

## **DRUG ABUSE IN TURKEY MEASURES - PENALTIES AND PREVENTION**

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### **I- Introduction**

On April 9-11, 1990, the United Nations Summit Meeting on Fight against Narcotics and Measures for the Cocaine Threat was held in London.

In the course of these meetings, it was acknowledged that in the Western European countries and in the United States, the illicit drug traffic could not be stopped in spite of the ever increasing war against drugs. On the contrary, it was acknowledged that the drug traffic continuesly increase, as ever.

The experts state that especially certain types of drugs have been smuggled into Europe. In particular, cocaine, and it's more dangerous form, "crack", is being brought in to the old world from North and South America. Also, hash-hish is being smuggled from the Caribbean and some other countries such as Nijeria. The heroin brouht to Europe originates from Asia, being produced in countries such as India, Afganisthan and Iran, and beign distributed through Turkey and other middle eastern countries, into Europe.

We observed that especially in recent years the Unite States has increased the funds allocated to wars against drug and has even actively intervned in the drug trafficking in certain latin american countries.

Nevertheless, it is obvious that all these efforts produce no efficient results against an industry producing approximately \$ 560 billion in tax free funds worldwide.

It is noticable that the most profitable drug to deal with today is cocaine. According to the figures indicated at the above referenced summit meeting, approximately 5-6 million people in the United States continuously use cocai ne while approximately 18 million use marijuana, and only 700,00 use heroin.

### **II- A Comparative Study.**

The figures accross the Atlantic Ocean are not as frightening. However, the

Eastern European Countries, which are now progressing towards democracy, are becoming new and promising markets for the drug lords and syndicates. Western European markets are facing similar growth for example, the amount of cocaine seized in the United Kingdom in 1989 is 50 % more than that seized in 1988.

We all know, in fact, that the amount of drugs that goes unnoticed is way over the amount of drugs that is seized and recorded by drug enforcement agencies. Experts estimate that for each kilogram of drugs that are seized, 9 kilos are remain to be in the Market, used and unnoticed.

The problem of drug abuse, is a phenomen of a social magnitude that every country is compelled to look for some preventive solutions. In North America, the problem is so acute, and the prevailing situation is so grave already while in Europe the tragedy is, that it is spreading quickly.

Generally speaking, drug abuse affects a modern state in two ways: on one hand young people are in danger of becoming victims with an ensuing loss of human potential; on the other hand there is the economic cost to the society.

Indeed, the Parliamentary Assembly of the Council of Europe, in its Recommendation 1085 (1988) on "the Fight Against Drugs" <sup>(1)</sup> states that there is an unprecedented increase in the number of drug addicts in European Countries, and that this increase leads to problems of serious nature, ie. of a deadly disease, AIDS. <sup>(2)</sup>

Before the second World War, drug abuse was not a problematic issue in European Countries. During the last three decades, the picture has changed radically: the danger of drug abuse spreading as an "epidemic" is illustrated through the economic development in the European countries.

Before 1960, any Country in Europe had any serious problem of widespread kind and the few drug abusers identified in the various countries caused no particular anxiety or concern from a legal or a public health point of view.

In Sweden for example, before the second World War the misuse of cannabis was practically unknown. It was introduced in the beginning of 1950's by American Jazz Group performing in Sweden. The first court case came out in 1956 where the defendants were all connected with the Jazz World <sup>(3)</sup>.

Finnish immigrants who had learned the injection techniques from Sweden

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(1) Text adopted by the Assembly on 4 October 1988.

(See Doc. 5939 Report of the Social, Health and Family Affairs Committee. Reporter: Mr. De Vincente and Doc. 5950, Opinion of the Legal Affairs Committee, Reporter Mrs. Lalumiere.)

(2) Spinellis, Dyonysios D., Transmission of AIDS and Penal Law, Eorpean Committe On Crime Problems Strasbourg, 16, Feb. 1990

(3) Lithner Klas, Drogue et Criminalite en Suède, 24 ème Cours International de Criminologie, Teheran, 1974.

returned home to start an "epidemic" in Helsinki in 1966.

The first case of drug abuse was reported in Denmark at the end of 1967. 1968 is the date where the first case of interavenous misuse of drug were confirmed in Norway.

Almost similar situations have accrued in the other Western European Countries such as United Kingdom, France, The Netherlands, Germany... and today the surveys show that the drug abuse is far more spread in Europe when compared to 1960.

One of the disquieting feature of recent investigations and statistics has been the revelation of widespread abuse of drugs among the young people. The statistics from Home Office in UK, show that there is an increase of the number of young people under 20 as being dependent on drug<sup>(4)</sup>.

Similar evidence of drug taking by young people has been forth coming from research in Scandinavia and the Netherlands.

According to the results of a survey made in Denmark, 20 % of Danish youth had been offered drugs, in the majority of cases, cannabis (%87) (Cannabis, marijuana or hashish) 12 % had tried of were actually using drugs<sup>(5)</sup>.

Similar data have been collected in Sweden that at least one-third of all swedish youth have at some time or other, used cannabis<sup>(6)</sup>.

In the Netherlands a study concerning abuse of drugs among secondary school students revealed that, (a) the percentage of drug users was 11.15 (30.3) % of all students; (b) and that 64.84 % of them only used hashish 11.69 % only hard drugs and 23.47 % used cannabis or its resin and as weel as LSD amphetamine opiates, cocaine<sup>(7)</sup>.

These results show clearly the extent to which drugs in one way or another have become part of youth culture in West European Countries.

One may look into social, economic and cultural reasons which gave way to this "chemical pollution of Mankind".

Since the second World War, modern society had certain rapid an deep changes on social, economic and cultural areas, which are clearly stated in the studies of the European Committee on Crime Problems (ECCP):

"- The considerable increase in economic activity resulting in greater afflu-

(4) Penal Aspects of Drug Abuse, European Committee on Crime Problems, Council of Europe, Starsbourg, 1974, p. 12

(5) Report from "Sundhedsstyrelsens arbejdsgruppe, Copenhagen, 1168, in Penal Aspects of Drug Abuse, p. 13

(6) Penal Aspects of Drug Abuse pp. 13

(7) "Druggebruik onder middelbare Scholieren", Ned. T. Crim., 1970, pp 175-186 in (Penal Aspects of Drug Abuse, p. 14)

ence at all levels of society, in particular among young people whose purchasing power has become an important aspect of modern economic life;"

"- The transformation of working methods and, in particular the general automation of manual work often leading to considerable monotony"

- The loosening of family ties: ie. broken homes; youth leaving home earlier and living among other young people; the changing patterns of child bearing;"

"- The prolongation of the education stages in life resulting postponement of social maturation;"

"- The formation of a new "youth culture" based on an earlier sexual and cultural maturation, increasingly divorced from social and vocational maturation;"

"- An awareness among young people for a unique, independent identity which would differ then from the older generation and an increasing reluctance to accept established social norms and traditions;"

"- The technicality and complicated nature of social problems, the dealings and solutions of which often require special insight and expert knowledge; frequently depriving young people (and the common man in general) of any possibility of taking part in influencing social debate and sometimes leading to alienation from the society;"

"- An accelerated urbanisation and increased social and geographical mobility;"

"- Improved means and opportunities for travelling abroad and thereby getting into contact with ideologies, philosophies and ways of life;"

"- Conflicts opposing political and ideological forces, often challenging existing social norms and structures;"

"- The increasing use of medicines for the treatment of emotional malaise which has been described as "better living through chemistry." (8).

### III- The Pattern of Drug Abuse In Turkey:

Turkey is one of the opium producing countries on the world. Turkey also has always found herself at the cross-roads of the drug trade. Turkey being on the trail of Kaatmandu, opium produced in Asia passes through Anatolia, changes into the morphine base, or heroin in the clandestine laboratories and then send to the European and North American markets.

Turkey has suitable soil for the cultivation of poppy, the principal substance

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(8) Penal Aspects of Drug Abuse. pp. 15

of certain drugs which are referred to as hard drugs.

Opium cultivation in Turkey dates back several hundred years and has been used in pharmaceutical and industrial fields as well as illegal drugs.

It was during the 17th century when Ottoman empire has faced an opium epidemic, which then repressed by very severe punishments against the users. <sup>(9)</sup>

After the Second World War, Turkish society became the stage of a similar play which this time was also staged in certain European countries.

The Law which increased the penalties for the drug users and traffickers in the Turkish criminal code dates 1954. This increase of penalties had once again had a positive effect towards the prevention of drug abuse and stopped a probable new drug epidemic in later years.

Turkey, while being an opium producer, as mentioned above does not face similar severe problems as some of the other European countries, until the 80's.

As a background information it may be relevant to recall that Turkey, is a rather big country for European conditions; having 56 million inhabitants and 776 thousand square kilometers of land (based on Asia Minor and Europe), has a parliamentary political system since 1923; is a member of the Council of Europe; in NATO since 1952; in the way of industrialisation with a rapid sociocultural change.

As a combination of the old and the new, Turkey is a worthy subject for criminological examination. Turkish society is an ancient one, but the Turkish Republic was established only at the second decade of the 19th century (1923).

The Republic is the last remnant of the Ottoman Empire, -which is one of the largest and long lasting empires in the world history- had established the Ottoman Empire based on a common culture within the Mediterranean basin and Middle-East for several centuries. In a sense, the Republic is a transformation of this Empire, representing a survival that was salvaged from the ruins of World War One.

As a developing country, contemporary Turkey is experiencing the upsetting effects of modernisation, while maintaining traditional values which are deeply rooted among the people. The consequence of that the crime associated with industrialisation and urbanisation has not been as evident in Turkey as in other developing nations.

Turkey experienced high rates of industrialisation, urbanisation and other social changes between the 50s and 80s, but it is early noticed that the upsurge in drug abuse did not parallel this growth.

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(9) Sulhi Dönmezer, *Kriminoloji*, İstanbul, 1984, (7th Edition).

The social values, Islamic customs and very strong family structures established over the centuries are maintaining functions as a social control mechanism to muffle the effects of social changes.

It was stated by the experts at the European Committee on crime problems, in 1972, that "in Turkey, there is not serious drug problem among young generation. Drug abuse being restricted to the medical profession, among the show business people and homeless people: this is, inter-alia due to the lower standard of living (shortage of money) as compared to other European States; the influence of family in particular the authority of the father; a fear of reduced virility consumption; and religious beliefs.

The drug abused were, cannabis and to a lesser extent opiates; amphetamine and barbiturates are also considered to be of the narcotic drugs.

Heroin was also to be included among the drugs used in Turkey. But the number of addicts was not so high for the time being that it could be negligible.

Cocaine was not very well known in this country: it is known among the upper class people, the price too high to be consumed by average drug dependants.

The total number of known drug addicts from 1953 to 1969 (including recidivists counted more than once) is 16, 774. <sup>(10)</sup>.

**Number of known addicts in 1966, 1967 and 1968**

Year	Men	Women	Total
1966	1,441	36	1,477
1967	1,674	33	1,647
1968	1,911	46	1,957

**Numbers of known addicts, according to social position**

Occupation	1966	1967	1968
Unemployed and vagrants	461	490	597
Workers	304	304	370
Craftsmen and street traders	232	381	432
Businessman	9	1	2
Liberal professions	329	307	389
Farmers	66	80	67
Civil servants	19	19	14
Doctors, chemists, etc.	1	1	1
Housewives	30	33	46
Students	9	10	12
Soldiers	17	21	27
<b>Total</b>	<b>1477</b>	<b>1647</b>	<b>1957</b>

(10) Some Statistical Data on Addiction (Supplied by the Police)

**Known addicts, by age groups**

Age	1966	1967	1968	1980
15 years and under	15	16	28	38
16 to 20	149	218	252	377
21 to 30	598	656	784	1370
31 to 30	520	541	619	963
41 to 65	189	215	261	650
65 to over	6	1	10	16
	<b>1,477</b>	<b>1,647</b>	<b>1,957</b>	<b>3,414</b>

**Addiction, according to drugs used**

Years	Heroin	Hashish	Opium	Morphine	Cocaine	Total
1966	-	1,444	33	-	-	1,477
1967	-	1,603	41	-	-	1,647
1968	-	1,924	33	-	-	1,957

Compared with the total Turkish population the proportion of addicts is seen to be very low. Study of the foregoing figures will show that the majority of the addicts are unemployed vagrants, labourers and craftsmen, street-traders and people in liberal professions.

Over the years there have been a general concensus that the drug abuse was not at a problematic level in Turkey. Indeed until recent years the statistical data proves this belief is right. There was slight use of morphine. Most popularly used drug was canabis followed by opium.

**What is the situation today:** Informations gathered through the mass media as well as the statistical research out puts indicate that there is once again an increase of the drug abuse in Turkey.

According to the AA Press news publisized in a local newspaper on 31.1.1979 parallel to the increaes of the use of heroin, opium and hashish, there is a noticable increase of the use of pills amongst the students. According to Prof. Özcan Köknel, the pills replaced other drugs amongst the youngsters of higher socio-economic level, and drug abuse increasingly spread over the lower socio-economic population, and even through the Urban Areas.

The results obtained from Prof. Aysel Ekşi's research over 6413 university students registered to the University of Istanbul on 1976-77, is as follows:

- 2.47 % use canavis;
- 5.51 % use opium;
- 0.7 % use LSD
- .02 % which is 114 students are total addicts;

1.25 % of the total are those using desoksini;  
amphetamine; or such, at times<sup>(11)</sup>.

According to a research made at the Eegeen University in 1991, 6 students out of 100 use above mentioned drugs in Turkey.

According to the central interpol archives in 1980 the total quantity of the South West Asia base heroin entered into the West European markets is 828.435 kg. and out of the 661 traffickers 361 are Turks. The statistical figures related to Germany are even more interesting: In 1980 180.34 kg heroin has been seized and out of the 281 traffickers 195 are Turks, 23 are Germans and 43 are of other nationalities. When other similar statistical data is also examined, one can easily come to the conclusion that Turkey has become an important trade bridge for the asian origin drugs way to the West European markets, and especially the Turkish workers easy access to these European contries and their frequent trips in and out of these countries have become an opportunity for the international drug dealers<sup>(12)</sup>.

Year	Type of case				
	Hashish kg	Opium kg.	Heroin kg.	Heroin kg.	Cocain kg.
1986	2336	68	46	166	-
1987	1940	16	61	1303	0 kg. 050
1988	5618	12	376	1049	0 kg. 815
1989	6978	3	248	1180	0 kg. 153
1990	11997	4	374	861	1 kg.948
1991	3535	1	131	1026	14 kg. 270

Year	Number of accused		
	Turkish	Foreigner	Total
1986	1726	53	1779
1987	1659	186	1845
1988	1884	155	2039
1989	1803	135	1938
1990	2159	148	2307
1991	1915	157	2079

There is also a noticable coincidence between the increase of terrorist activities in Turkey and the increasing number of drug dealers throughout Turkey. Many findings significantly prove that the weapons provided for terrorist activities within Turkey have actualy been paid for by the exchange of services

(11) Eksi, Aysel, "Uyuşturucu, Uyanıcı ve Teskin Edici Madde Kullanımı", 17-21 Ekim 1977, 13. Ulusal Psikiyatri ve Nörolojik Bilimler Kongresi. Rapor.

(12) Dönmezer Sulhi, Kriminoloji-İstanbul, 1984



pertaining to drug traffic, as well as the supply of drugs in return <sup>(13)</sup>.

#### **IV - Policies in the fight against the drug**

We may say that, in modern society, the drug abuse boom ran parallel to a gradual rise in affluance, social security, quality of housing, level of education and health services. This obvious positive correlation between levels of prosperity and levels of drug abuse could not be reconciled by the conventional criminology wisdom that "poverty breeds crime". On the contrary everyday European experience suggested that crime rates, as well as drug abuses go up jointly with the Gross National Product.

Therefore under the new circumstances, we should make a renewed effort to tackle the social problems constituting the backgrounds of "crime".

In other words, drug abuse is not primarily a problem to be dealt with by the police and the Courts, but more so a matter of and moral, health and social well-being.

In the use and sales of drugs, one can base his evaluation to the principals of economy and could easily trace the liberal economy's basic law of "supply and demand."

The fact that, there is a demand for the use of drugs in the society, brings along drug supply.

Therefore, in order to control and minimise the demand for drug usage, the supply should be kept under control and/or be directed.

In many of the legal systems, as mentioned above, this directive and control methods were established through penal sanctions. This was based on the pact that the use of drugs have been considered a crime. Yet, later on, it was acknowledged that, this offence contains victim's consent, which then makes it similar to that of illicit gambling and betting. Some legal systems, by officially organising lottery activities, has directed this act and prevented illicit gambling in the society, to some extend. Than, the trend become that a new attitude is necessary in dealing with this particular matter as well.

Within these context, three policies can be noticed:

- Prohibition and Penal Measures
- Social control
- Economic control

#### **A- Prohibition and Penal Measures:**

Prohibition seems the first and most obvious policy to adopt.

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(13) Groopp Walter, Organize Suçlulukla Mücadelede Yeni Araştırma Metodları, Report Submitted of The Symposion held on October, 1992 İstanbul, It Marmara University, Faculty of Law.

This policy is reflected on international and national level.

**a) Prohibition on production:** As you know, there are two ways of producing drug and narcotics. Agricultural production and Laboratory production.

**1- Agricultural Production:** For certain countries and regions, agricultural production represents an indispensable source of income their people, style of life, a culture: Comparable to the wine-growers in France, and in Italy.

As it is in Turkish example opium poppy cultivation is an indispensable source of income for certain regions. We may say that at these regions there is an opium culture established for long years.

Complete prohibition has already been tried in Turkey (Similar in Mexico). In 1971 government made an attempt to stop the cultivation of opium poppies by replacing it with other crops.

It should be borne in mind that all Turkish Governments in the past have consistently pursued a policy aimed at reducing progressively the poppy farming was gradually reduced from 42 to 7 before 1971 and that in 1971 after the absolute banning the Turkish share in the world opium production was less than five percent. The experience of the following 2 years has clearly shown that in the remaining regions where the substitute agriculture had proved to be unattractive and insufficient as the poppy straw is largely used by the inhabitants for daily diet as food, oil etc. Solution can be found through long term approach rather than imposing a total ban.

Due to the strong traditions and the profits obtained through the black market continuing clandestine cultivation, this attempt of total restriction has partly failed and in 1974 Turkish Government has changed its policy on complete prohibition of poppy cultivation.

The Turkish Government took a decision of September 12, 1974, according to which only unlanded poppy cultivation would be allowed in Turkey. Unlanded cultivation, or what is called the "poppy straw process of harvesting" which covers the collection by authorised bodies under strict supervision of the whole harvest of unlanded pods, which will be bought and collected solely by the Soil Products Office (TMO) in Turkey will serve to meet the growing demand of pharmaceutical industries in the world, for opium to be used for medical purposes. An alkaloid factory was set up in Turkey to manufacture fine opium alkaloids.

The Turkish Government, while deciding to authorize only the unlanded method of cultivation, has at the same time adopted the most comprehensive and effective measures of control in order to prevent the illicit traffic of opium.

Under Article 6 of Law no. 3491 of the Department of Soil Products, the

manufacture, import and export of narcotics (1) and internal trade in raw opium are a State monopoly.

The Council of Ministers may decide to include in the State monopoly other natural or synthetic products similar to narcotics whose use is scientifically proved to present a danger to health and to lead to addiction.

The State monopoly is controlled and run by the Department of Soil Products, which is a government body.

**Control of manufacture:** The manufacture of narcotics is controlled by Law No: 2313, dated 22.6.1933, or narcotics control.

Under this law manufacture of pharmaceutical products based on narcotics requires a permit. The Ministry of Health and Social Welfare licenses premises where such pharmaceutical products are manufactured.

Pharmaceutical product companies and pharmaceutical laboratories apply to the Ministry for a permit whenever they have to buy narcotics directly from the Monopolies Board. The Monopolies Board cannot sell without seeing the permit. After entering on it the quantity sold and the date, it forwards the permit to the Ministry.

Owners or managers in charge of pharmaceutical product companies must keep books in which they must regularly record the quantity of narcotics bought and changes in the stock of narcotics, and must enter quantities they buy and sell, together with the date and the name of the purchaser.

**Control of internal trade:** Under the provisions of Law No. 2313 on narcotics control, the internal licensed retail sale is carried out by public pharmacies run in compliance with the law on pharmacies and pharmacists. Pharmaceutical product companies sell narcotics in bulk only the pharmacists, public companies and laboratories.

In compliance with the law relating to pharmacies, owners or managers of pharmacies must enter the sale and purchase of any materials of the narcotics type specified by the Ministry of Health and Social Welfare.

Counterfoil books are required for prescribing narcotics. Official establishments use counterfoil books authorised by their competent departments. Doctors, veterinary surgeons and dentists practising privately use counterfoil books authorised by their respective professional associations.

Medicines containing narcotics may not be carried in the first-aid kits of aircraft and ships without proper authority. Limited quantities of narcotics may be carried internationally by air and sea for emergency use and first-aid on the voyage, subject to a special permit from the Ministry of Health and Social Welfare. The granting of such permits is notified to the competent United Nations bodies. In this way the Ministry of Health and Social Welfare and other compe-

tent national bodies take all the steps specified in Article 32 of the 1961 and Social Council to prevent narcotics carried in the first-aid kits of aircraft and ships from being misused or diverted to the black market.

Raw material: Cultivation of the opium poppy, in some districts for opium production and in others purely for seed-oil is authorised and controlled by order of the Council of Ministers in pursuance of Law No. 7368, dated 21.7.1959, the Protocol of 1953 and the conditions stipulated in the convention of 1961.

Under the terms of Law no. 7368, growers are bound to deliver all their crop to the department of Soil Products. This body has the exclusive right to buy, sell and export the whole of the opium production or to hold some back for stocks.

Necessary measures are taken to prevent the smuggling of surplus production. Where illicit trafficking is discovered, the contraband is seized by the police and the offenders handed over to the judicial authorities. Under Law no. 7368, licenses granted to producers who have diverted their crop to the illicit traffic are withdrawn.

Law No. 2313, relating to narcotics control, forbids the growing of Indian hemp for hashish production. Under Article 23, the unlawful crop will be destroyed and the offenders will be liable to imprisonment for from one to six months.

#### Court cases related to the Law number 2313

Years	Cases	Accused	
		M	F
1986	1270	2136	68
1987	1005	1110	17
1988	521	864	21
1989	574	805	40
1990	423	635	44

The decision of the Turkish Government on unlicensed poppy cultivation became legally effective on 6 th December 1974, and not only poppy lancing has been definitely forbidden, but -in the seven provinces where cultivation is authorised- additional measures of control as the sanctions related to the new system have been introduced.

This change on prohibition policy work out quite well. The positive effects of this change has been noticed by United Nation Commission on Narcotic Drugs.

At the third session of UNCND, meeting hold in Geneva it was stated that;

"Drug Enforcement Administration (DEA) statistics reveal that prior to June 30, 1972, 92 percent of heroin seized in USA was white (prosumably of Eu-

ropean origin, and produced lenquely from Turkish morphine Case) 8 percent was brown (presemably Mexican Original) by June 30, 1973, 62,8% was white and 37.2% brown."

This shows that available southern Asian heroin and heroin produced in Mexico had not filled the heroin void created by the effectiveness of the opium poppy ban in Turkey.

Today, the manufacture, import and export of narcotics and internal trade in raw opium is a state Monoply. This monopoly is controled and run by the Department of soil Products.

The oppium and other secondary product, produced at very limited provences bought by the Department of Soil Products.

### **Laboratory Production.**

Regarding laboratory production, which exists highly industrialized countries, there are two solutions:

The first, is to enforce the laws very strictly.

The second is to impose very severe penalties.

Needless to say these restrictions may lead to a tremendous increase in the value of drugs and narcotics for non medical purposes.

Under these circumstances, drugs for medical use could serves as substitutes. The importance and limitation of drugs must be assessed with the medical profession with strict prohibition of all other use.

In fact, the strict prohibition of the use of certain drugs may lead even the occassionnal users into drugs manufacture.

Consequently, prohibition cannot be effective unless it is supported through penalties. <sup>(14)</sup>

### **b- Penal Sanctions:**

There is a different kind of punishm ent forseen by the Law for the traffickers and the users.

The idea of punishing traffickers is accepted and justified in all criminal systems.

The traffickers are prosecuted through a concerted police action.

Usually Laws provide very severe, sometimes very harsh penalties for the drugs traffickers.

For example Turkish panel code until 1990 penalies the traffickers of the

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(14) United Nations Social Defence Research Institute (UNSDRI), Progress report of an "International Survey on Drug-Related Penal Measures"

drugs by death penalty, if the drug is heroin, opium now, it is 10 to 20 years imprisonment.

On the other hand, a comparative analysis of the different criminal legislation aimed combatting the use of drugs reveals a very wide range of situation <sup>(15)</sup>.

Among the European Countries, France, Finland, Luxembourg, Sweden, Switzerland and Turkey use of narcotics is considered to be an offence.

- Greece, Belgium, and the United Kingdom make the use of narcotics an offence only in certain case (taking into consideration account the conditions of use or nature of the drug).

- Malta, the Netherlands the UK and Portugal consider it an offence to possess narcotics for one's own use while not trading such possession as a drug trafficking.

The other countries where it does not constitute an offence either to use or to possess drugs, may defacto punish drug consumption by provision to prevent persons from "keeping of prohibited drug."

In the Spanish criminal code only to possess drugs with intent to deal with them is an offence.

It should be added also, that the degree of seriousness with which the offence of consumption of drug is treated considerably according to the substance involved, Judicial practice and attenuating circumstances allowed by the law itself.

One can identify two basic types of legislation on drug consumption.

The first approach is somewhat more repressive with severe sanctions and is based on the general institution of criminal law.

For example according to article 404/2 of Turkish criminal code penalty of illicit drug consumption is imprisonment of one to two years. But generally in practice the average sentence applied to drug users is minimum level of the imprisonment pointed above. But one sixth of it, was remitted as a standard practice.

In the second group, one may classify the legislations providing relatively mild punishment for drug addicts under special law on drug control and consequently, more specifically the means of taking alternative social and medical measures.

For example in France, the punishment pronounced will not be implemented if a convicted drug-dependent person agrees to the indicated medical treatment; in that case the penalty foreseen by law are not applicable, unless accused declines or avoid treatment <sup>(16)</sup>.

(15) Council of Europe, "Study and Synopsis on Basic Criminal Law Concepts of Pompidou Group Member Countries on the Prevention of Drug, Trafficking and Abuse" 1991.

(16) Study and Synopsis, pp 25.

It is clear, in fact, that the present laws providing for incarceration are not fully applicable, especially when adolescent users are involved, nor can they get the unanimous approval of advanced societies. On the other hand, fine as a penalty which are justified in all countries where the system also offers free medical care to all users, meets with the approval of a much larger portion of citizens.

## **B- Policy of Social Control**

**1- Social Control on prevention of crimes:** In the nineties in the area of crime prevention a trend towards integrated or comprehensive security is to be expected. But also, there are several reasons to predict a gradual renaissance of offender oriented crime policy. In the field of drug abuse some European societies, government will indeed make a renewed effort to tackle the social problems such as drug problem.

As it is mentioned in the "United Nations Guidelines For The prevention of Juvenile Delinquency" the policies facilitating the successful socialisation and integration of all children and young persons, particularly through the family, the community, schools, vocational training and the world of work, as well as through voluntary organisations, must be placed instead of the punishment methods <sup>(17)</sup>.

**Family:** Since the family is the central unit responsible for the primary socialization of children. Governmental and social efforts to preserve the integrity of the family including the extended family should be pursued.

**Schools:** Special attention for the educative methods should be given to comprehensive strategies for the prevention of drug and other substances abuse by young persons.

**Community:** As a shared responsibility it community-based services should be organized and programs which respond to the special needs, problems, interests and concerns of young person, and the committees charged to deal with drug addiction should offer appropriate counselling and guidance to young person and then family.

**Mass Media:** The Mass Media should be aware of its extensive role and responsibility as well as its influence, in communication relating to youthful drug abuse. The Mass Media should use its power for drug abuse prevention by realizing consistent messages through balanced approach: Effective drug awareness campaigns should be promoted.

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(17) United Nations, Guidelines for the Prevention of Juvenile Delinquency, New York.

### C- Policy of Economic Control

Drug use is considered an offence, but in its strict sense, it is one of those forms of criminality that implies the consent of the victim. Therefore it can be treated in a similar fashion to offences such as illicit gambling and betting.

To put an end to illegal activity of gambling some states have organized official lotteries, incidentally very lucrative for the governments concerned, and therefore, limiting the percentage of those who take the risk of losing their money in establishments organized by the underworld. It might similarly be possible that society, which is the main victim of drug use for non-medical purposes, -both in terms of the loss of human potential and the cost of treating drug addicts- would be quite ready to take over the production and control of the marketing of this type of produce.

"This policy rests on this theory and has nothing to do with the moral aspects, in the absolute sense of the term. They look successively, then, at the various problems involved, that of production, marketing, the regulating of sales and the restrictions and controls that are necessary." (18)

However, the sale of some types of pharmaceutical products and that of drugs in the true sense would have to be coordinated. Certain regulations and controls must be standardized from the beginning.

### V — Penal sanctions in Turkish law

The provisions of the Turkish penal code relating to the suppression of illegal trafficking in narcotics are set out below: (19)

**Article 403 (1):** Any person who makes, imports or attempts to do so, without a license or in contravention of a license, shall be liable to a minimum of ten to twenty years solitary confinement and, in addition, he shall also be liable to a fine of fifty thousand pounds for each gram or part of a gram of the drug.

(2) Any person in the country who exports narcotics mentioned in the paragraph 1, shall be liable to imprisonment to 12 years. He shall also be liable to a fine of fifty pounds for each gram or part of a gram of the drug.

(3) Any person who exports narcotics after producing or importing the same, are additionally subject to the penalties set forth in on paragraph 1.

(4) The penalties decided by in foreign jurisdictions for the exported material will be deducted from punishment due to exportation.

(5) Any person in the country who sells narcotics without a license or in

(18) Szabo, Dennis, "The Probleme of the nonmedical use of Drugs and Future Policien Report Submitted of the international Cours of Criminology, held at Teheran, in May 1974"

(19) Günalp, Yılmaz, *Türk Ceza Hukukunda Uyuşturucu Madde Suçları*, Ankara 1973.



contravention of a license, or exposes them for sale or purchases them, or has them on his person or elsewhere, or gives them away, or receives them, or sends them or carries them, or acts as intermediary for their selling or purchasing or transporting, or procures them by any means whatsoever, shall be liable to solitary confinement 4 years to 10 years. He shall also be liable to a fine of fifty thousand TL for each gramm or part of a gramm of the drug.

(6) If the act specified in the preceding paragraph relates to heroin, cocaine, morphine or hashish, the punishment shall be increased at doubled.

(7) Any person setting up and running an organisation or even joining one to commit the offences specified in the preceding articles is liable to a punishment increased by half.

(8) If the offences specified in this articles committed by two or more persons who are unconnected with person who make this offence an occupation, profession or livelihood, the penalties applicable shall be increased by one third.

(9) Any person employing children under eighteen, or those who are not responsible for their acts, in committing the offences specified in this article shall be liable to the punishment increased by 1/6.

(10) In cases where the offence is committed by persons in association, whether as a principal or as an accessory, the penalties specified in paragraphs (1), (3), and (4) shall be doubled. case provided for in paragraph (2), the offender shall be liable to sentences death.

(11) Agreement between two or more persons to commit this offence is considered an association.

(12) Anyone purchasing the substances specified in Article 403 by means of a false prescription shall be liable to imprisonment for a minimum of one year and a fine of from one million to five million TL.

**Article 404 (1):** Any person who by procuring private premises or in any other way attracts one or more persons to them and promotes the use of narcotics, and any person who gives such material to young persons under eighteen, or to those who are visibly mentally disturbed, or to addicts, shall be liable to the punishments specified in paragraphs (5) and (6) of Article 403, increased by one-sixth.

(2) Anyone using narcotics, or having them on his person for this purpose, shall be liable to imprisonment for from one to two years.

(3) Person who use narcotics who wants to get cured will not be under the punishment.

(4) If the taking of narcotics amounts to a craving, the person concerned shall be ordered to remain in the hospital until his cure is medically confirmed.

If such a person is in a place where there is no hospital, he shall be sent to a place where there is one.

The competent court may decide, at each stage of examination, on treatment and hospital care for those with a craving for drugs.

**Article 405:** Anyone accessory to the commission of one of the offences specified in Article 403 and 404, who notifies the competent authorities before they have been informed about his associates or the place where the narcotics are hidden or made and helps in apprehending them shall be exempt from punishment for his own acts.

For those who help in the discovery of the offence or in the arrest of their accomplices after the offence has been reported, penalty shall be commuted to the half.

**Article 406 (1):** If those committing the offences specified in Article 403 and 404 / 1 are doctors, veterinary, surgeon, chemists, pharmacists, dental surgeons or dentists, owners of a pharmaceutical business, responsible managers, military and civil officers of health, midwives or hospital attendants, the penalty of solitary confinement provided in the aforesaid article shall be increased to the half. Moreover, they shall be banned for life from continuing in their profession.

(2) If the offences specified in Article 403 and Article 404 (paragraph 1) are committed in any kind of transport undertaking, whether by its owner or employee abusing his position in it, the penalty of solitary confinement for life as provided in the said articles shall be increased to one third in addition, the offender shall be banned for life from exercising a public office or his trade.

**Article 407:** If personal illness or a threat to health such as wounding or bruising results from any act specified in the preceding articles, the punishment shall be increased by an amount varying from a third to a half, except in cases entailing solitary confinement for life. If the act has caused illness to several persons, the punishment laid down in the first paragraph shall be at least doubled.

If the offence has caused death, the offender shall be condemned to life imprisonment.

**Article 408:** Any articles found in a public place for facilitating the use of the substances specified in Article 403 shall be confiscated, and half the proceeds shall be given to those persons who have helped in the discovery of the offence.

It should be mentioned that, under Article 87 of the Turkish penal code, any foreign Jurisdictions convictions are to be taken into consideration for establishing recidivism.

## Court cases related to illegal Trafficking in narcotics

Years	Article 4q3 of the Penal code			Article 404 of the Penal code			Article 405 of the Penal code		
	Cases	Accused		Cases	Accused		Cases	Accused	
		M	F		M	F		M	F
1986	961	1158	31	467	624	15	11	13	—
1987	966	1873	37	464	621	9	--	--	--
1988	1158	2363	105	575	867	55	3	3	--
1989	1321	2697	82	777	1049	25	3	3	--
1990	1298	2913	67	844	1237	40	1	1	--

### VI- The measures forseen for the wrongful use of narcotics in Turkey

Known addicts are, to the extend possible, controlled and closely watched by the police and subjected to compulsory treatment in one of the psychiatric hospitals <sup>(20)</sup>.

Uner Article 404, paragraph 3, of the Turkish penal code if a person's customary drug-taking amounts to a craving (toxicomania), he is committed to hospital until his cure is medically confirmed. If such a person is in a place where there is no hospital, he will have to be sent to a place where there is one.

The competent court may decide, at each stage of examination, on treatment and hospital care for those addicted.

It should be noted that, according to the well established jurisprudence of the Court of Appeal, the addict may not incur any penalty, other than submission to special surveillance by the police, simply for using narcotics or having them on his person. But, under Article 48 of Turkish penal code, addicts are held to be fully responsible for their actions; diminished responsibility is not recognised. Hence, if they commit an offence while showing any symptoms of drugs-poisoning they are held liable in law.

All addicts are officially registered.

One of the offices of the Police Department and the Central Narcotics Bureau of the General Police Directorate are the authorities responsible for the registration.

The Directorate of the Registry at the Ministry of Justice is also responsible for keeping addicts' legal records.

### VII- Conclusion

The attempts and process of prevention of Drug abuse displays a rather different trend in Turkey when compared with the tendencies in other countries.

(20) United Nations, Study on Measures to Redicu Illicit Demand for Drugs, New York 1979.

In Turkey "penal norms" have always had primary importance in dealing with drug abuse. Therefore when the subject of study is "preventive methods for drugs abuse", the impact of "Criminal Jurisdiction" has to be viewed.

The known fact is that Penal Law deals with the deviated acts that are affecting and distracting the peace and order of the Society. In other word, penal sanctions are social reactions against these deviations.

It is generally beleived that under these circumstances "punishment" per say is necessary and useful. However parallel to this, it is also beleived that should any other type of measures can affectively be applied to control such deviations no doubt the interference of Criminal Law will not be needed.

The role of Penal Law in relation to the "Drug Abuse should be referred in a completely different manner.

It is anonymously agreed that the Penal Law will be applicable for the illegal produce and distribution of Drug.

However a similar approach can not easily be put for the use of illegal drug. The latter leads to contraversial opinions according to one point of view, which, to day in practice more communly defended use of drugs is an individual concern, for which the society would have no right to punish the individual: Because, the victim of the eact is the offender itself.

When the case is persented as such, contradicting opinion takes its shape: One by stating that, the drug abuse, leads to seven injuries in the life of human beings and through whom in the life of society.

Another important subjet matter related is the affectiveness of the penalties imposed on illegal drug users. There are contradicting and supportive examples representing these opinions.

The penalties have been applied for such a long time with no concrete result. However, this fact alone, should not lead us to the conclusion that it would be better to stop decriminilization of the act.

In our opinion penal law only have substitute role, where as the measures to be applied primarily are those to recupared, rehabilitad -rather than penalise. Yet it is also a known fact that over tolerant attitude leads to increase the number of people who involved in Drug.

In history of Turkey in 1954, heroin epidemics have been stoped by heavy penalties. Although it can not be claimed that the same result can be achieved by applying the same measure in 90 thies in the same country.

Needless to say this is mainly due to vaste social and economic changes, as well as the influences of world wild trends towards individualisme and human rights.