

‘PROBLEMATIC USE’ OF (ILLEGAL) DRUGS

A STUDY OF THE OPERATIONALISATION OF THE CONCEPT IN A LEGAL CONTEXT

SUMMARY

1. Introduction

The notion of ‘problematic drug use’ has been adopted in Belgian legislation since 2003. In order to stress the importance of this evolution, the recent developments in Belgian drug legislation are summarised. In 1996, a parliamentary working group was appointed to investigate all aspects of the drug problem. This working group produced a report of more than thousand pages in 1997. However, only one element of this thorough report attracted the media’s attention: in the prosecution policy, lowest priority should be given to the possession of cannabis. In 1998, a ministerial directive formalised for the first time the distinction between possession of cannabis for personal use and possession of other drugs for personal use. In 2001, the key points of drug policy are made explicit by the government in an official document, under coordination of the ministry of public health. In 2003, these viewpoints are adopted in Belgian legislation through two laws that modified the original drug law that dates from 1921.

The concept of ‘problematic use’ has already been used in the report of the parliamentary working group, but the first definition can be found in the federal policy note that was published in 2001, ‘a pattern of use that is out of control’. This policy note stated that treatment, harm reduction and reintegration should be the primary answers to problematic drug use. In the new legislation that followed this policy note (2003), ‘problematic use’ is defined as ‘use that is accompanied by a degree of addiction by which the user is no longer offered the possibility to control his use and that is expressed by psychological and physical symptoms’.

Since 2003, non-problematic cannabis use, without occurrence of other aggravating circumstances, is no longer prosecuted. From a theoretical perspective, such a distinction between several patterns of drug use seems plausible. There are indeed few reasons to intervene in someone's private life as long as the person concerned does not experience or cause problems of any kind. However, the introduction of this concept leads to several practical difficulties, since the content of this notion is very subjective and open to different interpretations.

The difficulties that arise from this notion illustrate that, despite the aforementioned consecutive steps towards a new drug policy, existing problems of non clarity, uncertainty as identified by De Ruyver and Casselman in 2000 and judicial insecurity remain. This study consists in the development and operationalisation of clear concept. In doing so, this study aims at more clarity and legal security.

2. Objectives of the inquiry

The first objective of the presented study consists in formulating a definition of problematic drug use in a theoretical way. However, the definition of this concept is not simply a theoretical issue, it has practical consequences. In particular in Belgium, where this notion has been adopted in legislation, the assessment of problematic use implies a certain social reaction. In this respect, the second objective of this inquiry is a translation of this concept into an operational definition that includes indicators for field workers, in particular for policemen and magistrates. These interventionists are legally obliged to assess the problematic character of drug use and to make decisions about the corresponding consequences for the user in question.

3. Methodology

The first part of the study consists in a literature search that provides an overview of the scientific insights concerning the definition of the concept 'problematic use' as well as possible indicators. The current discussions within the scientific literature, mainly between

advocates and contesters of classical definitions of ‘addiction’ and ‘dependence’, are the starting point of this literature search.

Secondly, we applied the focus group methodology. In five judicial districts of various sizes in the Dutch speaking, northern part of Belgium, focus groups were organised by the *Institute of Social Drug Research* (University of Ghent). The same methodology was applied by the *Département de criminologie et de droit pénal* (UCL; Catholic University of Louvain-La-Neuve) in five judicial districts in the French speaking, southern part of Belgium.

These focus groups were composed of eight field workers from three sectors: the justice and police department as well as different kinds of treatment specialists (prevention, low threshold, outreach and non-residential treatment). Two realistic cases were presented to the participants. These ‘stories’ were drawn up from several cases, supplied in advance, by fieldworkers themselves. These cases have been used as a starting point for discussion concerning important elements that render certain patterns of drug use problematic according to field workers.

4. Significant findings

4.1. Distinction between concepts (literature search)

Throughout this literature search, we were able to make a clear distinction in the whole range of concepts that are used in the drug field and to discover the evolutions in the use of these concepts. Although the concept of ‘*addiction*’ is widespread, commonly used in everyday language and applied to all kinds of behaviour, it is no longer considered scientifically valuable, according to the international scientific community. According to the current definitions and views, the concept of ‘*dependence*’ refers to compulsive behaviour, craving and loss of control, while ‘*abuse*’ refers to drug related problems, other than dependence. Finally, ‘*problematic use*’ is to be seen as independent from the former concepts that have medical-psychiatric backgrounds. By means of this notion, it is possible to distinguish different kinds of drug use, whether the people concerned are ‘dependent’ or not.

4.2. Problematic use: theoretical dimension (literature search and focus groups)

The literature search as well as the empirical inquiry yielded an enormous amount of possible indicators of problematic drug use, which are grouped in twelve categories. (1) For many field workers and according to several authors, the use of certain products as such (for example heroin) is an indication of problematic use. (2) Secondly, field workers as well scientific literature show interest in the characteristics of the user (age as well as physical and psychological characteristics). (3) The third area concerns characteristics of the way drugs are consumed: frequency, intensity, duration, method, combined drug use, transition from cannabis to other drugs and circumstances of use (during activities, in the morning, in the presence of a child or in public). (4) Moreover, the function of drug use is important: why is the person concerned taking drugs (to avoid health problems, to support certain activities, to deal with problems, because he needs to or to have fun). (5) Also, the opinion of the user concerning his use is accounted for: is he willing to change and how does he respond to the opinion of others? This element concerns the experience or the recognition of a problem by the user himself. (6) Actual and past treatment are taken into account, as well as the nature of this treatment. (7) Assessment of 'problematic use' involves the social integration of the user (housing and employment), as well as (8) the social context of the user. Field workers ask whether he can rely on other persons (family, relationship, and friends). (9) But more important, the impact and consequences of drug use on the environment of the user is given a lot of attention, especially the impact on a child. In this respect, the opinions of the family and the environment of the user are considered important. (10) The impact on the broader environment and society is of crucial relevance: does the user cause public nuisance? (11) The judicial history of the user is also taken into account, as well as other (12) drug related crime that he has committed.

However, there are some difficulties when we want to use these 'areas of concern' as 'indicators'. First, there are numerous elements of problematic use.

Secondly, these elements are not important on their own: it is the combination of several of these factors that make field workers conclude to call certain types of drug use 'problematic'. The empirical research showed that every single field worker has his own construction or configuration of indicators. Further analyses showed that these configurations can be of such complexity that they refer to other factors than 'problematic use'. The majority of the

indicators that were mentioned earlier are considered important because they refer to these six meta-indicators: dependence, health problems, social problems, disturbances to others, intoxication and incapability. For example: heroine use (significance the drug used) is considered problematic because it renders users dependent, it causes health problems and people who are under influence of this product are not capable of going to work.

Thirdly, there is no agreement between field workers on the relevance nor the importance of the indicators. Not only between different sectors, but also within the justice and police department, as well as within the social services, people disagree on the value of every indicator. These disagreements are sometimes so strong, the same characteristic can lead to opposite conclusions (e.g. functional drug use as a coping strategy for job related stress relieve is considered problematic by some field workers, while are convinced this is not problematic at all). The relevance of all possible indicators has been contested this way.

Finally, a certain indicator can only be important in a relative way, since drug use is a dynamic process.

4.3. Problematic use: practical value (focus groups)

The majority of the participants of the focus groups think that the concept of ‘problematic use’ is confusing. When they attribute certain content to this notion, it is in a simplifying manner or with reference to other concepts in Belgian legislation (drug related crime or public nuisance). Although field workers are very good at providing a whole range of indicators of problematic drug use (in a theoretical way), they don’t think this concept has any practical value. First, the legitimacy is questioned: is it legitimate to punish ‘problematic’ drug users, without any reference to public disturbances and to direct them to treatment services under the direction of public prosecutors and policemen? Secondly, it is contested that it is efficient to direct users to treatment services through the expertise of the public prosecutor. Thirdly, it is not considered workable that policemen assess problematic use.

5. Conclusions

To conclude, the contradiction between, on the one hand, the numerous indicators that field workers associate with problematic drug use and, on the other hand, their rejection of this concept because of its practical uselessness will be explained. The core element of this explanation are the professional values and expertise of the field workers, that have developed spontaneously over the years.

On the one hand, it is their job to help users in order to deal with drug related problems. In reaction to the presented cases during the focus group discussions, they automatically associate any kind of problem, difference or sign of marginality with drug consumption. It is doubtful that any causality would have been discovered without the appearance of drug use in the presented stories. In this respect, 'problematic use' can be understood as a form of drug use that causes these problems, differences or abnormalities. The professional role of the field workers brings them to associate any behaviour or personality trait of the user with the drug use.

On the other hand, field workers reject this concept since policemen and prosecutors have worked for years within carefully developed professional rules and values and expertise. In this respect, it is not surprising that they do not adopt a new concept that contradicts these rules and values, and is less workable.

With respect to the complexity of the concept of 'problematic use', the objectives of the research, the objectives of the reform of legislation and the current practices, it is concluded that the concept of problematic use is not workable for the police and justice department and that it is not useful to elaborate an operational definition in legislation.

6. Recommendations

The general recommendation of this study is to eliminate the concept of 'problematic use' from legislation. It does not support the objectives of the legal reforms that were presented a few years ago. This concept does not contribute to more clarity, or more legal security.

The results of this inquiry suggest that a clearer and objectively measurable criterion would be far more useful and workable for policemen and public prosecutors. In this respect, a new notion is being suggested: personal use, defined according to the quantity found. In this sense, policemen are not automatically obliged to charge people that possess maximum 30 grams of marihuana, 5 grams of hashish, 250 ml of hash oil or 200 grams of cannabis cake. These maximum quantities were not suggested by the participants of the focus groups. We did not present them these quantities either in order to receive comments. The researchers have suggested these themselves, because field workers in general were not surprised when presented a case that considered a user who possessed 30 grams of marijuana.

This study started 1 September 2003 en ended 29 October 2004. De focus group interviews with field werkers from the police and justice department as well as from the psycho-medico-social field were conducted between 4 March and 8 June 2003. These were organised long before the decision of the Court of Arbitration.