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**LISBON  
ADDICTIONS  
2019**

# **Efficiency vs. rule of law: some constitutional issues regarding control of new psychoactive substances**

**Third European Conference on Addictive Behaviours and Dependencies  
Lisbon, 23 – 25 October 2019**

# Methods to define controlled substances

## Traditional and most precise:

- Schedules of concrete substances (chemical compounds), attached to drug laws or other pieces of legislation;

## New methods:

- Temporary scheduling and fast track methods to supplement schedules;
- Analogue definition;
- Generic definition;
- Total (blanket) ban;

# Implications for penal law

- Offences, including drug offences have to be defined according to the principle *nullum crimen sine lege* (criminal offences may be established only by the law);
- What does the notion law mean in that case?
  - Any legal act, including governmental decrees, ministerial ordinances etc.?
  - Only a statute adopted by parliament or similar body?

# Polish 1985 drug law

- Offences involving narcotic drugs and psychotropic substances defined by the statute;
- Introduction of scheduling system for controlled substances;
- Schedules define what constitutes narcotic drug and psychotropic substance;
- Schedules attached to the ministerial ordinance;
- Therefore, it may be argued that decision to control a substance, and to therefore to criminalize it, belong *de facto* to minister of health;

# The 1997 and 2005 drug laws

- In 1997 schedules of controlled substances are attached directly to the Drug Abuse Counteraction Act (a parliamentary statute);
- Decision to control a substance requires amendment of this Act, therefore action of the parliament;

# The 2010 amendment to the drug law

- Establishment of the ‚double track’ system to control psychoactive substances:
  - Schedules attached to the drug law and penal responsibility for traditional drugs;
  - Schedules attached to ministerial ordinance combined with analogue definition, and administrative (financial) responsibility for new psychoactive substances;

# The 2016 amendment to the drug law

- Schedules of all controlled substances (both, 'traditional' drugs and new psychoactive substances) became attached to a ministerial ordinance;
- Supplementing schedules is again competence of the minister of health;

# Questions

- Did requirements of efficiency won over the rule of law?
- Or is restrictive interpretation of the principle *nullum crimen sine lege* something unrealistic?



**Thank you for your  
attention!**

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