may be harnessed to provide more of the new psychoactive substances appearing in the future. As criminal laws should clearly define those substances under control, the discovery of a psychoactive substance outside legal control can allow suppliers make a profit at unknown risk to the health of consumers. The speed at which new psychoactive substances can appear and be distributed now challenges the established procedure of passing legislation to control a substance in each country.

During the last few years, the new drugs phenomenon has been going through a period of dynamic change. The appearance of a large number of new unregulated synthetic compounds marketed on the internet as ‘legal highs’ or ‘not for human consumption’ and specifically designed to circumvent drug controls shows the speed and sophistication at which the market reacts to control measures, and how globalisation and innovation present a growing challenge to current approaches to new psychoactive substances. This is illustrated not only by the increased number, but also by the diversity in type, of substances that have appeared on the European market. The spring and diversity of new drug families is largely due to the increased complexity and volatility of the European drugs market and to the way that these substances are being produced, distributed and marketed.

Psychoactive substances controlled under criminal law must be clearly defined. The principle underlying this, enshrined in the European Convention on Human Rights and in some national constitutions, is that no one can be found guilty of an offence that was not criminal at the time. According to this, the European Court of Human Rights has ruled that criminal law has to be specific as to what it classifies as an offence. This would mean that substances not listed in the drug law are not controlled by it.

The rapid spread of new substances is pushing Member States to rethink and revise some of their standard responses to the drug problem. In 2010, both Ireland and Poland rapidly passed legislation to limit the open sale of psychoactive substances not controlled under drug laws. This required both countries to work on a careful legal definition of such substances. The Irish law defines them as psychoactive substances, not specifically controlled under existing legislation, that have the capacity to stimulate or depress the central nervous system, resulting in hallucinations, dependence or significant changes to motor function, thinking or behaviour. Medicinal and food products, animal remedies, intoxicating liquor and tobacco are excluded. The Polish law refers to ‘substitute drugs’, defined as a substance or plant used instead of, or for the same purposes as, a controlled drug, and whose manufacture or placing on the market is not regulated by separate provisions. It makes no specific reference to whether the drug should be considered as harmful.

Some European countries have successfully used other laws to stop the open distribution of a new drug. These laws are based on harmonised EU definitions, which should now be operational in all Member States. For instance, regulations requiring that

goods or food for sale are clearly and accurately labelled in relation to their expected use have been invoked to confiscate ‘Spice products’ not labelled in the national language (Italy), or *mephedrone* labelled as bath salts and plant food (United Kingdom). By applying the harmonised EU definition of a medicinal product to a new psychoactive substance, national medicines agencies can prohibit its unauthorised importation, marketing or distribution. In 2009, Austria classified ‘Spice products’ under non-criminal medicines legislation, and this proved effective in stopping the open marketing and distribution of ‘Spice’ in Austria, while avoiding criminalising users. Import bans of ‘Spice’ in Austria and *mephedrone* in the United Kingdom contributed to stopping open distribution.

Problems and the influence of the control on the circulation of new drugs and crimes related to narcotic and psychotropic substances are as follows:

- new psychoactive substances are not easily detected and identified by forensic laboratories. Testing products for unknown or unexpected substances is time consuming, complex and expensive. This may hinder targeted and timely responses by legislators and law enforcement authorities;
- it is not legally possible to criminalise the unauthorised distribution of all psychoactive substances, therefore legislation, rather than being proactive, can only react to substances as they appear;
- new psychoactive substances may pose risks to individual and public health as well as social risks affecting the broader community. However, when they first appear on the market, information on their associated risks is lacking;
- the legislative procedure required to bring a substance under the control of the drug laws takes time, in some countries it takes more than a year;
- controlling a new psychoactive substance might have unintended and unwanted consequences. It may stimulate the search for, and distribution of, a non-controlled replacement, possibly the one more harmful than its predecessor;
- other control options, though faster, lack the penalties to send the same messages of deterrence and health risk. Furthermore, they might not be effective in preventing or stopping the marketing and distribution of a new substance.

Conclusions

1. The illicit drug circulation in the country has featured some stability, with the trends actually unchanged for several years. The illicit drug circulation encompasses new controlled and uncontrolled psychoactive substances, the latter are distributed on internet websites or commercial portals. The fact that drugs are marketed in different forms (powder, tablets, liquid) is a challenge for monitoring systems as they need to be able to pick up trends on all fronts. Furthermore, there is a need to develop innovative alternative monitoring strategies that may be based on sources complementary to law enforcement, and which may rely on more qualitative data, with a view to better understand intra-European drugs markets, focusing especially on their structure, organisation, actors and dynamics.

2. Recent developments have led to new psychoactive substances becoming widely available at an unprecedented pace. The speed at which they appear and the way they can be distributed challenges the established procedures for monitoring, responding to and controlling the use of new psychoactive substances. This is in turn reflected in much higher political, general public (media, society at large) and scientific interest and concerns about the ‘legal highs’ phenomenon. Risk assessment systems can provide evidence to support the legislative process. The results can send an accurate and credible message to the public about the risk of harm associated with the substance. Targeted research is key to providing a firm evidence base for risk assessment and for ongoing justification of control measures.

3. Both the information exchange mechanism and the risk assessment would benefit from a clear mandate to purchase new psychoactive substances and analyse them; to purchase and synthesize reference samples; to disseminate analytical information to Member States and to carry out toxicological and epidemiological studies. It is important to consider if other laws already available, such as consumer protection and medicines laws, might achieve the desired objective.

References

- Administrative Code. *Official Gazette*. 1985, No. 1-1.
- Amphetamine: A European Union perspective in the global context*. EMCDDA–Europol joint publications No 3. Luxembourg: Publications Office of the European Union, 2011.
- Annual report 2011 [interactive]. [accessed on 18-12-2011]. <www.emcdda.europa.eu/events/2011/annual-report>.
- Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk assessment and control of new psychoactive substances (OJ L 127, 20.5.2005, p. 32).
- Drugs and crime: a complex relationship, Drugs in focus*. Luxembourg: Office for Official Publications of the European Communities, 2007.
- Drugs offences: sentencing and other outcomes*. Luxembourg: Office for Official Publications of the European Communities, 2009.
- EMCDDA–Europol Annual Report on the implementation of Council Decision 2005/387/JHA*. Publications Luxembourg: Office of the European Union, 2011.
- European Commission – Press release ‘European Commission to strengthen rules to fight dangerous new synthetic drugs’, 2011 [interactive]. [accessed on 20-09-2011]. <<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/855&format=HTML&aged=0&language=LT&guiLanguage=en>>.
- Gutauskas, A. Economic crisis and organized crime in Lithuania. *Jurisprudencija*, 2011, 18(1): 303–326.
- Krawczyk, W.; Kidawa, M.; Strzelecka, A. *Problem amphetamine use, related consequences and responses*. Warsaw: Centrum informacji o narkotykach i narkomanii, 2009.
- Law on the approval and entry into force of the Criminal Code. *Official Gazette*. 2000, No. 89-2741.
- National Program on Drug Control and Prevention of Drug Addiction 2010–2016 adopted by Resolution No. XI-1078, of

- November 4, 2010, of Seimas of Republic of Lithuania.
- Nilsson, R.; Kegö, W. (eds.) *The impact of drugs trafficking, corruption and organized crime. How to strengthen cooperation around the Baltic Sea*. Stockholm: Institute for Security & Development Policy, 2009.
- Operating guidelines for risk assessment of new psychoactive substances*. Luxembourg: Publications Office of the European Union, 2010.
- Review of illegal drug trafficking in Lithuania 2010*. Lithuanian Criminal Police Bureau, 2011.
- Svensson, B. *Problem amphetamine and methamphetamine use, related consequences and responses*. Swedish National Institute of Public Health, 2009.

NUSIKALSTAMOS VEIKOS, SUSIJUSIOS SU NARKOTINĖMIS IR PSICHOTROPINĖMIS MEDŽIAGOMIS: ATEITIES LŪKESČIAI IR IŠŠŪKIAI

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Santrauka. Straipsnyje pateikiamas kompleksinis požiūris į šią šiuolaikinę nusikalstamumą, susijusį su narkotinėmis ir psichotropinėmis medžiagomis, kuris keičiasi ir įgauna vis kitokias reikšmes atskleidžiant ir ištiriant šios rūšies nusikalstamas veikas. Apžvelgiama Lietuvos kriminogeninė padėtis, ji lyginama su Europos Sąjungos rodikliais, apibūdinančiais šiuolaikinę visos Europos būklę. Šie statistiniai rodikliai atskleidžia vieną svarbų aspektą – Lietuvoje nusikalstamų veikų, susijusių su narkotinėmis ir psichotropinėmis medžiagomis, daugėja, keičiasi neteisėto disponavimo narkotinėmis ar psichotropinėmis medžiagomis formos, būdai, asmenų charakteristikos. Todėl teisėsaugos institucijų veikla, ypač dažnėjančios tarpvalstybinės narkotinių medžiagų sulaikymo operacijos, kuriose sėkmingai dalyvauja ir Lietuvos teisėsaugos institucijos, įgauna vis didesnę prasmę.

Straipsnyje pateikiama šios rūšies nusikaltimų teismų veikla. Kaip viena iš aktualių problemų, nulemiančių realios bausmės (laisvės atėmimo) vykdymo paradoksą, – teisinis reguliavimas, sudarantis teisinę prielaidą asmenims, nuteistiems už šios rūšies nusikaltimus, anksčiau laiko palikti laisvės atėmimo vietas.

Pateikiamas vienas iš pagrindinių kovos su neteisėtu disponavimu narkotinėmis ir psichotropinėmis medžiagomis trukdžių – naujų psichoaktyvių medžiagų, kurios šiuo metu pradeda konkuruoti su klasikinėmis narkotinėmis ar psichotropinėmis medžiagomis, „teisėta“ rinka. Pastarojo meto naujovės, leidžiančios pigiai susintetinti organines chemines medžiagas, taip pat interneto teikiamos galimybės keistis informacija ir prekiauti lėmė naujų psichoaktyvių medžiagų prieinamumo didėjimą precedento neturinčiu tempu. Šiomis medžiagomis gali būti prekiaujama miestų centruose įsikūrusiose specializuotose specifinio vartojimo reikmenų (pvz., sekso, grožio ir laisvalaikio) parduotuvėse ir lengvai įkuriamose interneto svetainėse, kurios atveria galimybę naujų psichoaktyvių medžiagų vartojimui plisti šalių vi-

duje ir tarptautiniu mastu. Naujos psichoaktyvios medžiagos gali kelti pavojų asmenų ir visuomenės sveikatai, taip pat socialinio ir ekonominio pobūdžio pavojų, kuris daro poveikį platesnei bendruomenei. Tačiau kai tik jos pasirodo rinkoje, pradžioje trūksta informacijos apie su jomis susijusius pavojus. Šios problemos neišvengiamai daro įtaką kriminalizacijos procesams, jų įrodinėjimui ir žmogaus teisių apsaugai.

Reikšminiai žodžiai: *narkotinės ir psichotropinės medžiagos, naujos psichoaktyvios medžiagos, nusikaltimų tyrimas, nusikaltimai.*

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