

**The impact of drug policy reforms on drug offences and  
organised crime: A case study of the Czech Republic from 1990-  
2016**

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## **Abstract**

Possession of drugs for personal use has been decriminalised in the Czech Republic since 1990, but the implementation of the law has changed several times. This thesis examines the impacts of these changes on drug offences and organised crime. Using an approach that combines the use of the Advocacy Coalition Framework with a sequential explanatory mixed methods design, this research utilises interrupted time series analysis and thematic analysis of interviews and government documents to compare rates of drug offences and organised crime across the implementation periods of the different policies.

The results of the study indicate that rates of drug offences and organised crime have continued to increase under the decriminalisation policies, but there were fewer prosecutions and convictions under the policy that was in place from 1999-2009, when possession for personal use was decriminalised for amounts 'greater than small'. The most significant increases were seen after the 2010 policy change, which harmonised threshold limits across law enforcement agencies. While policy changes contributed to these outcomes, the crime rates were also influenced by procedural changes in law enforcement, police and judicial discretion, police and governmental prioritisation, and changing trends in drug use and distribution.

Ultimately, the thesis concluded that the decriminalisation policy was one of many factors that influenced rates of drug offences and organised crime. The policies, regardless of specific implementation, did not reduce the number of prosecutions or convictions and may have provided a hospitable environment for the expansion of organised crime. The socio-political landscape of the country – including core cultural beliefs, public tolerance for drug use, policing and law enforcement structures and philosophies, and medical approaches and views – all shaped the evolution of the decriminalisation policy and its effects on crime.

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## **List of Acronyms**

ANO – Association of Nongovernmental Organisations

ANO 2011 – Akce Nespokojených Občanů [Action of Dissatisfied Citizens]

CZK – Czech Koruna [currency]

EMCDDA – European Monitoring Centre for Drugs and Drug Addiction

EU – European Union

ICSP – Institute for Criminology and Social Prevention

MHRA – Medicines and Healthcare products Regulatory Agency

MP – Member of Parliament

NGO – Nongovernmental Organisation

NMCDA – National Monitoring Centre for Drugs and Addiction

PAD – Projekt Analýzy Dopadů Novelizace Drogové Legislativy v ČR  
[Impact Analysis Project of New Drugs Legislation]

UK – United Kingdom

UN – United Nations

UNODC – United Nations Office on Drugs and Crime

US – United States of America

WHO – World Health Organisation





## **Chapter 1: Introduction**

This thesis examined the impacts of different implementations of drug decriminalisation in the Czech Republic on drug offences and organised crime. The nature and extent of drug decriminalisation within the Czech Republic – including all substances for an extended time period – makes it a unique case and one of the unsung forerunners of the shift towards decriminalisation. Despite decriminalisation becoming an increasingly common policy option, it is relatively understudied compared to prohibition. The incremental changes to the drug policy in the Czech Republic, which all fall under the umbrella of decriminalisation, allow for a comparison of different implementations of the same overarching policy rather than the starker contrast of prohibitive versus liberalised laws seen in previous decriminalisation studies. This made the Czech Republic an ideal case study site for this thesis. It also demonstrated numerous factors outside of the legal framework that have impacted drug use, harms associated with drug use, and crime over this time period (1990-2016), while minimising the confounding factors related to cross-cultural comparisons.

This research draws upon the drug policy literature on prohibition and decriminalisation, particularly as it relates to criminal activity. Literature on the Czech version of decriminalisation has been authored by Czech researchers, with few outsiders exploring its effects. Frequently research has been conducted by those that were involved in the development of the policies, so this thesis was meant to build on their foundational analyses and expand the scope of that research. There are also no studies of the Czech decriminalisation policy that cover the entire time span of the policy to explore long term effects. This thesis fills that gap by examining the period from 1990-2016, longer-term than any studies that have been completed to date. It also focuses on organised crime and criminal justice outcomes, which are frequently minimised in lieu of public health effects, and have been under-researched in the Czech Republic. Chapter 2, which looks at the history of the Czech Republic and how this research fits into the broader narrative of the countries transitional period, forms the basis for this thesis. Non-Czech literature on decriminalisation was also imperative for the

development of the research questions, to provide a basis for the types of outcomes that would be expected from this policy change. An examination of those arguments will be presented in Chapter 3.

Studying the impacts of decriminalisation empirically over time is important as more countries move towards decriminalisation (Taylor et al., 2016). In January 2019, the United Nations (UN) Chief Executives Board for Coordination issued a position statement in support of decriminalisation (United Nations Chief Executives Board for Coordination, 2019), and many countries have implemented policies decriminalising illicit substances. However, the evidence in support of decriminalisation is primarily based on studies of prohibition rather than decriminalisation itself. This is partially due to the limited number of countries that designate their policies as 'decriminalisation', making prohibitive policies more common and likely to be scrutinised. It is also due to the time frames in which decriminalisation has become more widespread, since the impacts of a policy are not evident immediately, so research will undoubtedly increase over time. Liberal drug policies are gaining support, but there is limited practical evidence that they are superior to the status quo in terms of implementation and outcomes (Laqueur, 2015; Marlowe, 2016), which is an issue that will be discussed in-depth in Chapter 3.

This thesis approached this problem through an extended policy analysis, using mixed methods to examine the outcomes of the different changes to the criminal code. It aims to answer the overarching research question of:

How have the different implementations of drug decriminalisation in the Czech Republic impacted drug offences and organised crime over time?

The study begins with an analysis of how the policy changes came about in the Czech Republic, using the lens of the Advocacy Coalition Framework, to describe the events that led to these policy decisions and what influenced them. Next follows an interrupted time series analysis of quantitative data, primarily crime rates, and qualitative data, interviews and documentary analysis, to determine how the policy changes affected organised crime and drug offences over time. It also extends the analysis to the demographics of

the offenders, looking at sex and nationality, examining if any disproportionality exists in the policy impacts that would not be evident from aggregate crime rates.

This chapter will provide an introduction to the thesis, explaining the drug policy changes over time in the context of Czech history. In order to understand the policies of the Czech Republic, and how the implementation and reception of such policies would differ from other nations, the chapter provides relevant background information regarding the political history of the region, including the structure of the Czech government. Key terms that are used throughout the thesis are discussed and defined. The chapter then explains the methodological approach taken to evaluate the policies, the research questions, and the policy analysis framework that guided the process. Finally, it will outline the structure of the thesis as a whole, detailing the content of each chapter.

## **1.1 Czech drug policy over time**

In 1990, Czechoslovakia decriminalised the possession of drugs for personal use. Unlike some of the other countries that have liberalised their drug laws, such as Portugal and Switzerland, the Czechoslovak decriminalisation was not in response to a public health crisis. At first, it was intended to distance the newly-formed democratic state from the former communist laws, so decriminalisation was not the only liberalised legislation (Zábranský, 2004; Zeman, 2007). Possession of drugs for personal use was reduced to a misdemeanour (Zeman, 2007), which is an administrative offence rather than a criminal offence (Karabec et al., 2002), marking the first official decriminalisation policy in the country. Policies which decriminalise only cannabis or other drugs that are perceived to be less harmful are more common, but the Czech policy has always been broad, and only differentiated between 'soft' and 'hard' drugs (as described in the literature) for prosecution and sentencing in 2010 (Mravčík, 2015). In the 1990 legislation, it was only illegal to supply 'narcotic or psychotropic substances' to another person (Zeman, 2007), without any clarification of amounts or substances. This reflects the desire for personal liberty that was increasingly important at the time. Criminal penalties were still in place for distributing,

producing, or trafficking drugs (Zeman, 2007; Klobucký, 2012), which was consistent with the laws of other European countries. The criminal code in 1990 had three sections relating to drug crimes: Section 187 referred to drug production, import, export, transit, and storage; Section 188 for the possession of drug-producing materials; and Section 188a, which was for the crime of 'spreading addiction' (Act No. 140/1961). These offences are described in detail in Chapter 6.

In 1998, amid concerns of increasing drug use and crime, a new provision was added to the criminal code: Section 187a, which criminalised possession of narcotics for personal use in an amount 'greater than small', which was not further defined (Zeman, 2007). In addition, penalties became tougher for a number of crimes and new aggravating circumstances were added. Committing the offence against a minor, as a part of an organised group, or causing an injury or death increased the time of imprisonment for crimes under Section 187. The harshest penalty, ten to fifteen years imprisonment, applied if the act caused serious injury or death to two or more people, the offender acquired a large-scale benefit, or the act was committed as part of a transnational organised crime group (operating in two or more states) (Act No. 140/1961 amended by Act No. 112/1998). This is a significantly harsher penalty than even the Soviet era drug policy, which carried a maximum of eight years imprisonment.

In 2009, a completely new criminal code was introduced, taking effect in 2010. The new code replaced Sections 187-188a with Sections 283-288. These sections included all the laws found in the previous code, along with two new provisions for the cultivation of narcotic-producing plants and possession, distribution, or handling of drugs with hormonal effects (Act No. 40/2009). Sentencing options increased, with fines and forfeitures allowed for a broader range of crimes that formerly required imprisonment. The allowable punishments for personal possession changed to reflect the differentiation between cannabis and 'hard' drugs, with a lesser penalty for cannabis offences. This legal change also led to the establishment of set threshold limits for personal possession, rather than the vague 'greater than small' designation (Mravčík, 2015). The text of each section can be found in the analysis of crime rates in Chapter 6 and Appendix C. Throughout the

thesis, the three time periods are referred to by summary titles that reflect the possession laws at the time. Table 1.1 provides a reference for the policy periods, the summary titles that are used for reference throughout the thesis, and a brief description of the possession laws at the time.

**Table 1.1: Summary titles for policy periods by possession provision**

| <b>Policy period</b> | <b>Summary title</b> | <b>Possession provision</b>  |
|----------------------|----------------------|--|
| <b>1990-1998</b>     | Decriminalisation    | No personal possession offence   |
| <b>1999-2009</b>     | 'Greater than small' | Possession decriminalised up to a 'greater than small' amount          |
| <b>2010-Present</b>  | Threshold limits     | Threshold limits set for the possession of each substance <sup>1</sup> |

Through the historical lens of Czech drug policy development, several areas of inquiry were explored in this research. Changes to the drug policy are influenced by factors unique to the Czech Republic, and also have varying impacts. Each of these areas contributes to the overall theme of how the drug policy changes have impacted upon crime and corresponds to the accompanying sub-questions that were necessary to answer the overarching research question.

## **1.2 Areas of inquiry**

Changes in drug policy have far-reaching implications for society, and cannot be evaluated in isolation. This section reviews the areas that are impacted by drug policy changes, and the rationale for their inclusion in this thesis. It also examines the influences on the drug policy that can be expected from a single nation study, and how that cultural lens will be applied to the study of drug policy development.

Since the manufacture and distribution of drugs are illegal activities under the UN Conventions, any changes to drug policy through the criminal justice system will impact recorded crime rates. Much of the current

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<sup>1</sup> The threshold was changed in 2013 after being deemed unconstitutional and a new standard was defined by the Supreme Court, along with the return to a material rule of law, akin to the 1999 policy. Since there was no actual change to the criminal code, this was not considered a separate legal change within this thesis.

decriminalisation research has focused on Portugal, and the beneficial health impacts stemming from decriminalisation there (Hughes and Stevens, 2007; 2010; Greenwald, 2009; Laqueur, 2015), but there is little evidence of the impacts in other countries, particularly when it comes to organised crime. Prohibition of drugs has been linked to increasingly violent drug markets controlled by organised crime (Dorn and South, 1990; Resignato, 2000; Wodak, 2014), so this study contributes to that body of literature by exploring how organised crime – particularly with regard to drug offences – functioned under different implementations of decriminalisation. This thesis will expand the research base on the effects of decriminalisation on organised crime, which could be useful to other jurisdictions that are considering a decriminalisation policy. There is also academic speculation that decriminalisation would lead to a more considerable apprehension of serious offenders by police, as they would not be occupied with petty drug crimes (Miron and Zwiebel, 1995; Anderson and Rees, 2014). That would lead to a decrease in incarceration rates for lower-level drug offenders, and potentially increased rates of incarceration for higher-level offenders. This study contributes to the literature on the impacts of decriminalisation on policing and criminal justice to evaluate whether that hypothesis is supported, aiming to answer the question:

How did the decriminalisation policies affect law enforcement practices, including interpretation on the ground, and how have the officially reported crime data changed during the policy phases?

Another noteworthy aspect of decriminalisation is the effect that it may have on drug use rates. This is a more commonly researched topic in the field and will be covered in the review of the literature in Chapter 3, but an analysis specific to the Czech Republic was conducted to determine if the impact on drug use was similar to other countries that have been studied. As this thesis focused primarily on crime, drug use was not the primary consideration and was evaluated using secondary data from the National Monitoring Centre on Drugs and Addiction (NMCD). It is also related to crime rates, however, as increases or decreases in use drive the illicit drug market, potentially impacting the behaviours of criminal organisations that are involved in the

manufacture and supply of drugs to the country. Trends in drug use, including shifts in the types of drugs used, are an essential element of the drug market. These related impacts will be discussed in relation to the crime rate analysis in Chapters 6 and 7.

One problematic aspect of prohibition policies is the frequently disproportionate enforcement of the law (Engen et al., 2002; Stevens, 2007). Minority ethnic groups in particular often suffer dire consequences from drug policies that are not experienced by the white majority. Many studies in the US and the UK have demonstrated that minority ethnic groups are more likely to be arrested, prosecuted and incarcerated as a result of drug offences (Lowney, 1994; Chambliss, 1995; 2003; Freedman, 1998; Webster, 1999; Murji, 2007; Alexander, 2011; Eastwood et al., 2013). The Czech Republic is also a white majority country, with mixed views on immigration (Sides and Citrin, 2007; Gorodzeisky and Semyonov, 2015), so the potential for similar disparities was evident. There is also a strong association between ethnicity and organised crime in the country (Nožina, 2004; 2010; Klaus et al., 2018), which contributes to anti-immigrant sentiments, which could influence how the drug policy is implemented. The thesis aims to answer the following question to address this issue:

How and to what extent have the demographic characteristics of people prosecuted for drug offences and organised crime changed across policy phases, and how does this relate to policy implementation?

Drug policies are not created in a vacuum, and therefore are subject to the cultural influences of the location that enacts them. The Czech Republic transitioned from communism back to capitalism in 1989, extensively shifting the policy landscape. Views on drug use, such as whether it is a matter of personal freedom or a societal harm, are tied to these political fluctuations. As Seddon (2010), drawing on the work of Foucault and Bauman, states, 'The modern concept of freedom . . . is closely bound with the advent of liberal capitalism' (p. 9). Bauman (1988) stated that the modern concept of freedom was linked to consumerism, rather than freedom such as from slavery, as it had been historically understood (Seddon, 2007; 2010). Munk

(2000) supported this assertion, by stating that during the communist era Czechoslovaks envied the American “freedom” to choose among consumer goods’ (p. 229). Capitalism brought that freedom of personal ownership to Czech society, including the right to make individual decisions about one’s habits and health, making issues such as drug use more politically complicated. This thesis examines the history of the Czech Republic and the development of the democratic government over time, placing the drug policy changes into the political context. Chapter 5 explores the policy development and the political will behind each modification, using the Advocacy Coalition Framework, furthering the discussion of how cultural shifts and influence are realised in public policy. In this examination, it will aim to answer the question:

What lessons can be drawn from the Czech experience of decriminalisation, and how might they be applied in other contexts?

### **1.3 Methodological approach**

A mixed methods approach was selected to allow for a comprehensive examination of the different facets of the drug policy. Studying the impact on crime requires not only the official crime statistics and estimations of drug use, but also the qualitative accounts of experts in the field and documentary accounts of parliamentary debates to provide context. This study utilised a sequential explanatory method of data analysis (Creswell, 2014). It began with the collection and analysis of the quantitative data, and then followed with qualitative interviews and documentary analysis to explain the quantitative findings. Quantitative data was drawn from official statistics from the Czech Ministry of Justice, the National Police, and the National Monitoring Centre for Drugs and Addiction. Qualitative data was collected from parliamentary debate transcripts, government and police reports, and semi-structured interviews with researchers, law enforcement, and government employees. This pragmatic approach to data collection provided a multi-faceted view of the effects of the different drug policies.

After collecting the data, the quantitative analysis consisted of an interrupted time series analysis of the specific drug offences and organised crime



offences being studied. Summary statistics and cross-tabulation of demographic data were also completed to compare the policy periods. A thematic analysis of the qualitative data followed to expand upon the findings of the quantitative analysis. The analysis of all the data centred on policy analysis, so it was necessary to situate it within a policy analysis framework. The Advocacy Coalition Framework (ACF) was selected based on the highly politicised nature of drug policy and the strong political coalitions that formed in the Czech Republic surrounding this issue. The next section summarises this framework.

### **1.3.1 Policy analysis framework – Advocacy Coalition**

The policy analysis component of the thesis uses the Advocacy Coalition Framework (ACF) (Sabatier, 1988; Sabatier and Weible, 2007). This framework was selected because drug policy in the Czech Republic has changed through an ongoing process extending over nearly 30 years, with a variety of actors engaged in shifting, politicised discussions, resulting in incremental changes over time. ACF is based on the concept that people become involved in policy to turn their beliefs into law. This is evident in the parliamentary debates on drug policy in the Czech Republic. During periods of liberal drug policy, coalitions formed that opposed the idea of decriminalisation and fought to end it. A strong coalition existed on the opposing side, based on medical evidence and the Czech cultural value of personal autonomy. The policy has changed over time, stemming from the conflict between these groups. The framework will be explored further in the literature review and methodology chapters, but this brief summary is necessary to understand the structure of the thesis.

## **1.4 Definitions of key terms**

Research on both drug policy and crime requires the use of several contested terms. The word ‘drug’ itself is subject to many definitions (Ruggiero, 1999; McAllister, 2002; Boland, 2008). ‘Prohibition’ and ‘decriminalisation’, two fundamental concepts for this thesis, can be defined differently depending on the context. Those terms will be examined in detail in Chapter 3, along with the rationale and outcomes reported for each. In order to conduct a review of the literature, it was necessary to determine

what terms would be used to capture precisely what the focus of the research would be, and why, to narrow the scope. Based on the lack of research on decriminalisation and organised crime, those concepts formed the foundation for the study. In the literature on decriminalisation, it has been noted that decriminalising drugs frees up police time to work on serious crime, rather than minor offences (Moreira et al., 2007; Adda et al., 2014; Goulão, 2016), so expanding the scope beyond organised crime to include serious offences made sense. This section defines some of these essential conceptual terms – notably drug, serious crime, and organised crime – to improve clarity in the following chapters.

#### **1.4.1 Defining drugs**

The term 'drug' can include a wide variety of substances, often categorised by their psychoactive properties and potential for harm. However, as stated by Ruggiero (1999), 'The concept of "drug" cannot genuinely claim scientific status, as it is grounded in political and moral evaluation' (p. 123). In the Czech Republic, the United Nations (UN) protocols are used in the classification of drugs, so using them in the study of the Czech policy is a logical choice. Even in that context there is ambiguity however, since the addition of 'New Psychoactive Substances' has led to separate regulatory discussions than other drugs (Nekola and Moravek, 2015), based on the ever-evolving status of such substances; thus demonstrating the 'political and moral evaluation' of substances that Ruggiero (1999) described. Similarly, alcohol and tobacco are not typically included in definitions of illicit drugs, despite their similarities and potential for harm (Stevens, 2007). This thesis will utilise a narrow definition of the term 'drug,' based on those used by the United Nations and World Health Organisation, yet acknowledges that broader definitions exist and are equally valid. The legislation under consideration only applies to those substances found in the UN protocols making them the most relevant definitions for this study.

In the United Nations Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol, 'drugs' refer to substances and preparations in Schedules I, II, III and IV. The Schedules are periodically amended, most recently 24 May 2019, to include new substances and preparations. The

World Health Organisation created a Lexicon of Alcohol and Drug Terms in 1994, which provided the following, more comprehensive definition:

In common usage, the term often refers specifically to psychoactive drugs, and often, even more specifically, to illicit drugs, of which there is non-medical use in addition to any medical use. Professional formulations (e.g. “alcohol and other drugs”) often seek to make the point that caffeine, tobacco, alcohol and other substances in common non-medical use are also drugs in the sense of being taken at least in part for their psychoactive effects. (p. 34)

Since the thesis examines the effects of criminal code changes in relation to drugs, it made sense to keep the definition to the narrow realm of drugs that are typically prohibited. Alcohol, tobacco and caffeine, while psychoactive, are legal in most countries and governed by different legislation than illicit drugs.

#### **1.4.2 Defining serious crime**

‘Serious crime’ definitions vary by jurisdiction but are generally based on the potential severity of sentencing. The United Nations has defined a serious crime as one in which the maximum penalty allowed is at least four years imprisonment (United Nations Secretariat, 2012). In the Czech Republic, the definition is: ‘crimes stipulated in the provision 62 (the Penal Code) and those premeditated crimes punishable by a maximum term of imprisonment of at least eight years’ (Act No. 140/1961, amended by Act No. 112/1998, Section 41(2)). This study focused on drug crimes – including possession, sale, and trafficking – and organised crime, primarily as it relates to drug offences. The effects of each form of decriminalisation implementation were evaluated and compared in an attempt to determine which policy had been most effective in allowing police to combat serious crime. For the purposes of this study, the Czech definition of serious crime will be used: crimes that could lead to a sentence of eight or more years in prison. All of the crimes under consideration for this research would be considered ‘serious crime’ apart from personal drug possession.

### **1.4.3 Defining organised crime**

Developing a single definition of 'organised crime' is a challenge. Criminal syndicates differ by many factors – organisational structure, size, scope and duration of activities, and cooperation with government, among others – making most definitions either exclusionary or overly broad (Maltz, 1976; Winsloe, 1982; Jacobs and Panarella, 1998; Finckenauer, 2005; Hagan, 2006). Definitions also vary based on the author and their underlying reason for defining the term (Beare and Naylor, 1999). For instance, a policymaker would have different needs for a definition than a criminologist, as one is based on a legal definition while the other is more analytical (Beare and Naylor, 1999; Wright, 2006). Due to these discrepancies, the academic community has yet to agree on a definition.

Several papers have been written devoted solely to the topic of defining organised crime (Schelling, 1971; Maltz, 1976; 1985; Hagan, 1983; 2006; Smith, 1991; Song and Dombrink, 1994; Finckenauer, 2005; Morselli, 2010). In the most inclusive definitions, any group of people conducting criminal activities could be considered organised crime. Others are so specific that what is regarded as organised crime in one country would not be in another. One of the primary issues, as stated by Fijnaut and Paoli (2004), is that 'It is still unclear whether organised crime involves sets of criminalised activities or groups of people engaged in crime' (p. 7). In other words, the definition of organised crime could be based on the complex organisational nature of the crimes committed, such as drug trafficking, or it could be based on the identity of the group committing them, such as an ethnic minority group (Maltz, 1976; Smith, 1991; Williams, 2002). With the vast number of definitions available and the lack of consensus on even the most basic classification – whether the term refers to people or actions – choosing a definition for a study is problematic.

Defining organised crime in the modern age has led to several different strategies that can be divided into three categories: enterprise-based, organisation-based, or a combination of the two. Enterprise-based defines the term by the financial goals of the organisation and is frequently used to compare criminal organisations to multinational businesses (Fijnaut and Paoli, 2004). This philosophy, the 'illegal enterprise' paradigm, focuses on

the profit-making aspects of organised crime (Paoli, 2002). The illegal enterprise concept has widespread support amongst European academics (Mack and Kerner, 1975; Gambetta, 1993; Hobbs, 1988; 1997; van Duyne, 2000), as well as other scholars worldwide (Hellman, 1980; Haller, 1990; 1992; Williams, 1994; Desroches, 2007; Briggs, 2010; Albanese, 2011). A definition within this paradigm presented by Albanese and Reichel (2014) identifies organised crime as 'continuing criminal enterprises that rationally work to profit from illicit activities that are often in great public demand' (p.1). A similar definition, from more than 30 years prior, describes organised crime as 'a continuing enterprise operating in a rational fashion and focused toward obtaining profits through illegal activities' (Hagan, 1983, cited by Fijnaut and Paoli, 2004, p. 28).

Despite widespread usage, there are legitimate gaps in this method of definition. Organised crime groups are notorious for using their influence for political corruption (Gounev and Ruggiero, 2012). Though profits might play a part in political upheaval, such actions cannot be considered purely entrepreneurial. The Italian mafias, the quintessential stereotype for organised crime, have been known to have considerable political influence (Fijnaut and Paoli, 2004; Paoli, 2004). There are also groups that engage in terrorism that would generally be considered 'organised crime' (such as the Irish Republican Army), that could hardly be defined as profit-driven. Using a solely illegal enterprise definition would exclude these organisations, rendering the definition incomplete.

An organisation-based definition examines the group structure and activities involved. Peter Reuter presented this definition in 1983: 'Organised crime consists of organisations that have durability, hierarchy and involvement in a multiplicity of criminal activities' (p.175). This definition is quite open-ended, and could be used in scenarios that some might not consider 'organised crime'. It specifies a 'multiplicity' of criminal activities and could exclude organisations that limit their involvement to a specific industry. However, Reuter did not think that organised crime had to be structured and instead described most criminal markets as 'disorganised crime', or a network of associated individuals or groups that conducted the business of crime together (Reuter, 1983). His definition was likely purposely exclusive to

differentiate organised crime from what he found to be more typical criminality.

Another issue that arises from this method of categorizing organised crime is the emphasis on illegal activities. Though all criminal syndicates engage in crime, many also have legal business ventures. Definitions that rely too heavily on illegal activity would exclude the Cosa Nostra and Yakuza, archetypes of organised crime, which are both regularly involved in the licit economy (Paoli, 2002).

A more comprehensive approach is to combine the components of illegal enterprise and organisations. Combined definitions are one way to avoid the drawbacks noted with the previous two methods, and are widely used both academically and politically. The combined definition from the Czech Institute of Criminology and Social Prevention (ICSP) is the most relevant to this thesis:

Organised crime is the recurrent (systematic) perpetration of target-oriented, coordinated serious criminal activity (and activities supporting this activity), whose involved entities are criminal groups or organisations (mostly with a multi-level vertical organisational structure) and whose main aim is to achieve the maximum illegal profits while minimizing risk (Cejp, 2009, p. 31).

Since this is the definition used in the Czech application of the law, it is also the definition used for the organised crime data in this thesis. Fortunately, this broad description provides ample flexibility when considering what to include in 'organised crime', which was discussed further with Czech government officials during data collection.

## **1.5 Thesis outline**

Following this introduction, **Chapter 2** provides an overview of the Czech context, specifically in regard to governance, policing, and the history of illegal drug use and crime. It describes the major political changes in the Czech Republic and the surrounding region, and how both crime rates and drug use have changed over the same time period. Sentencing and

incarceration are also examined, to demonstrate how the consequences of crime have changed. This chapter provides relevant background information that is necessary to understand the development of the Czech drug policy within its societal framework.

**Chapter 3** reviews the relevant works of literature on the impacts of drug policy on crime. The theoretical foundations of prohibition, decriminalisation, and depenalisation are reviewed, as well as the effects that have been studied for each policy. The relationship between organised crime and drug policy is also examined, with a particular focus on the impacts of prohibition. Literature specific to the Czech Republic is limited, but the available literature on the Czech drug policy and previous evaluations of the decriminalisation policy are included.

**Chapter 4** outlines the methodological considerations, research design and implemented methodology for the thesis. It provides a background discussion of mixed methods research and the rationale for the use of mixed methods in this study. It then explains the methods of data collection and analysis in detail, including the processes of sequential explanatory analysis and interrupted time series analysis. A discussion of the Advocacy Coalition Framework is included to theoretically frame the policy analysis that follows in Chapter 5.

**Chapter 5** presents the findings of the policy analysis, using the Advocacy Coalition Framework. It examines how the decriminalisation policy changed over time and the political alliances and drivers that led to those changes. Each policy period is analysed within the political context of the Czech Republic. This chapter draws primarily from the parliamentary debates and interviews to illustrate how the policy formulation occurred for each time period, setting the scene for the data analysis chapters.

**Chapter 6** uses a blend of quantitative and qualitative data to explore the policing and sentencing of drug offences under each decriminalisation policy. This chapter contains an interrupted time series analysis of the rates of prosecutions and convictions for drug offences. Interview and documentary data are used to supply the context and explanations for the

quantitative findings. It also includes an examination of the demographic changes of those arrested for drug offences over the period of the study.

**Chapter 7** also draws on a variety of research methods to explore the prosecution and conviction rates for organised crime. Like Chapter 6, it includes an interrupted time series analysis with qualitative data used to explain the trends. This chapter delves more deeply into the demographic data, specifically nationality, since certain groups of foreign nationals are involved in organised crime in the Czech Republic at higher rates.

**Chapter 8** concludes the thesis. It provides a summary of the findings and their policy implications by policy period, examining the findings as a whole. The results from the analyses are consolidated and the central arguments of the thesis are presented. It closes with suggestions for further research in the Czech Republic as well as other nations.



## **Chapter 2: Czech history and the context of drugs and crime**

This chapter provides background information and context for the analysis of the drug policy outcomes. Czech history has affected how crime rates and drug use have evolved over time, so the chapter opens with an overview of historical events that influenced public policy. This is followed by a description of the current Czech political landscape, which provides the foundation for the analysis of policy development in Chapter 5. Politicians made many assumptions about how changes in the criminal code would impact drug use and crime rates, which informed the arguments of the pro- and anti-decriminalisation coalitions during parliamentary debates. However, due to a paucity of evidence, they were not initially evidence-based. This chapter explores issues raised in debates as well as the realities of the Czech drug market through a review of data on crime rates and drug use statistics.

The data in this analysis were derived from the Czech Ministry of Justice statistical yearbooks, annual reports of the National Monitoring Centre for Drugs and Addiction, annual reports of the Czech National Police, and primary data collection. These sources were combined, along with a review of the relevant literature, to form a fuller picture of how drugs and crime have evolved and intersected in the Czech Republic from 1990-2016. Identifying trends in these indicators points to the effects of the policy as well as the effects of external factors that impact on the policy system. These trends then provide a basis for the more specific analyses in Chapters 6 and 7.

### **2.1 An overview of the Czech Republic**

The Czech Republic is a medium-sized Central-Eastern European country bordered by Germany, Austria, Poland, and Slovakia (Slovak Republic). It has been 78,870 km<sup>2</sup> since dividing from Slovakia in 1993 (prior to that Czechoslovakia was 127,875 km<sup>2</sup>), with the Czech side of the country taking the majority of the land mass in the split. The mid-year population estimate for 2016 was 10,565,284 and has been around 10 million for over 100 years (Czech Statistical Office, 2016). In the early 1940s the population peaked at approximately 11.1 million, then reached a low of 8.8 million in the late

1940s, but the population only fluctuated within a range of about 300,000 people over the 25-year span of this study (Czech Statistical Office, 2016). Prague, the capital, is the largest city with a population of 1,280,508 in December 2016 and over 2 million in the metropolitan area. It is the only city with a population of over 1 million people (Czech Statistical Office, 2017). At the end of 2016, only six municipalities had over 100,000 inhabitants – Prague, Brno, Ostrava, Pilsen, Liberec, Olomouc – with the second largest city of Brno having 377,973 residents. Most people live in small municipalities, with only 2.3 million lived in municipalities of over 100,000 in 2016 while over 2.8 million people live in municipalities under 2000 (Czech Statistical Office, 2016). The proportions have remained relatively consistent over the span of this study, however there has been a shift from urban to rural areas over time. In 1989, 2.5 million lived in larger municipalities while only 2.1 million lived in areas under 2000 residents (Czech Statistical Office, 2016), indicating that people are moving outside of urban centres.

The demographics have also remained relatively consistent over time. There are more women than men in the Czech Republic, but only by 1.7% in 2016. The difference was greater in the early years of this study, at 2.8% more women in 1989, and the gap has gradually decreased over time (Czech Statistical Office, 2016). Birth rates have also decreased, reaching a low point in 1999, leading to a decrease in the population under age 15 in recent years. The population aged 0-14 declined from 22% in 1989 to 15.5% in 2016 (Czech Statistical Office, 2016). Most of the residents of the Czech Republic are Czech or Slovak, though immigration increased rapidly after the Velvet Revolution. This is detailed in section 2.3. The demographic changes and balance between urban and rural populations have had an impact on drug use and law enforcement over time. This will be examined further in section 2.6. The next section looks at the history of the country and how political changes have shaped the government and the landscape of policy making.

## **2.2 Modern history of the Czech Republic – A time of transitions**

The Czech Republic has a complicated history which involves frequent occupation and rare periods of independence. This experience of being

under the control of outside influences (Nedelsky, 2009) has had lasting consequences for the Czech peoples' sense of national identity. This section explores how the political history of the Czech Republic has shaped society, and how that has influenced criminal justice and drug policy. It provides a brief, simplified timeline of Czech history for context in the subsequent analysis. In 1993, the Czech Republic became an independent nation after 75 years of being joined with the current Slovak Republic as Czechoslovakia (also known as the Czechoslovak Republic). Although the history of the region can be traced back to the fourth century, the historical account provided here will focus on the existence of Czechoslovakia as it was, established after World War I and the fall of the Austro-Hungarian Empire, which is the most relevant period to the current political climate.

In 1918, Czechoslovakia was represented by a parliamentary democracy and had a burgeoning economy, with the capital city of Prague developing into a major industrial city (Staar, 1971; Wolchik, 1993). Trade relationships with neighbouring countries were emerging as the country found its way in the new structure of Europe (Benaček, 2001). This period of relative stability lasted until the stock market crash of 1929, which threw the world into economic turmoil (Benaček, 2001; Martínek, 2010). The impact of the financial collapse in Europe provided Hitler with an opportunity to spread antisemitic rhetoric, blaming Jews for the economy, and created an environment for Nazism to take hold. The German Army invaded the Czech Republic in 1939 and occupied the country until the end of World War II in 1945, when Prague was liberated by the Soviet Union (Staar, 1971). Following the war, the Communist Party dominated the Czechoslovak parliament and began the nationalisation of industry, during which the economy recovered quickly and remained stable (McGregor, 1991; Wolchik, 1993; Benaček, 2001; Martínek, 2010). The Soviet Union maintained a close relationship with Czechoslovakia and its influence was present in international relations (McGregor, 1991). When the US proposed the Marshall Plan, an offer of economic assistance to European countries after the War, the Czech government initially approved it unanimously. After intervention from Stalin however, the government rejected the plan, and it was clear that the nation was again losing its autonomy (Benaček, 2001).

The Communist contingent overthrew the Czech government in a coup in February 1948 (Staar, 1971; Brown, 1991; Janík, 2010). Politicians that supported democracy were ousted, including the President, and replaced with Soviet-backed Communists (Staar, 1971). Nearly all businesses were nationalised, damaging the Czech industrial economy (Benaček, 2001). While stable according to the standards of Eastern Europe, Czechoslovakia lagged behind Western Europe in economic growth and recovery (Benaček, 2001). In 1960, the Czechoslovak Socialist Republic was officially formed, under the jurisdiction of the Soviet Union. Along with the hardships associated with a stagnant economy, people had to live under an authoritarian government that intervened in all aspects of their lives (Nedelsky, 2009; Burns, 2018). They were discouraged from leaving the country and borders were tightly regulated (Klobucký, 2012, Stoneman, 2015). Freedom of speech was limited and many citizens were arrested for protests and demonstrations (Staar, 1971; Munk, 2000; David, 2003, Stoneman, 2015). This strict control has had a lasting influence on Czech public policy, which will be explored in this thesis. However, while controls were officially in place, they were not fully accepted by everyone in the communist government. In 1968, a newly elected leader of the Communist Party, Alexander Dubček, proposed a series of reforms that would liberalise the country (Williams, 1997; Stoneman, 2015). Under his proposal, referred to as 'socialism with a human face', Dubček promoted open borders, trade agreements, human rights, and freedom of speech known as the Prague Spring (Williams, 1997; Stoneman, 2015). His reforms brought in an era of artistic freedoms and dissidence, including the inspiration of a young playwright named Václav Havel. After only a few months the Prague Spring was abruptly stifled by the Soviet Union, who invaded in 1968 and swiftly removed Dubček from power, restoring the former restrictions; yet the reforms were not forgotten and laid the groundwork for what would become the Velvet Revolution (Williams, 1997; Stoneman, 2015). After the Velvet Revolution, the dissidents and intellectuals that had been involved in the Prague Spring, including Havel and Dubček, became leaders in the new government (Stoneman, 2015).

In 1989, the Soviet Union began to collapse, losing control of its satellite states, and Czechoslovakia became independent once more. Due to the peaceful nature of the transition, the liberation of Czechoslovakia became known as the 'Velvet Revolution.' At that point, significant political changes occurred. After 40 years of communism, the Czech people were adamantly in support of a functional democracy, with capitalist underpinnings. The transition also led to a number of demographic changes, including declining birth rates and increasing immigration (Drbohlav, 2003; Sobotka et al., 2003; Nožina, 2004), which will be discussed later in this chapter.

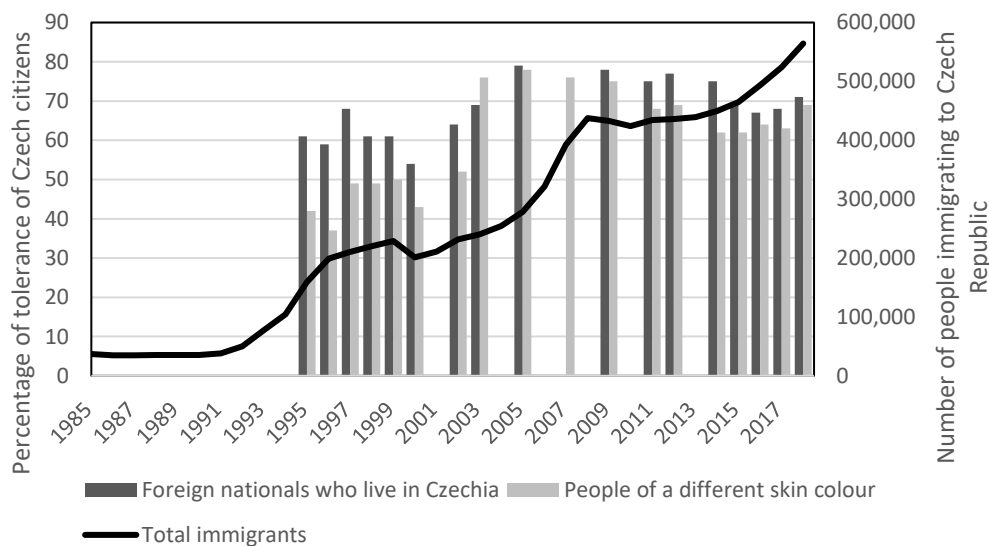
Personal freedom was an essential aspect of government and public opinion at the time, which led to the liberalisation of the criminal code overall. As mentioned in Chapter 1, freedom of choice was something Czechoslovak people desired during the communist era (Munk, 2000). While this applies to consumerism, it also applies to the freedom of choice in actions, such as consumption of potentially harmful substances. The decriminalisation of drugs for personal use was therefore one of the criminal justice changes that occurred after the Velvet Revolution. The Czech Republic and Slovakia divided peacefully in 1993, and their policies diverged (Klobucký, 2012). The Czech side maintained the more liberal policies towards drugs, while Slovakia took a more repressive stance. The next section looks at another change that emerged from the transition to capitalism – the influx of non-Czech/Slovak immigrants to the region.

### **2.3 Immigration in the Czech Republic**

Czechoslovakia had little ethnic diversity during the Soviet era. The Nazi decimation of minority populations, as well as the expulsion of the German population following the war, led to Czechoslovakia becoming over 90% ethnically Czech or Slovak (Staar, 1971; Gross, 1989). The Communist Party used this to their advantage, promoting fear of outsiders and exploiting the nationalism of the Czech identity, providing a foundation for communist ideology to take hold. In 1989, when the Iron Curtain came down, immigrants rapidly began to move into the region (Nožina, 2004). At first, most immigration came from the neighbouring countries of the Eastern Bloc, but soon expanded to include people from throughout the world with a

sizeable Asian diaspora (Nožina, 2004). Census data from 1921 to 2011 (the most recent census) indicates a dramatic increase in immigration from outside the region in the 2001 and 2011 figures. The census categories for nationality are Czech, Slovak, Roma, Ukrainian, Russian, Polish, Hungarian, German, Other, and Not identified (Czech Statistical Office, 2016). In the 1991 census, 18,812 people were classified as Other and 22,017 were classified as Not identified, which is consistent with the previous decade. In 2001, the Other category jumped to 69,835, growing to 257,430 in 2011 (Czech Statistical Office, 2016). Even more notable is that the Not identified grew to 172,827 in 2001, and then 2,642,666 in 2011, demonstrating an enormous increase in immigration from outside the specified regions (Czech Statistical Office, 2016). Sections 6.3.2 and 7.5 examine the relationship between nationality and crime, including details on the groups from Asia and Africa that are not counted in the census. Figure 2.1 shows the number of immigrants from 1985-2018, demonstrating the steep increase beginning in the early 1990s when the borders were opened.

**Figure 2.1: Rates of immigration and public tolerance of foreign nationals and people of different races**



Data from the Czech Statistical Office and surveys from the Public Opinion Research Centre Public opinion surveys did not begin until the mid-1990s, but the results of surveys from 1995-2018 included questions on public tolerance of foreign nationals living in the Czech Republic and people of a different skin colour (Mišovič, 2002; Tuček, 2019b), which are included in Figure 2.1. In the early surveys, the public was more tolerant of immigrants than non-white people in

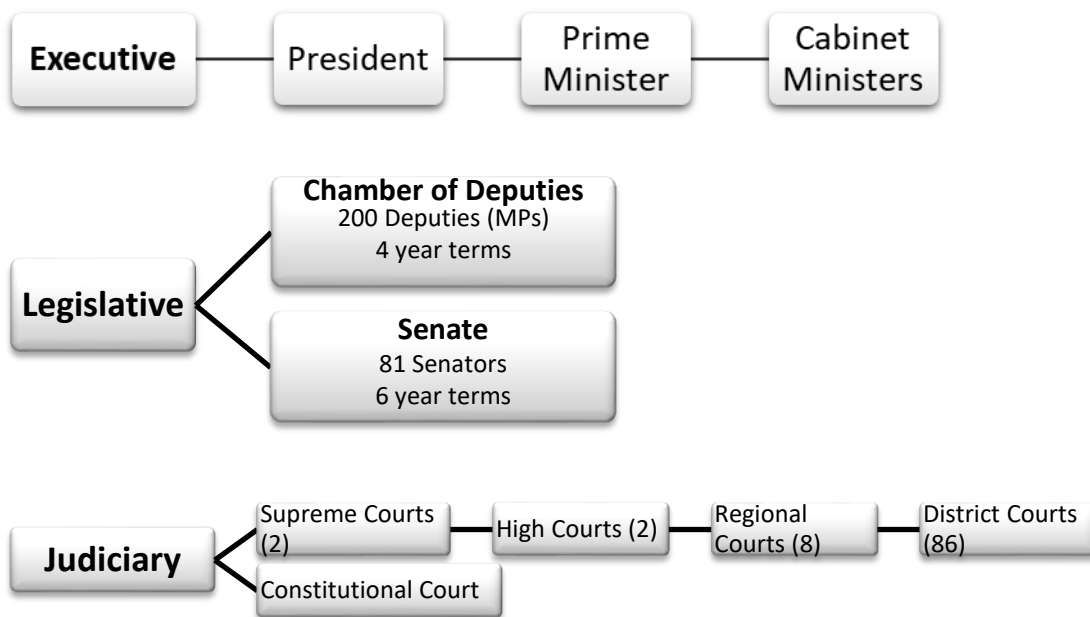
general. The levels of tolerance for both groups were nearly equal in the later surveys, from 2015-2018, though tolerance for both groups peaked in the mid-2000s, and declined in more recent surveys. Levels of tolerance have remained consistent alongside the rapid increase in foreign nationals. Acceptance of foreign nationals had typically remained between 60-70%, while acceptance for people of a different skin colour increased to a similar range since the first surveys when it hovered around 40-50% (Tuček, 2019b). While this demonstrates a generally high level of acceptance for non-Czech people living in the country, the results for specific immigrant groups were not nearly as positive.

Data from the European Social Survey (ESS) showed a different side to the immigration debate, illuminating the limits of Czech tolerance. When asked if immigrants made the country's crime problems worse, a question only included in the survey in 2002 and 2014, the majority of Czech respondents (72% in 2002; 58.7% in 2014) said that immigrants worsened crime (ESS, 2002; 2014). Though it has improved over time, the Czech Republic has been one of the most negative respondents towards immigration in Europe. In the 2014 ESS, when asked about Romani people and whether they should be allowed to live in the Czech Republic, 34.2% of respondents preferred to allow none, versus 9.5% that said to allow many (ESS, 2014). In Czech public opinion surveys regarding Romani, the number of respondents stating that coexistence of Romani and non-Romani people was 'good' has never risen above 23% since 1997 (Tuček, 2019a). These results demonstrate that tolerance for immigrants is high, as long as they are the *right* immigrants (Gorodzeisky and Semyonov, 2015). Diverse groups are viewed differently, so the attitudes regarding the groups are central to views on immigration. This information is valuable in the examination of prosecution and conviction rates by nationality, as possible inequities could result from negative attitudes of police, prosecutors, and judges. The data on immigration and tolerance provides context for later exploration of discrimination in policy implementation.

## 2.4 Current system of government in the Czech Republic

This section is intended to clarify the law-making process of the Czech Republic, as well as the titles, roles and political parties of those involved in the development of the drug policy, providing context for the policy analysis in Chapter 5. The Czech Republic is a parliamentary democracy with the President as the head of state and the Prime Minister as the head of government. The three branches of government – Executive, Legislative, and Judiciary – are shown in the graphic below.

**Figure 2.2: Czech governmental structure**



Bills can be introduced by the government, or by the deputies or regional governments (Government Information Centre, 2009). Once introduced, they are assigned to Committees and debated by the Chamber of Deputies in three readings. If they are approved by the Chamber of Deputies, they move to the Senate for debate and approval. Following Senate approval they are sent to the President, who can either approve the law or return it to the Chamber of Deputies, who can override the veto with a majority vote (Government Information Centre, 2009).

Transcripts from the debates are saved in a publicly available database online, with easily searchable records from the Chamber of Deputies. Due to the availability of documentation, this thesis focuses on the debates that took place in the Chamber of Deputies, the lower house of Parliament. Speeches



by the President, Prime Minister, and Ministers were also considered in the documentary analysis.

#### **2.4.1 Political parties**

After separating from the USSR, the Czech government rejected the 'one-party' Communist system. Several different political parties emerged, all with different agendas. Traditionally, the primary political parties in the country have been: the Czech Social Democratic Party (Social Democrats), the Civic Democratic Party (Civic Democrats), the Christian Democratic Union-Czechoslovak People's Party (Christian Democrats), and the Communist Party of Bohemia and Moravia (Communists) (Embassy of the Czech Republic in the Hague, 2019). The Czech Republic has a multi-party system which allows smaller parties to become involved, along with the dominant parties. These minority parties form and dissolve over time, frequently by splintering off from or being absorbed into one of the larger groups. The far-right Republican Party, which was staunchly against drug decriminalisation, for example (Morávek, 2007), is no longer represented in Parliament. Currently, the role of Prime Minister and the majority of the seats in the Chamber of Deputies are held by ANO 2011, a party only created in 2011. The roles that the major political parties have had in the drug policy debate are discussed in the next section.

Some parties are strictly prohibitionist, including the **Christian and Democratic Union – Czechoslovak People's Party** (Christian Democrats<sup>2</sup>) and the **Communist Party** (Zábranský, 2004; Zeman, 2007). The Christian and Democratic Union is a right-leaning Christian party which was founded in 1919 in a merger of Roman Catholic political groups. They have often collaborated with other groups and have been part of nearly every cabinet since 1990, regardless of the political leanings of the majority. Currently the Christian Democrats hold 10 of the 200 seats in the Chamber of Deputies and 15 of the 81 in the Senate. The far-left Communist Party has recovered

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<sup>2</sup> There was another Christian Democratic Party in the Czech Republic, but it was short-lived and merged with the Civic Democrats in 1996, so the term is used here for the longer lasting and more powerful party that uses the same terms.

some popularity in recent years, currently holding 15 seats in the Chamber of Deputies, though it is not represented in the Senate. Communists are opposed to decriminalisation on moral grounds, allowing them to form an alliance with the Christian Democrats to oppose it.

Other parties lack a clear consensus on drug policy, such as the **Social Democratic Party** and the **Civic Democratic Party** (Zábranský, 2004). The Social Democratic Party is a centre-left party that was founded in 1878, rare in its longevity (Perottino and Polášek, 2013). Like most Czech political parties, it was largely inactive during the communist era, but has maintained a dominant position in the government since the early 1990s. The Civic Democratic Party is a more recent development, founded in 1991, and is a right-leaning party that has been the dominant opposing counterpart to the Social Democrats since the split between the Czech and Slovak Republics. In both of these major parties, despite their conflicting political tendencies, some members support harm reduction or cultural integration style policies, while others support repressive and punitive measures. Both have also experienced wavering popularity in recent years, with the Social Democratic Party currently holding 15 of the 200 seats in the Chamber of Deputies and the Civic Democratic Party holding 23. In the Senate both parties hold more power, though not the majority, with the Social Democrats holding 13 of the 81 seats, while the Civic Democrats hold 18.

All of the older, more established, parties have been overtaken by newer political movements, which are coincidentally also strong supporters of decriminalisation. In 2011, a new association was formed called **ANO** (an acronym for Akce nespokojených občanů [Action of Dissatisfied Citizens], also the Czech word for 'yes'). It was established as an official party in 2012 and currently holds a majority in the Chamber of Deputies (78 of 200 seats). The popular ANO party hinges on a foundation of fiscal responsibility and an end to corruption, and prefers not to be identified on the left-right political spectrum. The party is pro-liberalisation, even supporting the full legalisation of cannabis (Filipková, 2015), which aligns with the generally Libertarian platform. The centre-left **Pirate Party** is similar to ANO in its government transparency and anti-corruption platform, but has clearer policy goals and is

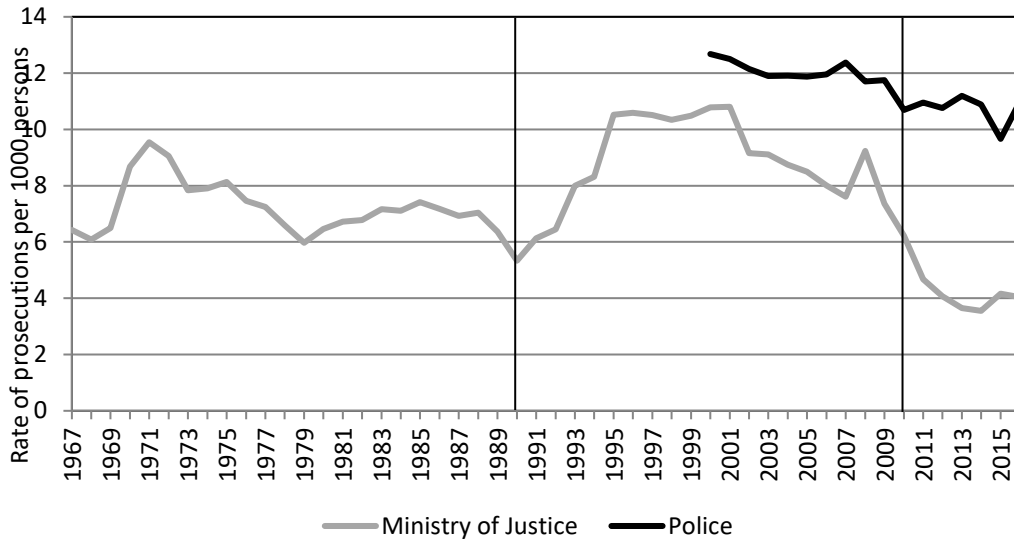
positioned further to the political left than ANO. Protecting civil liberties is a large part of the party's platform, and as such, they promote the liberalisation of drug policy. The Pirates are the only political group to have an official drug policy statement in their manifesto (Pesek, 2016). Under the healthcare section of the 2017 parliamentary program, the Pirates state: 'We will support regulated hemp legalisation for both treatment and recreational use: Substances less hazardous than alcohol and tobacco should be legal' (Czech Pirate Party, 2017).

While other parties exist in the Czech Republic, these are the groups that are most commonly discussed in regard to drug policy. These parties have made up the advocacy coalitions for and against decriminalisation that will be discussed in Chapter 5. The next section examines the overall trends in crime from the communist era into the present, to provide a context for comparison to the specific offences included in this analysis.

## **2.5 Crime rates in the Czech Republic over time**

Comparisons of crime between the communist era and the modern era are problematic due to reporting differences and the data manipulation meant to make crime rates appear lower under the communist system (Hignett, 2010). However, in the absence of any other data, the recorded rates are the only figures available to compare crime rates over time. Figure 2.3 is a plot of the prosecution rates from both the National Police and the Ministry of Justice. Rates were calculated as the number of adults prosecuted per 1000 population, using the mid-year population estimate for each year reported by the Czech Statistical Office. Data on the rate of prosecutions were selected because they are reported by both the police and the court system and could be used to collect evidence from both sources. The vertical lines in Figure 2.3 indicate the points at which the criminal code was substantially revised, with the first at 1990, the year the Czechoslovak Republic formally became independent of the Soviet influence, and the second at 2010, the year in which the penal code was recodified. While the rate of crime in the early 1990s was similar to that found in previous years, the rapid increase provoked concern to lawmakers (Hignett, 2010).

**Figure 2.3: Total prosecuted persons per 1000 total population**



Data from the Ministry of Justice Statistical Yearbooks and the National Police Statistical Surveys of Crime.

As seen in Figure 2.3, recorded crime rates from 1969-1989 were relatively stable and had been declining. From 1990 to 1993, the early years of the liberalised criminal code, the recorded crime rate reported by the police tripled (Pehe, 1992; 1994; Scheinost, 2001; Bullington, 2007), resulting in the spike in prosecutions seen here. Property crime showed the most dramatic increase, from 49% of total crime in 1989 to 82% in 1993. It did drop down again slightly, to 74% in 1998, but did not return to the lower levels of the communist era. Violent crimes as a percentage of overall crime decreased throughout the 1990s, but the absolute number of violent crimes increased, with homicide rates surpassing 300 people for the first time in 1998 (Scheinost, 2001). Homicide rates during the Soviet era (1956-1989) were consistently between 1-1.5 per 100,000, but increased to around 2.3 per 100,000 by 1995 (Karstedt, 2003). The same pattern was observed in other post-communist states, so the Czech Republic was not a unique case (Buriánek, 1994; Holmes, 2009; Cejp and Scheinost, 2012). In a review of 24 Eastern European countries, Holmes (2009) found that 14 countries followed the same trend: a sharp increase followed by decreasing crime rates. Karstedt (2003) found similar patterns in homicide rates, with some countries, including the Czech Republic, entering the decline more quickly than others. As crime is calculated differently by country exact values are not comparable, but the emergence of similar trends across the region suggests

that this was not solely a Czech problem. Violent crime rates were actually low in the Czech Republic compared to the rest of the Eastern Bloc (Buriánek, 1994; Karstedt, 2003). Geis (1997), suggested that the increase in crime was the inevitable price that the post-communist nations would have to pay for democracy. As he put it:

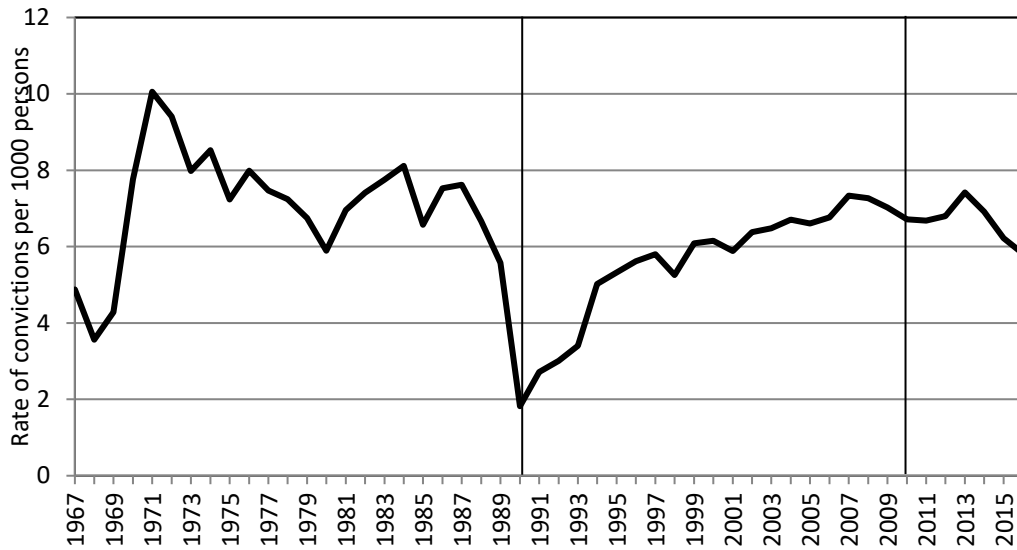
This key issue can be encapsulated as “Order with Little Crime” as opposed to “Freedom with Much More Crime”. Take your choice and then take the benefits and pay the price that goes with the choice (p. 318).

This quote partially explains the trend. Initially, there would be an increase with the advent of democracy as the population and law enforcement adjusted to the new norms, but eventually it would stabilise. In this particular case, adjusting over time to levels below the communist era.

One thing to note in this data is that the degree of decline is significantly greater in the Justice data than in the police data, potentially signifying a reduction in the number of cases that continue in the criminal justice system after their initial entry from the police. This is supported by the higher levels reported by the police which were not maintained in the court system at the same points in time. It is debatable whether the increase in recorded rates of crime is an actual representation of increasing crime, changes to policing practices, or a reflection of police efficiency (Buriánek, 1994). It could also indicate a symbolic gesture of uncompromising policing meant to repress crime through strict enforcement, but it is unlikely that the entire rise is an artefact of policing. On the other hand, the increase in crime rates could also be due to a lack of policing, as the police struggle to adapt to the new regulatory environment (Parker Jr, 1993). These remaining questions demonstrate the difficulty of interpreting crime rate statistics on their own, which highlights the importance of the qualitative aspect of this thesis to provide an explanation for crime rate changes.

Figure 2.4 shows the rates of convictions over the same time period, 1967-2016, with vertical lines to mark the changes to the criminal code.

**Figure 2.4: Total convictions per 1000 persons**



Data from Ministry of Justice Statistical Yearbooks

As was the case for prosecutions, conviction rates sharply increased during the early 1990s; yet unlike prosecutions, were preceded by a precipitous drop in the late 1980s. Convictions during the Soviet era increased rapidly in 1970, but began to decline after 1971. The decrease was not steady, with fluctuations throughout, but convictions trended downward and reached a low point in 1990 that was far below the rates consistently seen in the communist era. The initial drop was likely a result of the change in governmental structure. With the regime change, many crimes that had commonly led to convictions, such as crimes against the state, were no longer valid. There was also an adjustment time for law enforcement with limited numbers of police and prosecutors, which would slow proceedings (Parker Jr, 1993). Conviction trends generally followed prosecution trends, but there appeared to be an extended period in the 1990s, where the issues within the criminal justice system may have impeded conviction rates. Depending on the nature of the crime, the lag between prosecution and conviction can vary. If the particular crimes in question were more serious, such as organised crime, the lag would be evident in the conviction rates. The continued increase in convictions past 2001, when prosecutions peaked, could be due to convictions catching up to that peak.

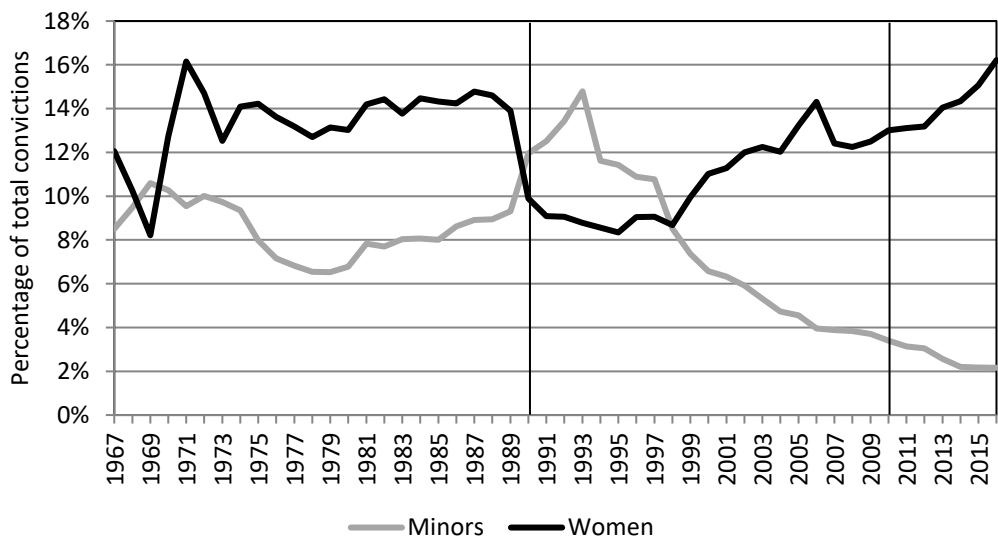
### 2.5.1 Sex and age of offenders

While overall prosecutions followed the trend evidenced in the majority of the Eastern Bloc, there are variations based on the demographics of offenders

that are particular to the Czech Republic. In this section, special attention is paid to the gender and age of offenders, as women and young people experience the criminal justice system differently than adult men. The gender gap in crime is most evident for serious crimes (Steffensmeier and Allan, 1996; Steffensmeier et al., 2006; Heimer et al., 2009; Lauritsen et al., 2009), so changes in the rates of conviction for women tend to reflect low-level crimes. This analysis examines the overall crime data for women and juveniles to establish baseline trends for comparison to the data on specific offences in Chapters 6 and 7.

Figure 2.5 shows the rates of women and minors that were convicted as a percentage of total convictions from 1967-2016. This method was selected to place the women and minors on the same scale and to avoid the calculations involved in breaking down the overall population to reflect population-based conviction rates for specific demographic groups. Prosecution rates were not broken down by grouping in the early years of data collection and were only available since 1994, but the trends from 1994-2016 were the same in the conviction rates. Police data has only included statistics on gender since 2010, so while there has been an increase, it was not enough data to form meaningful conclusions and was not included. Vertical lines again represent the years that the criminal code was substantially modified.

**Figure 2.5: Women and minors as a percentage of total convictions**



Data from Ministry of Justice Statistical Yearbooks

Convictions of women as a percentage of total convictions followed the same trend as overall crime, but with a slight delay. Rather than reaching a nadir in 1990, as overall convictions did, women's convictions began to decline during the communist era and continued to decline until 1995. They have consistently increased since then, with no levelling off period as was seen in the overall conviction data. Despite the rapid increase since 1995, it was only in 2006 that the percentage of women convicted reached peak communist era levels, which were around 14% for nearly two decades. This is an interesting distinction, as the convictions for women were quite consistent from 1971-1989, and maintained much higher levels than the post-communist period. This is possibly due to the equality of the sexes during the communist period, in which women worked outside the home at one of the highest rates in the world (Illner, 1998). Following the Velvet Revolution there was a backlash against gender equality because of its association with communism (Wolchik, 1994). Being pushed out of the workforce created new struggles for women, leading to financial difficulties for families that needed dual incomes. Women were also made increasingly vulnerable, without a source of income and with increasing crime in general (Wolchik, 1994). The rise in convictions may be due to the increased involvement of women in crime by necessity, or potentially a willingness of police to apprehend female criminals over time as gender equity returned to Czech society.

In stark contrast, the percentage of convictions for minors, offenders under the age of 18, have steadily and rapidly declined since 1993. After an increasing trend that began in 1979, convictions for minors peaked in 1993 and have now reached the lowest recorded level. Figure 2.5 shows only Ministry of Justice data for convictions of people aged 15-17. The police data, which reports both under 15s (children) and under 18s (minors), shows the same declining trend for all young people. This is potentially an intentional effort to avoid the introduction of minors to the criminal justice system. Interview data from law enforcement officers indicated that police were avoiding the unnecessary prosecution of young offenders for drug offences, so that trend may be evident for other offences as well.



Interestingly, the trend in convictions of minors appears to be independent of the criminal code changes. While both convictions and prosecutions of overall crime noticeably changed in 1990, rates for both women and minors continued on their own trends, reversing later in the 1990s. This points to a change in crime trends and policing that is not directly tied to the code, such as increasing involvement of women in crime, and either decreasing youth crime or police intentionally avoiding the arrest of young people. These trends demonstrate some of the additional factors that can affect crime rates outside of the written laws and policies. Chapter 6 will examine the additional influences on crime rates in greater detail. The next section describes how offenders were sentenced over time, demonstrating further changes to the criminal justice system that are not evident from the prosecution and conviction rates.

### **2.5.2 Sentencing of offenders**

Along with a decrease in overall crime rates, rates of imprisonment have also declined. Possible sanctions that were allowed for specific crimes have changed within the criminal code, so different penalties were available to the courts at different points in time. For drug offences, the sanctions became slightly more punitive for supply crimes after decriminalisation, more punitive still during the 'greater than small' period and less punitive after 2010. This is not necessarily the case for all crimes but provides an example of how sentencing options can evolve. In brief, the options for sentencing in the Czech Republic are:

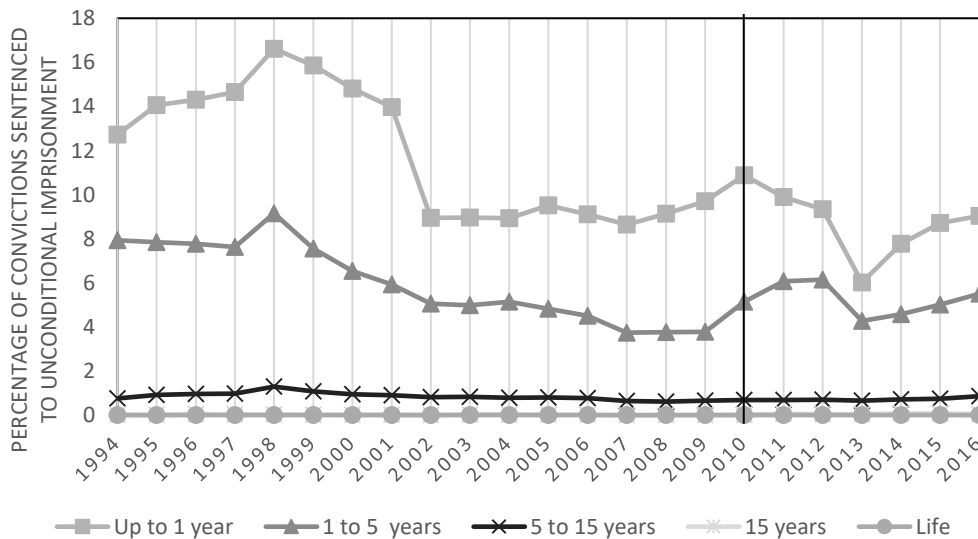
- unconditional imprisonment, which is a typical custodial sentence,
- conditional imprisonment, in which the prison sentence is suspended unless the person reoffends,
- house arrest,
- community service,
- financial penalties, including fines and forfeiture of assets,
- protective treatment (e.g. treatment for addiction or treatment for sex offenders),
- ineligibility to continue certain activities (e.g. loss of medical licensing),
- a combination of the above penalties.

This is not an exhaustive list, but includes the primary punishments reported over time in the Statistical Yearbooks. There is also a category of 'other'

listed in the Statistical Yearbooks, which includes military demotion, loss of honorary titles, or banishment. However, since the category was non-specific and not well defined in the statistics, it was not included in this analysis.

Overall, a lesser percentage of convicted offenders were unconditionally sentenced to prison in 2016 than in the 1990s. Of those that did receive custodial sentences, approximately 1% received a sentence of over five years imprisonment. The death penalty is illegal in the Czech Republic as a result of the 1990 criminal code changes, so life imprisonment is the most severe sentence available. Life sentences have remained stable over time at less than 0.007% of prison sentences. Figure 2.6 shows the percentage of convictions receiving sentences of unconditional imprisonment by sentence length, in ranges of years, with a vertical line at 2010 to indicate the criminal code change.

**Figure 2.6: Prison sentences for all offenders by year range**



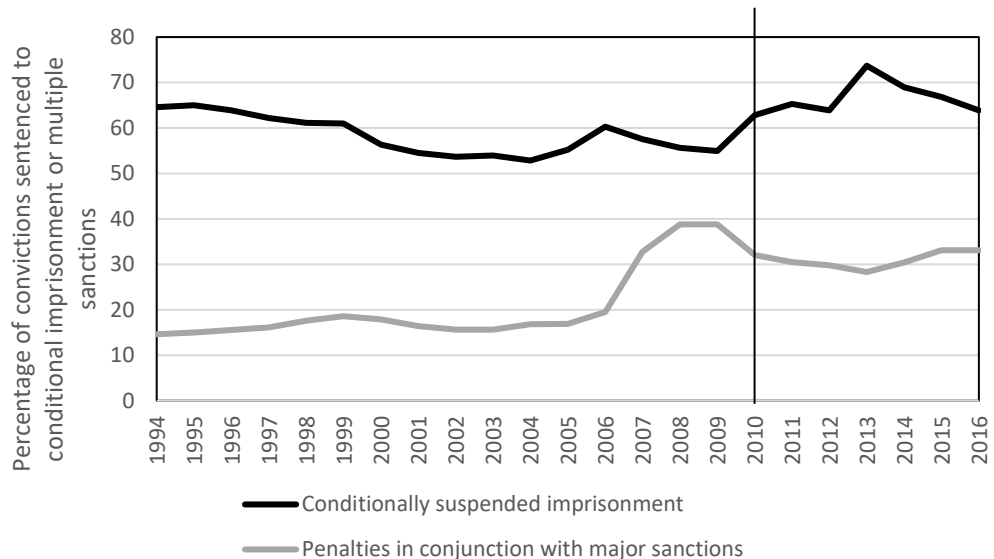
Data from Ministry of Justice Statistical Yearbooks

The percentage of convictions resulting in imprisonment follows an opposing trend to the number of convictions, which could indicate that the increased convictions were for minor crimes which would not warrant a custodial sentence, or a conscious decision by the courts to reduce custodial sentences. In 1990, the government stated that for offences that held a maximum sentence of one year, prison should be imposed only if alternatives would not suffice (Karabec et al., 2002; Karabec et al., 2017). In

2002, this was extended to crimes with maximum sentences of three years, which corresponds to the decrease in both one year and one to five year sentences<sup>3</sup> (Karabec et al., 2002). Prison sentences over five years have remained the same proportion over time, and sentences of one to five years decreased only slightly, suggesting that sentencing for serious offences has remained consistent. In the case of drug crimes, each policy change brought changes in sentencing as well, which may have been replicated throughout the penal code. There were slight trend differences in short sentences following the 2010 recodification, which may be indicative of sentencing changes in the new code, but there is no clear trend in either direction.

To further evaluate how the sentencing practices changed over time, non-custodial sentences were also analysed. Figure 2.7 shows the two most common sentences that appear in the Statistical Yearbooks: conditionally suspended imprisonment and penalties in conjunction with major sanctions.

**Figure 2.7: Most common non-custodial sentences for all offenders**



Data from Ministry of Justice Statistical Yearbooks

Conditionally suspended imprisonment sentences have been the most common penalty for decades, but began an increasing trend in 2009 and peaked in 2013 (74% of convictions). A conditionally suspended

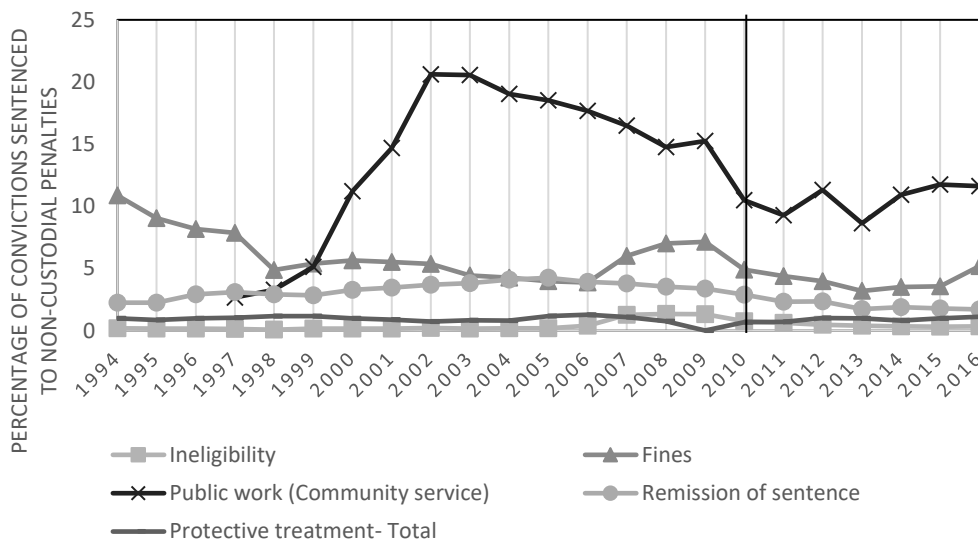
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<sup>3</sup> The most recent version of this report (Karabec, et al., 2017) states that this has now been extended to sentences up to five years, but does not indicate the year that it was changed.

imprisonment sentence involves supervision by a probation officer and results in the imprisonment being waived if the offender maintains the terms of their probation (Karabec et al., 2017). The second most common penalty was ‘penalties in conjunction with major sanctions’, which is the application of multiple penalties simultaneously. House arrest and community service cannot be combined with an imprisonment sentence (Karabec et al., 2017), but penalties such as fines or forfeitures can be imposed concurrently. The use of multiple sanctions increased after 2006 and has since levelled off.

Figure 2.8 shows the percentage of other non-custodial sentences applied over time. The ‘other’ category designated in the Statistical Yearbooks has been removed since it was a small percentage and it was unclear exactly what was included.

**Figure 2.8: Non-custodial sentences for all offenders**



Data from Ministry of Justice Statistical Yearbooks

As seen in Figure 2.8, community service was the most commonly applied non-custodial sentence from 2000-2016. Fines were the next most common and have followed a declining trend since 1994. The low percentages are likely due to the separation of single non-custodial sentences versus the penalties used in conjunction with other sanctions. For drug offences, many alternative sentences were not an option from 1999-2009, so it is likely that the sentencing structure also changed for other provisions. This study did not analyse the penal code to find what other offences had amendments to allowed penalties, so that factor was not considered. This situation also

demonstrates that when non-custodial sentencing options are presented, the Czech judiciary does utilise them, which means the changes to the drug policy will have lasting consequences for offenders.

This section provided an overview of the total crime rates during and after the communist era, as well as the sentencing applied, presenting comparison points for the specific drug crimes and organised crimes analysed in Chapters 6 and 7. The next section explores the use of drugs in the Czech Republic over time to enhance the discussion of how drug decriminalisation has impacted the conditions of the country. It will look at the use of drugs historically compared to modern usage to explore whether usage changed under the different decriminalisation phases.

## **2.6 Drug use in the Czech Republic over time**

Historically, under the Soviet regime, drug use was portrayed as an insignificant issue by official accounts. Due to strict border controls drug use had been limited to domestically produced substances (Cejp et al., 1993). These included 'pervitin' (a homemade form of methamphetamine), 'braun' (a homemade opioid), inhalants, and locally grown marijuana, which was minimal (Nožina, 2004; Záborský, 2004; Miovský, 2007; Klobucký, 2012). Once the borders were opened at the end of 1989, a plethora of new drugs became available, as anticipated by medical professionals and government officials. Non-governmental organisations (NGOs) aimed at protecting public health, such as SANANIM (acronym unknown), were established in the early 1990s specifically to help deal with a predicted surge in problem drug use. Pervitin and braun retained their popularity, but the greater availability of cannabis products, cocaine, and heroin diversified the drug scene (Cejp et al., 1993). Drug use in Czechoslovakia rose substantially in the early 1990s, or at least appeared to, which was of great public concern both due to health risks and fear of criminal activity (Zeman, 2007).

Whether or not drug use actually increased at the reported rate is debatable. Media coverage of the drug problem increased, which may have fuelled the public response without merit (Záborský, 2004). Unfortunately, there is very limited data available on drug use in Czechoslovakia prior to 1990, so the only available data would show a marked increase, regardless of accuracy

(Miovský, 2007; Radimecký, 2007). Kramer (1990) and Lee (1992) claimed that the Communist government willfully ignored increasing drug use in the region. This was supported during the interview phase of this thesis, when one participant, a historian with extensive research experience in the region, suggested that drug use may have been higher during the Soviet era than was officially acknowledged. By their account, Soviet doctors were aware that drug addiction was increasing beginning in the 1960s, but it was concealed by the Communist Party (Researcher 7). They said 'They didn't want to admit that it was a problem, so the data that does exist about levels of drug production, drug use, drug addiction is quite patchy, but it is almost certainly higher than the official estimates that they gave', and it was not acknowledged until the mid to late 1980s that there was a problem (Researcher 7).

As a growing variety of new drugs became available the structure of the drug market also changed. Whereas it was previously an underground industry, the liberalised drug laws of 1990 brought drug selling out into the open (Miovský, 2007). This openness led to the marketisation of drug supply and a growing role for larger organised crime gangs who crowded out smaller local dealers (Nožina, 2004; Miovský, 2007). Drug use in the late 1990s became significantly more commercialised than in the early days of decriminalisation, with professional vendors that overtook the market previously run by locals (Miovský, 2007). Use of cannabis products and recreational ecstasy steadily increased in the early 1990s, but the use of 'hard' drugs was still limited to pervitin (the prevailing term for methamphetamine) and prescription medications (Mravčík et al., 2003). Additionally, an increase in the availability of heroin in the late 1990s, along with higher quality (by purity) heroin, led to increased use. Heroin was not commonly seen in the Czech Republic until the late 1990s, and when it appeared, it was low purity brown heroin, which remained more widely used than the newly available white heroin (Miovský, 2007).

In 2016, the last year of data collection for this study, the most commonly used substances were cannabis, ecstasy, mushrooms and pervitin (Mravčík et al., 2017). Cocaine usage has become more prevalent in recent years, but according to the Czech National Monitoring Centre for Drugs and Addiction

(NMCDA, formerly National Monitoring Centre for Drugs and Drug Addiction) is still somewhat rare in the Czech Republic. Most people that seek treatment for drug use are users of opioids, pervitin, stimulants, cannabis, and sedatives, or a combination of those substances (Mravčík et al., 2017). Drug use occurs throughout the country, but availability of drugs tends to be higher in urban areas, leading to higher levels of use (Kážmér, Chomynová, and Csémy, 2019). The highest rates of problem drug use have been found in Prague and the rural Ústí nad Labem, which borders Germany (Mravčík et al., 2014). Similarly, the Karlovy Vary region, which also borders Germany, and the Liberec region, which borders both Germany and Poland, have also reported high rates of drug use (Mravčík et al., 2014). This points to a trend of higher rates of use in urban areas as well as rural areas with German borders. These four regions – Prague, Ústí nad Labem, Karlovy Vary, and Liberec – also tend to have the highest recorded rates of drug crime (Mravčík et al., 2006; Mravčík et al., 2011; Mravčík et al., 2014), which is consistent with the link to international, particularly German, borders, and can be attributed to both high rates of use and cross-border trafficking activities.

### **2.6.1 Problem drug use**

‘Problem drug use’ is a contentious term, generally used to describe drug use that could be diagnosed as a substance use disorder. While it does not encompass all drug use or even most drug use, it has been the most consistently recorded measure of use in Czech society, with the longest ranging data. It is defined by the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) as ‘injecting drug use and/or the long-term/regular use of opioids and/or amphetamine-type drugs and/or cocaine’ (Mravčík et al., 2013, p. 48). This is also the definition used by the NMCDA in their annual reports on the Czech drug situation. However, similar to the term ‘drug’ itself, the concept of a ‘problem drug user’ does not have a static definition that has persisted throughout time (Seddon, 2011).

Seddon (2011) explored the origins of the term, and while it initially referred to people that were experiencing health or social problems as a consequence of their drug use, it was later adopted by governments to classify the users that were perceived to be problematic to society. This is

evident in the definition used by the NMCD, as it includes users of two substances that frequently lead to substance use disorders, but fails to distinguish between users that perceive their use to be a problem and those that do not. It also overlooks many substances that lead to harms, causing users to seek treatment. Notably, it excludes cannabis, a heavily used drug in the Czech Republic, ecstasy, also popular, and prescription medications, the leading cause of drug overdoses, from ever being reported in problem use statistics. High usage rates of these drugs have been reported in the youth population, which is concerning to the public and policymakers (Morávek, 2008), and thus represents another societal 'problem' that is not connected to the use of opioids, amphetamines, or cocaine. While a more operational definition of problem drug use could be use that causes someone to seek treatment, which would include the additional categories of drugs as well as incorporating the users' own perceptions of problematic usage, the statistics are not reported in that way.

Problem drug use, as defined by the NMCD, is estimated each year in the Czech Republic and has been rising, so the next section will examine those statistics. It should be noted, however, that due to the above issues with definition, figures are likely to underestimate the number of people experiencing harms from heavy drug use in the country.

### **2.6.2 Monitoring Problem Drug Use in the Czech Republic**

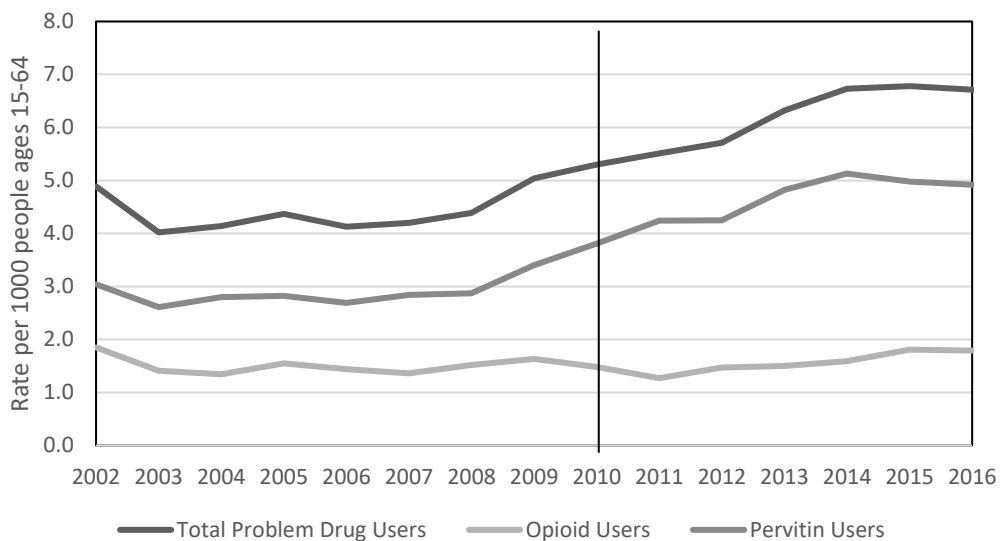
While the definition of problem drug use includes opioids, amphetamines, and cocaine, cocaine usage in the Czech Republic during the focus period of this study was low (<1%). As a result, it is not considered an issue for purposes of this study and the statistics therefore include only opioids and amphetamines. The category of opioids includes heroin, opium, buprenorphine, and numerous prescription medications such as oxycodone. Pervitin is almost the only amphetamine used in the Czech Republic, so statistics on problem drug use are reported using the terms 'opioids' and 'pervitin'.

In 2001, there were approximately 37,500 problem drug users officially counted in the Czech Republic (Zábranský et al., 2002). Estimates prior to this did not use the same methodologies and are not directly comparable,



but qualitative research indicates a probable increase from previous years (Zábranský et al., 2002; Miovský, 2007). Interviews with people who use drugs indicated that use increased following the end of Communism, and concurrently the onset of decriminalisation (Miovský, 2007). Though the number of problem drug users appeared to decrease in 2003 (30,000) and remained stable for several years, a sharp increase was observed in 2009 (37,400) (Mravčík et al., 2004; Mravčík et al., 2010). Over time, the ratio of pervitin to opiates has been stable at around 2:1, with 80-90% of users believed to be injecting these substances. Throughout the history of the Czech drug use estimates, when the use of one substance has increased use of the other has decreased, balancing the level of problem drug users so the overall number remains unchanged (Mravčík et al., 2017). Until the increase in 2009, that was the case, though both substances saw an increase in that year (Mravčík et al., 2010; Mravcik et al., 2017). Figure 2.9 shows the rates of total problem drug use, opioids, and pervitin over time.

**Figure 2.9: Rates of problem drug use, 2002-2015**



Data from the National Monitoring Centre for Drugs and Addiction 2016 Annual Report (Mravcik et al., 2017)

As seen in Figure 2.9, the rate of total problem drug use has followed an increasing trend since 2008, but this is entirely due to the increase in pervitin use over time. Problem use of opioids has remained relatively level, with slight fluctuations. The trends in opioid use are not evident in this data however, as the types of drugs in use have shifted. Heroin was the most commonly used opioid until 2012 when the ratio abruptly shifted to

buprenorphine. There were only 3,400 heroin users estimated in 2016, compared to a peak of 7,100 in 2009 (Mravcik et al., 2017). In contrast, there were 7,300 estimated buprenorphine users in 2016, up from 5,100 in 2009 (Mravcik et al., 2017).

Buprenorphine (Subutex®) is a prescription opiate that is used in substitution therapy for people addicted to heroin. The problem use statistics are calculated using a multiplication method based on contact with low-threshold centres, as well as a capture-recapture method (Mravčík et al., 2014), and both methods show the same trend of increasing buprenorphine use as a replacement for heroin. Buprenorphine is frequently sold on the black market in the Czech Republic after being legally obtained by someone with a prescription (Miovský, 2007; Mravčík et al., 2018). Stricter controls were put in place for prescriptions to reduce this, so that users could not obtain duplicate prescriptions from different prescribers (Mravčík et al., 2018). As this places an administrative burden on doctors, it makes them less likely to prescribe the drug, thus reducing supply and increasing demand (Miovský, 2007). The relative safety of buprenorphine compared to heroin, since it is unaltered from pharmacies, as well as its widespread availability, is likely why it has overtaken heroin on the market.

Aside from the drugs officially included in the definition of problem use, increases in other addictive substances were also noted. Generally increasing trends in ecstasy and hallucinogens were reported, though exact numbers are rarely mentioned for these substances. The percentage of individuals with at least one experience with illicit drugs in the general population surveys had been stable at around 20% since 2002, but in 2008 jumped to 37% (Mravčík et al., 2009). Whether this indicates an actual increase or is a result of methodological changes is questionable, since different surveys are used to determine the values. Each survey will have different sampling techniques, questioning, and interpretation, so the values are not comparable, making problem drug use the best option for comparisons over time.

## **2.7 Conclusion**

This chapter provided the Czech-specific context for the analysis in Chapters 5-7. Historical political changes have had significant effects on public policy, and the attitudes and biases of the Czech populace. These factors influence how drug policy has been developed, modified, and implemented, as well as the public perceptions of crime and drugs in the country. By providing an overview of the crime rates, demographic changes, and drug use trends that have occurred, this chapter forms the foundation for the analysis of specific drug offences and organised crime offences, and how they can be interpreted through a Czech lens. The next chapter is a broader look at drug policy and how it can be implemented, with particular focus on prohibition and decriminalisation. It provides the necessary background information on the theoretical foundations for drug policies, and an evaluation of the literature that is specific to the Czech style of decriminalisation.

### **Chapter 3: The intersection of drug policy and crime**

While it is frequently acknowledged in the policy literature that there is a relationship between drugs and crime, there is no general consensus on a causal connection (Seddon, 2000; White and Gorman, 2000; MacCoun et al., 2003; Bennett and Holloway, 2007). There are potential causal links, but drug-related crime is diverse, and a single explanation is impossible. What can be considered 'drug-related' ranges from activities involving the production and consumption of substances, to the acquisitive and violent crimes associated with obtaining substances, to the crimes committed unknowingly under the influence of substances. There are theories about motivations for and causes of drug use; however, there is no agreement on why people use drugs, and this is a highly complex and contested area. Several different frameworks to describe the connection between drug use and crime have been developed (Goldstein, 1985; Miron and Zwiebel, 1995; Inciardi, 1999; White and Gorman, 2000; Bean, 2008; Stevens, 2011a; 2011b), however these will not be discussed in this chapter. Ultimately this research only minimally considers usage rates, and is more interested in the relationship between drug policy and drug markets.

To contextualise how drug policy influences crime, this chapter provides an overview of the literature examining drug policy, the connection between policy changes and crime, and the expected outcomes of decriminalisation. Due to the multidisciplinary nature of this study, it would be impossible to exhaustively review all relevant literatures, so the scope was narrowed to the most directly related contextual literature, namely: variations on drug policy, the connection between drug policy and organised crime, the Czech drug policy, and Czech policing. The chapter begins with a discussion of drug policies, their theoretical foundations, and the different ways that illicit substances have been regulated over time. This is followed by an overview of the association between those policies and organised crime, as well as the characteristics defining organised crime. Previous examinations of the Czech drug policy that formed the foundations for this thesis are reviewed, and finally, the chapter concludes with a discussion of policing in the Czech Republic as it relates to drug offences and organised crime.

### **3.1 Variety and rationales of drug policy approaches**

There are many different approaches to drug policy, including different ways of implementing decriminalisation, but comparative research is limited. This is primarily due to the methodological complications associated with comparative policy research, particularly in criminology (Ali, 1986; Von Lampe, 2012). Context affects how policies play out, are implemented, and how data are collected and reported. In the case of drug policy, there are also intricacies within the criminal justice system and the policies themselves that differ between countries or jurisdictions, making direct comparisons impossible. One of the aims of this thesis is to unpack how the culture of a country influences drug policy decisions and implementation, which sheds light on the difficulties of comparative research while still providing insight on potential policy consequences. This section reviews the most frequent policy options and the different ways that they are employed, along with the theoretical justifications behind them.

#### **3.1.1 What are the options for drug policies?**

Prohibitive drug policies, in which possession of any quantity of an illicit substance is a criminal offence, are the policies most commonly seen throughout the world (Nadelmann, 1989; Inciardi, 1999). The levels of punishment for possession of drugs differ significantly, from fines and/or a minor prison sentence (e.g. the United Kingdom) to execution (e.g. Philippines) (International Network of People Who Use Drugs [INPUD], 2014; Lyons, 2016). These inconsistencies are a complicating factor when discussing drug policies, since 'prohibition' may have different interpretations depending on the country or state. The quantity of illicit substances necessary for the holder to be accused of 'possession', 'distribution', or 'trafficking' can also vary (if there is differentiation at all between these crimes) making penalties difficult to compare. The term 'prohibition' will be used in this thesis to describe policies in which any quantity of drugs equates to a criminal offence, regardless of the severity of the offence. This was the drug policy in place in the Czech Republic prior to 1989. However, there are various other options for drug policy outside of the prohibition framework. Between the extremes of legalisation and prohibition are a range of policies based on the criminal codification of penalties for drug offences –

such as decriminalisation or depenalisation – which allows for a great deal of flexibility when determining drug policy.

While this study focuses on decriminalisation policies in the Czech Republic, the definition of the term 'decriminalisation' is not universally agreed upon in the literature. Bean (2010) noted that decriminalisation is often used synonymously with depenalisation, but is also distinct. Decriminalisation, for the purposes of this thesis, implies that criminal sanctions are not applied for drug possession (Inciardi, 1999; Hughes and Stevens, 2010). Depenalisation is a reduction in the severity of penalties for possession, though it remains a criminal offence, such as police diversion programs for cannabis in New South Wales (Bean, 2010; Weatherburn, 2014; Gotsis et al., 2016). In places that have moved away from prohibition, such as in Portugal and the Czech Republic, decriminalisation often replaces criminal sanctions with administrative sanctions, which is likely why it is used interchangeably with depenalisation. Depenalisation applies in cases of de facto decriminalisation, where the criminal offence for even small quantities for personal possession remains an offence, but penalties are not applied by law enforcement. Hughes and Stevens (2010) define the terms as follows:

Decriminalisation is defined as the removal of sanctions under the criminal law, with optional use of administrative sanctions (e.g. provision of civil fines or court-ordered therapeutic responses); and depenalisation is the decision in practice not to criminally penalise offenders, such as non-prosecution or non-arrest (p. 999).

The above definition aligns with those from Douglas and McDonald (2012) and Bean (2010) and is commonly used in academic literature. Under this definition, the Czech policy is a decriminalisation policy, although, in 2010, the head of the National Drug Squad of the Czech Police, Jakub Frydrych, denied that drugs were decriminalised in the Czech Republic (Sevcenko, 2010). This highlights that understandings of key terms vary, and clarification of definitions is necessary when discussing drug policy.

During the debates in which Czech policy was decided, the medical and legal experts hired as consultants and the policymakers disagreed on the

definition of decriminalisation, creating difficulties for the discussion of policy options. As stated in the 2001 Annual Report of the National Monitoring Centre for Drugs and Addiction:

In the discussion, [it] was obvious that the MPs do not have sufficient knowledge (which also reflected the situation in Czech society) and understanding of the significance of and the differences between various legislative terms - especially legalisation of drugs and decriminalisation of possession of drugs for personal use. The example of the Netherlands was presented as a deterrent example, and it was said wrongly that marijuana was legalised there. (Zábranský et al., 2002, p. 26)

Incorrect use of terminology leads to a lack of understanding of the laws and proposed laws, which is of particular importance where policymakers are concerned. Comparisons between countries are also complicated by differences in terminology, or, as in the above example, misuse of terminology. Deputy Severa, one of the most vocal opponents to decriminalisation in the Czech Republic, also referred to the pre-1999 legislation as 'legalisation of drugs in both legal and practical sense' (September 2, 1997) during a parliamentary debate.

It is unlikely that the Czech Republic will be the only country to have this sort of confusion around terminology as more countries adopt decriminalisation policies. Discussing the understanding of terms by all involved is an essential first step in the policymaking process that may not be given adequate deliberation.

### **3.1.2 Why are these policies implemented?**

There are a number of theoretical justifications for prohibition which provide explanations for how it would function to decrease drug use and its associated harms. Prohibition of drugs is frequently linked to the concepts underpinning rational choice theory. Rational choice theory can be summarised as people making the most logical decision for their own well-being, based on a cost-benefit model (Becker, 1968; Hodgson, 2012). This theory is based on the classical criminological model, derived from the ideas of Beccaria ([1764] 2016) and Bentham ([1789] 1996) which theorises that if

the punishment for a crime outweighs the benefits, a person would be deterred from committing the crime. This represents the deterrence aspect of rational choice theory. In the case of drug offences, it would imply that the fear of legal sanctions would make a rational person opt to not use or sell drugs (MacCoun, 1993; Pratt and Cullen, 2005; Pratt et al., 2006), although research has found little evidence to support the idea that tough police tactics help to reduce rates of drug offences (Dorn and South, 1990; Pratt et al., 2006). For example, Pratt et al. (2006) noted that the causes of crime are multifaceted, so the effects of aggressive policing are limited by the other factors that play into decision-making.

There is also more to deterrence theory than severity of punishment, and the degree to which sanctions are actually enforced, as well as the swiftness of consequences, appear to be critical factors in deterring drug crime (Miron and Zwiebel, 1995). MacCoun (1993) found that certainty of punishment had a greater deterrent effect than severity of punishment, since a severe punishment is only threatening if it is guaranteed to occur. In drug selling situations where punishment was more likely to occur, drug dealers were more aware of their positioning and strategised to avoid sanctions (Ekland-Olson et al., 1984; MacCoun, 1993). Similar findings also emerged in the early years of alcohol prohibition in the US, during which consumption initially dropped dramatically, but increased when people noticed that the law was not consistently enforced (Hall, 2010). Williams and Hawkins (1986) also studied this effect but focused on the importance of societal perceptions on discouraging crime. They noted that receiving a sanction could be seen as a negative moral consequence, which could itself have a deterrent effect. Certainty of punishment could place a higher moral value on penalties, as an unenforced law might be perceived to be less immoral than one that is strictly enforced (Williams and Hawkins, 1986). This is a particularly important detail, as in many countries, law enforcement is unlikely to detect or pursue low-level drug offences (MacCoun, 1993). In those situations, through the lens of deterrence theory, prohibition would have little effect on current users or sellers since they were accustomed to evading prosecution and applied no moral weight to obeying the law.



Another concept, that of utilitarianism, as espoused by Beccaria ([1764] 2016) and Bentham (Bentham, [1789] 1996), holds that the option that provides the most favourable outcome for the greatest number of people is the best choice, even if it restricts the rights of individuals. Depending on the cultural context, drug users are often seen as separate from the general population. In that situation, the choice of a person to use drugs can be perceived to be a threat to the greater good, and thus it would be acceptable to sacrifice some of their individual rights to maintain the safety and happiness of the whole. That scenario would also assume that one saw the use of drugs as a right, which has always been a politically charged argument. One point of view is that the choice to use drugs affects only the user, who has a right to their own body, while another holds that drug use affects society as a whole (De Marneffe, 1996; Dufton, 2012; INPUD, 2014). In the Czech Republic, drugs were decriminalised primarily to expand human rights (Radimecký, 2007). Individual freedom is a prominent aspect of the Czech national identity (Sobotka et al., 2003), as explored in Chapter 2, so restrictions on personal substance use did not fit into the paradigm of the new government in 1989.

The decision to decriminalise is often not founded on theories of what will prevent drug use or supply, like prohibition, as drug use itself is not seen as the problem. Reasons for decriminalisation can roughly be broken into two groups: those that focus on rights and proportionality of punishment and those that focus on medical reasons (Fish, 1998). In the first category, the legal moralist argument for decriminalisation suggests that prohibiting drugs infringes on individual rights. In this vein, some Libertarians adopt the view that drug use is victimless should not be prosecuted as a crime, but instead treated as a personal choice like alcohol or tobacco (Szasz, 1972; MacCoun and Reuter, 2001). While this group often leans towards legalisation as an ultimate goal, some see decriminalisation as a necessary first step to achieving this.

Stemming from these philosophical arguments around drug use and decision making, price and availability are factors that influence decisions, as decreased availability and increased price should lead to less frequent use, justifying prohibition policies (Reuter and Kleiman, 1986; MacCoun,

1993; MacCoun and Reuter, 1998). However, the degree to which policy controls supply is questionable, as is the degree to which price sways purchase decisions. While rational choice theory would predict that price should be a deciding factor, the price elasticity of demand <sup>4</sup> for addictive substances has been estimated to be substantially lower than for other commercial products, particularly in the case of heavy drug users (Reuter and Kleiman, 1986; Miron and Zwiebel, 1995; Olmstead et al., 2015). This finding is not universally accepted however, and has been found to be dependent on substance as well as frequency and duration of use (Reuter and Kleiman, 1986; Olmstead et al., 2015). Gallet (2014), for example, conducted a meta-analysis of the available data on price elasticity and found price changes to have little effect on cannabis consumption, but significant effects on heroin and cocaine consumption, while Cameron and Williams (2001) found that price did significantly affect cannabis consumption. The discussion may be a moot point however, if drug policy does not change the price trends in the drug market. Félix and Portugal (2017) found no significant difference in drug prices in Portugal, which has a broad decriminalisation policy, between periods of prohibition and decriminalisation, so price did not seem to be a factor related to that policy change. Czech debates around price and the changes that occurred in each policy phase are explored further in Chapter 6. Policies that aim to limit the availability of drugs are also frequently ineffective, as limitations of supply are rarely so low as to make drugs unavailable (Weatherburn, 2014), whilst increased availability does not necessarily increase demand (MacCoun, 1993). Whether this was an issue in the Czech context will be discussed further in Chapter 6, but as shown in Chapter 2, heavy use has increased under the decriminalisation policy. This points to increased availability leading to an increase in usage in the Czech Republic.

One of the most common criticisms of prohibition is that it does not tend to lead to decreased drug use (Nadelmann, 1989; 1992; MacCoun, 1993; Chambliss, 1995; Miron and Zwiebel, 1995; Drucker, 1999; Weatherburn,

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<sup>4</sup> The degree to which price changes impact buying decisions.

2014; Wodak, 2014; Taylor et al., 2016), and furthermore the criminalisation of those who use drugs has led to increasing incarceration, particularly for visible minorities, and fosters stigmatisation of drug users which deters people from seeking treatment (Drucker, 1999; Radcliffe and Stevens, 2008; Douglas and McDonald, 2012). Drug-related deaths have also drastically increased in some countries with prohibition policies. For example, Drucker (1999) noted that drug-related deaths in the US quadrupled between 1976-1995 from 2,136 to 9,097 (p. 24). This rapid increase has not abated, and 70,237 people died in 2017 from drug-related causes in the US (National Institute on Drug Abuse, 2019).

The data on drug-related mortality raises an issue that came up frequently while reviewing the literature. The landscape of the drug scene can change swiftly and severely, so the literature is often quickly outdated. By the time a study is published, the situation in that jurisdiction may have already changed. This was evident particularly in the area of decriminalisation, which has limited long term studies, so those that exist tend to be dated. More recent studies are often available from government reports, so grey literature took on a significant role in this thesis as the academic literature was lacking in certain areas. Prohibition research was the most prevalent, but studies on decriminalisation, and policing under decriminalisation in particular, were limited. The small amount of dated literature on decriminalisation has also led to disagreements about what the effects of the policy might be, which are examined further in the next section.

In 2014, Weatherburn published a controversial article entitled 'The pros and cons of prohibiting drugs' that was subject to public scrutiny from other researchers (Weatherburn, 2014). Along with the conclusions explored above, he suggested that prohibition was the only option for drug policy that could potentially lead to a decrease in drug use, and questioned whether decriminalisation would produce better outcomes. This article was subsequently critiqued by Wodak (2014), who claimed there was no evidence that prohibition would reduce drug use or social harms. Citing research that found no link between drug policy and drug use (Single et al., 2000; Degenhardt et al., 2008; Hughes and Stevens, 2010), he stated that Weatherburn's claims were unfounded and not supported by evidence.

There are some vocal proponents of drug legalisation or decriminalisation, such as Nadelmann (1989), who had previously acknowledged that these policies would likely lead to increased usage. This demonstrates that there is an evidence base for either argument, but raises the question of whether increasing drug use is actually negative in and of itself. If there are no societal harms involved, it might not matter if people choose to partake in a habit that might incur personal harms, which goes back to the topic of rationale.

Decriminalisation has become an increasingly popular policy option (Rosmarin and Eastwood, 2012). It has been argued that law enforcement under prohibition has not been successful in controlling supply, there is increasing demand regardless of the legal status of possession, and harms from drug use are continually escalating (Weatherburn, 2014; Wodak, 2014). Frequently, this is expressed as a failure of the 'War on Drugs', a term coined by US President Richard Nixon in 1971 (Douglas and McDonald, 2012), or as proof that prohibition does not work (Lenton, 2000). The question that arises, of course, is how one would define what 'works' as a drug policy. One method would be to determine if the policy was achieving its stated goals, whether in terms of reducing HIV rates, decreasing drug use, decreasing incarceration rates, or increasing the number of people seeking treatment. Each country – or jurisdiction – will have different goals based on their own issues, so there is no policy that will be ideal in all situations.

Along with claims that prohibition has failed to reduce drug use or related harms, it has also been suggested that it leads to an increase in violence in drug markets (Nadelmann, 1989; Leuw, 1991; MacCoun, 1993; Chambliss, 1995; Miron, 1999; Wodak, 2014). The connection between prohibition and crime, particularly organised crime, dates back to the origins of organised crime in the US when alcohol was briefly prohibited in the 1920s (Cressey, 1969; Schelling, 1971; Reuter, 1983; Demleitner, 1994; Lyman and Potter, 2011; Abadinsky, 2013). The argument is that, when the use of drugs is prohibited, the only way to obtain them is by illegal means and that this puts the whole market in the hands of criminal organisations which are prone to violence and corruption (Berney, 1999). While that is a legitimate claim

regarding prohibition, there is limited evidence that decriminalisation would have a different outcome since there would still be no legal means of obtaining drugs if trafficking and distribution remained illegal. However, since people who use drugs regain agency under decriminalisation, some argue that decriminalising drugs takes power away from violent drug cartels and traffickers, leading to less drug-related crime (Nadelmann, 1989; Schmoke, 1990; Berney, 1999; Bagley, 2012), though the connection between decriminalisation and crime is unclear.

Jacques et al.'s (2016) study specifically compared legal, decriminalised, and illegal drug markets in the Netherlands by interviewing workers from legal alcohol establishments, decriminalised cannabis shops, and street drug dealers about their experiences. Street dealers were more likely to experience violence than either the decriminalised or legal market workers, less likely to seek help, more likely to retaliate, and more likely to receive counterfeit payment (Jacques et al., 2016). Their unregulated status left them open to victimisation, which is an argument for a regulated market. Legal alcohol sellers were also more likely to be victimised than decriminalised cannabis sellers however, indicating that the relationship was not linear. The authors also made the distinction that the types of substance sold in each establishment had different physiological effects, which may have increased the risk of violence in the alcohol selling environment (Jacques et al., 2016). This study was not accepted by all though, and was subject to a critique by Reuter (2016) who cautioned about drawing wide-ranging conclusions from such a small, focused study. Reuter (2016) argues that the real victims of the drug market are not street-level distributors like those interviewed by Jacques et al. and that the victimisation of legal sellers and illicit dealers is only a minor facet of the drug market. However, one aspect of the Jacques et al. (2016) study that was not mentioned in Reuter's (2016) critique was the racial element. It was also noted that nearly all of the street dealers, the most harassed and victimised interview subjects, were black immigrants (Jacques et al., 2016). Racism and xenophobia are rampant in drug markets, and this detail highlights the need to include demographics in drug policy studies as outcomes may vary based on respondent characteristics.

Institutionalised racism is an issue commonly associated with prohibition and often used to rationalise decriminalisation (Berney, 1999; Eastwood et al., 2013). Particularly in the US and UK, drug users from minority ethnic groups are more likely to be arrested, convicted, and given jail time than white drug users, despite evidence that usage is more common amongst the white population (Lowney, 1994; Chambliss, 1995; 2003; Freedman, 1998; Webster, 1999; Murji, 2007; Eastwood et al., 2013). This is evident in stop-and-search statistics in the UK, as black and Asian people were six times more likely to be stopped than white people in 2011-12 (Eastwood et al., 2013). Stop-and-frisk data from New York showed a similar trend with black people being stopped five times more often than white people (New York Civil Liberties Union, 2012). Decriminalising drugs would theoretically help to reduce the victimisation of black and minority ethnic groups since they would not be unfairly targeted for arrest or incarceration (Clifford, 1992; Chambliss, 1995; Drucker, 1999; INPUD, 2014). However, current research from Colorado, where cannabis was recently legalised, still shows a considerable racial disparity in drug arrests (Associated Press, 2015; Taylor et al., 2016). A report from the Drug Policy Alliance (2018) analysed statistics from five US states that had legalised cannabis and found that black people were more likely to be arrested than white people in every state. This demonstrates the pervasiveness of institutionalised racism, which may not be influenced by changes in drug laws. Changes in policing practices and stigma are necessary to improve racial disparities (Drug Policy Alliance, 2018). To determine if similar results were found after decriminalisation in the Czech Republic, data on nationality was included in the analysis. Aside from the disproportionate treatment of minority groups, the high level of incarceration for drug offenders in general is concerning from the theoretical perspective of proportionality of punishment (Beccaria, [1764] 2016).

Prevention of mass incarceration – systematic and disproportionate imprisonment, often of ethnic minorities (Garland, 2001) – is used to promote decriminalisation, as it is often seen as an unintended consequence of prohibition. Since many drug crimes are non-violent, the purpose of imprisonment for drug offences is arguably punishment rather than public safety, which is more controversial (Welch, 1997; Chambliss, 2003; Duke,

2009). Decriminalisation and depenalisation policies often replace prohibition to prevent drug users from being imprisoned for minor offences where the penalty is deemed too severe for the crime (Bean, 2010; Damrongplisit et al., 2010). It has also been suspected that the 'War on Drugs' was responsible for the rapid increase in incarceration rates in the US (Chambliss, 1995; Alexander, 2011). This has been challenged by Pfaff (2017), who claims that non-violent drug offenders only make up 6% of the US prison population and that violent crime, which may or may not be related to drugs, is the real cause of mass incarceration. From a Czech standpoint, the issue is less pressing because prison populations are substantially smaller, 203 per 100,000 in the Czech Republic compared to 698 per 100,000 in the US (Wagner and Sawyer, 2018). However, this thesis does examine the rates of incarceration and sentencing lengths to explore whether decriminalisation had any impact in that area. Decriminalisation policies are frequently based in the principles of harm reduction, which would point to reducing incarceration when possible, and the Czech Republic appears to be oriented toward that philosophy.

### **3.1.2.1 Harm reduction**

Countries that enact decriminalisation policies typically adopt a harm reduction stance, taking a less punitive and more public health driven approach to substance use. European countries commonly see drug addiction as a health problem, as evidenced by the emphasis on harm reduction relating to public health in the European Union Drugs Strategy 2013-2020 (as well as the previous 2005-2012 strategy) (Chatwin, 2013; 2017; European Council, 2013), in contrast to other regions of the world, including parts of Asia and the Middle East, which more frequently implement punitive approaches. New countries joining the European Union are required to implement harm reduction measures as a condition of their membership (Chatwin, 2013), but that is not to say that European countries have harmonised their drug policies as criminal penalties vary widely (Chatwin, 2003; European Monitoring Centre for Drugs and Drug Addiction, 2017; 2019), but there is a united effort within Europe to reduce public health harms.

'Harm reduction' is a catch-all term for policies intended to reduce the societal harms of drug use, including drug-related crime, death, and other health consequences (Nadelmann, 1989; Kübler, 2001; Tammi and Hurme, 2007). While harm reduction programmes are easier to implement in a less restrictive environment, there is the potential to include harm reduction strategies such as needle exchanges, increased treatment availability, and replacement therapies within any drug policy framework, including prohibition (Kübler, 2001; Tammi and Hurme, 2007; Benfer et al., 2018). During the emergence of HIV/AIDS in the early 1980s, public health concerns surrounding intravenous drug use came to the forefront of drug policy, and the UK Advisory Council on the Misuse of Drugs (1988) issued a report stating that the 'spread of HIV is a greater danger to individual and public health than drug misuse' (p. 17). This statement led to a greater focus on public health in drug policy, including increased public health information campaigns, needle and syringe exchanges, and methadone treatment in the UK (McKeganey, 2006).<sup>5</sup>

Decriminalisation in conjunction with the philosophy of harm reduction can allow people who use drugs to seek treatment without stigmatisation, which would theoretically lead to fewer drug-related public health issues (Nadelmann, 1992; Douglas and McDonald, 2012; Russoniello, 2012; INPUD, 2014). The Czech Republic has incorporated harm reduction measures since the communist era, so this philosophy likely provided for a smoother transition to decriminalisation. HIV rates were already low, with the majority from sexual contact rather than drug use (Bruckova et al., 1993; Brucková et al., 2007; Kalina, 2007), so that was not a driving factor in the Czech context. Harm reduction programmes, specifically around injecting drug use, were introduced in the former Soviet Union in the mid-1980s in an effort to prevent the spread of HIV among intravenous drug users (Sarang et al., 2007). The Czech Republic was one of the first countries in the Eastern

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<sup>5</sup> As McKeganey (2006) notes, whether these programmes actually had an effect on HIV rates is questionable, as the rates of Hepatitis C are extremely high among injecting drug users, indicating continued unsafe needle practices. Low HIV infection rates have generally been viewed as signs of success in harm reduction programmes in the UK.



Bloc to introduce a needle exchange program in 1987, and opioid substitution therapy began in 1992 (Kalina, 2007; Sarang et al., 2007), so the nation was a forerunner in the harm reduction movement. After the Velvet Revolution, privatisation of services caused a number of treatment centres to close and led to difficulties in treatment accessibility (Kalina, 2007), but this was related to the health care system rather than the drug penalties in the criminal code. When there is less stigma in seeking services, and people do not need to worry about arrest if they openly discuss drug use, such as in a decriminalised environment, harm reduction measures are easier to implement (Benfer et al., 2018), which explains why they have been effective in the Czech Republic. The next section looks at the broader outcomes from prohibition and decriminalisation policies, outside of public health.

### **3.1.3 What outcomes have been reported from these policies?**

There is a wealth of literature about the outcomes of prohibition policies, particularly in the context of the 'War on Drugs' (Douglas and McDonald, 2012). The bulk of these studies are negative. Prohibition of drug possession has been considered a failure because drug use has continued to increase and because it criminalises people who use drugs, causing stigma and discouraging people from seeking treatment. Decriminalisation research is limited to select jurisdictions, primarily Portugal, and other countries do not have the same style of decriminalisation as the Czech Republic. Cannabis-only decriminalisation is more common than all-substance decriminalisation, so there are more studies in that area. Several studies have indicated that changes to criminal sanctions for cannabis use or possession do not affect usage rates (Thies and Register, 1993; McGeorge and Aitken, 1997; Single et al., 2000; Korf, 2002; Miron, 2002; Pacula et al., 2003; Reinerman et al., 2004), whilst others indicate an increase in usage which is either temporary (Maloff, 1981; Cameron and Williams, 2001; Williams and Bretteville-Jensen, 2014) or sustained (Model, 1993; Chaloupka et al., 1999; Saffer and Chaloupka, 1999; Zhao and Harris, 2004; Miech et al., 2015). Most of the studies on cannabis decriminalisation have been conducted in the US or Australia because they lend themselves to state by state comparisons of decriminalised versus restrictive policies. Yet even within those two

countries, the lack of consensus on the effects of cannabis decriminalisation demonstrates that there is no single expected outcome and that it is not possible to extrapolate the results of cannabis decriminalisation to the decriminalisation of other substances, as the factors that influence use decisions vary (Chaloupka et al., 1999). Decriminalisation of arguably more harmful drugs such as heroin and cocaine (Nutt et al., 2007) is limited to only a few countries worldwide (e.g. the Czech Republic), so evidence of reduced harms is similarly limited.

A critical difference between decriminalisation and prohibition is that possession ceases to be a crime, so crime rates for possession should decrease when decriminalisation policies come into effect. Yet theoretically, if prohibition was failing in controlling the growth of drug use and contributing to violent and organised crime, then the liberalisation of drug policy would be beneficial in those areas. The relationship between decriminalisation and crime is contested, but there is speculation that the reallocation of police resources would lead to a reduction in non-drug-related crime (Anderson and Rees, 2014). This was supported by Adda et al. (2014), in a study of cannabis depenalisation in the London borough of Lambeth. When cannabis was depenalised, police significantly increased their arrest rates for non-drug-related crime. Likewise, João Goulão, Director of the Service of Intervention on Addictive Behaviours and Dependencies in Portugal, claimed that police are now able to focus on serious crimes because their time is not wasted with minor drug offences (Russoniello, 2012; Goulão, 2016).

In contrast, MacCoun and Reuter (1998) asserted that 'depenalisation does not clearly increase the demand for drugs... but, unlike outright legalisation, it does little to address the crime and violence associated with drug markets' (p.232). It was also not found to decrease crime in two other studies of cannabis-only depenalisation. In South Australia, a program was piloted that issued expiation notices for minor cannabis offences (Christie and Ali, 2000). After the introduction of the expiation scheme, the handling of cannabis issues became faster, which led to a rapid and immense increase in notices issued that did not appear to be linked to increased cannabis usage (Christie and Ali, 2000). Police were still devoting large amounts of time to minor offences, which was counter to the goals of the program. There were also

concerns that some people were unable to afford the expiation fee and were thus convicted, which was not the intended outcome and was discriminatory to lower-income individuals. Unintended consequences also occurred in the UK when cannabis was reclassified as a less serious class of drug (Shiner, 2015). Allowing sanctions for cannabis to count towards police performance management goals led to significantly more targeting of cannabis users, rather than less, as was intended (Shiner, 2015). These studies point to the importance of evaluating unintended consequences when studying drug policing, as well as the consideration of police quotas and prioritisation.

### **3.1.3.1 Portugal**

Portugal decriminalised all illicit substances in 2001, sending people caught possessing drugs, with no indication of trafficking, to dissuasion commissions that assess the need for health interventions rather than arresting them (Hughes and Stevens, 2007).<sup>6</sup> International interest in the Portuguese programme has grown over time, and it has been researched more than any other decriminalisation policy, so this section will be devoted specifically to the research on crime in Portugal following decriminalisation. Hughes and Stevens (2007) found increases in the quantity of drugs seized following the decriminalisation of drugs in Portugal, as well as an increase in trafficking charges. They attribute this to either greater police focus on large-scale trafficking operations or more trafficking through Portugal. The United Nations Office on Drugs and Crime (UNODC) positioned this firmly in the latter category, citing increased cocaine trafficking from West Africa through Portugal. Greenwald (2009) contradicted this entirely. His argument stemmed from data showing decreased convictions for trafficking, which he believed to reflect a decrease in trafficking, apparently ignoring the increase in trafficking charges noted by Hughes and Stevens. Moreira et al. (2007) reported a rise in trafficking arrests directly following decriminalisation that later decreased. They also found that more substantial amounts of drugs

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<sup>6</sup> The use of the term 'decriminalisation' in this case is challenged by Weatherburn (2014), who holds that Portugal employs 'depenalisation' since the possession of drugs can still lead to criminal sanctions. As the country itself refers to the policy as 'decriminalisation', that is the term used in this thesis.

were seized, particularly heroin, in fewer operations, potentially indicating a more efficient seizure effort by law enforcement.

Another point made by Hughes and Stevens (2012), is that the pattern of drug seizures did not match the surrounding countries. While trafficking in Spain and Italy has been characterised by a continuous increase, Portugal's seizures include spikes with large amounts of different drugs seized in different years. There is also evidence that drug trafficking patterns change due to changes in drug laws (Pace, 1991, p. 98), and Portugal is a traditional import country for drugs from the Americas and Africa. Hughes and Stevens (2012) suggest that the pattern of spikes and dips, rather than a gradual increase, is indicative of police intervention since it does not match the regional profile. If that is the case, then the policies were successful in increasing police interference in the drug trade. However, the varied interpretations from other researchers, and a lack of reference to this interference pattern, does not make this a firm conclusion.

Criminal activity outside of direct drug offences has not been extensively studied in Portugal. Coelho (2010) noted an increase in homicides following decriminalisation, which he attributed to increased drug market crime based on that linkage being made in the UNODC *World Drug Report 2009*. Hughes and Stevens (2012) refute that argument, stating that his information was from a speculative statement with little supporting evidence. However, the UNODC data compared Portugal to other countries with Eurostat data and found Portugal to be the only European country with an increase in homicides over that time period. As it occurred alongside a drastic increase in cocaine seizures, the assertion that the homicide rate is linked to drug market violence is logical and warrants further consideration.

One of the non-public health related goals of the Portuguese drug policy was to reallocate police resources to more serious crimes and away from minor drug offences (Van Het Loo et al., 2002; Moreira et al., 2007; Hughes and Stevens, 2010; Russoniello, 2012), and the trafficking data provides some evidence of success, since increasing seizures would point to a more focused police effort on large scale crime. Another consideration is the declining total arrest rate for drug crimes, however, which might indicate

fewer arrests of drug dealers. Overall drug offences should have increased alongside the seizure rates, as the organisations involved are apprehended, but that did not appear to be the case. As Laqueur (2015) noted, the police in Portugal rarely arrested users for small quantity drug possession prior to the legal change, making it less significant and controversial than it was portrayed, whilst any significant differences in arrests are therefore likely to be due to a reduction in trafficking charges rather than possession charges.

All decriminalisation research, inclusive of, but not limited to, Portugal, has not widely included the influence of drug policy on organised crime. While many studies reference how policy relates to possession offences, the larger-scale drug crimes of manufacture and distribution tend to be neglected. The next section examines the research to date on the relationship between organised crime and drug policy, with a particular focus on which areas are unexplored.

### **3.2 Organised crime and drug policy**

Not all organised crime is related to drugs, but the two are inextricably linked. Drug production, trafficking, and distribution are typical activities of organised crime groups and have been recognised as such since the emergence of organised crime as a concept. Trafficking in drugs and alcohol during the prohibition era in North America is often considered the beginning of modern organised crime, as described in Chapter 1 (Cressey, 1969; Schelling, 1971; Reuter, 1983; Demleitner, 1994; Lyman and Potter, 2011; Abadinsky, 2013). Notably, the association between the market for illicit alcohol and organised crime exemplifies the impact that drug policy can have on crime.

Most organised crime groups work in multiple domains, broadening their income potential by diversifying interests whilst other groups specialize in certain types of crime, such as drug trafficking, and are not involved in other criminal activities. These differing organisational patterns also produce criminal syndicates with different structures and functions (Reuter, 1983). Reuter (1983) coined the term 'disorganised crime' to describe groups that worked as networks, rather than insular, hierarchical structures. Criminal networks can change over time, shifting membership numbers and working

with different people at different times (Paoli, 2002; Kolliarakis, 2010). They are generally more flexible and difficult to apprehend than groups with closed structures.

Drug trafficking requires organisations or entrepreneurs that work at different levels (Haller, 1990). All drugs require processing, and the people that produce the plant or precursor chemicals are not generally the same people as those that process and distribute the final product (Reuter and Kleiman, 1986; Haller, 1990; Pace 1991; Pearson and Hobbs, 2001; Bennett and Holloway, 2007; Desroches, 2007). An exception to this would be local marijuana or methamphetamine distributors, who might produce and distribute the products themselves. Large-scale production, at the level of a transnational organisation, would likely involve numerous groups at different levels, lending itself to a more conglomerate or network structure (Williams, 1998; Pearson and Hobbs, 2001; Desroches, 2005; Levi and van Duyne, 2005).

There have been relatively few studies of upper-level drug trafficking as opposed to local dealing (Reuter and Haaga, 1989; Pearson and Hobbs, 2001; Desroches, 2007). Those that exist tend to have small sample sizes and be limited to specific areas – New York City and Chicago, for example – which are not representative of the rest of the country, much less non-American contexts (Adler, 1975; Natarajan and Belanger, 1998), so the literature on large-scale drug trafficking is largely incomplete and primarily speculative when it comes to transferability (Desroches, 2007). Natarajan and Belanger (1998) tested the theory that trafficking networks had to be either structured or loosely structured by reviewing trafficking cases in New York City and evaluating the organisational structures. They found that the groups fell into four different types: corporations (similar to structured organisations), communal businesses, family businesses (similar to loosely structured organisations), and freelance (Natarajan, 2000). Use of this typology is limited, as it is based on a very specific (n=39) sample of New York City cases; however, it also demonstrates the variety that exists in the drug market even amongst a small subset of groups. This indicates that generalising characteristics of drug trafficking groups across the world is not

feasible, and problems of generalisability appear frequently in studies of large-scale trafficking.

There are some notable trends among the studies that have been conducted. The illicit drug industry has been found to function as an ordinary economic market in many ways (Adler, 1975; Ruggiero and South, 1995; Reuter and Haaga, 1989; Zaitch, 2002; Desroches, 2005; 2007). As Gilinskiy (1999) stated in a study on Russian organised crime: 'The members of criminal gangs are neither heroes nor villains. They are people engaged in a form of business that makes sense to them' (p. 117). This quote epitomises the view that organised crime is a business, albeit an illegal one, and that the morality of those involved is no different than in any other business. Drug trafficking is dictated by supply and demand (Reuter, 1983; Jager, 2002) as with any other illegal enterprise, yet unlike many forms of organised crime, drug traffickers are involved in the production and distribution of a specific product. Labelling drugs and creating a 'brand' is commonplace (Goldstein et al., 1984; Ruggiero and South, 1995) and groups that specialise in only drug production and distribution want to maintain their brand name just as a legitimate business would, but marketing of the product has always been an issue. Desroches (2007) noted that the difference between legal and illegal firms lies in the secrecy with which they must conduct business. He stated that illicit firms 'cannot advertise their products, are restricted in their ability to secure credit and collect debts, face the risk of robbery and other violence, have problems expanding their operations, and must select workers and clients whom they can trust' (p. 830). This point can be taken with Gilinskiy's (1999) above, that what differentiates organised crime from legitimate businesses can be their ability to function in the same way, rather than the morality of those involved.

With its Central European location, the Czech Republic is well situated for drug trafficking. Two of the major branches of the Balkan route pass through the country from South-Eastern Europe to the more profitable areas of Western Europe. While there are some drugs that remain in the Czech Republic, heroin being a particularly noteworthy example, the country has relatively low seizure rates compared to other European nations (United Nations Office on Drugs and Crime, 2015). Cannabis is the most seized

drug, followed by methamphetamine (pervitin), and both of these are commonly produced within the Czech Republic according to the Czech Police and the National Monitoring Centre for Drugs and Addiction (NMCD). Increased research on drug trafficking through the Czech Republic would provide valuable information as to how drug routes are changing in the region, as well as how drug trafficking differs in a country with decriminalisation. Specific ethnic groups are also associated with organised drug trafficking in Central and Eastern Europe, so the next section examines the connection between nationality, ethnic identity and organised crime.

### **3.2.1 The link between ethnicity, nationality, and organised crime**

One association that commonly arises in discussions of organised crime is ethnicity (Antonopoulos, 2009). Ethnic groups have been linked to organised crime since the concept was developed in the age of alcohol prohibition. In the US, when 'organised crime' was first recognised as a term, there were a number of ethnically distinct groups that became involved in illicit industries (Haller, 1990; Jacobs and Panarella, 1998). Italian, Irish, Jewish, and African-American groups were all prominent participants in US organised crime in the early 1900s (Haller, 1971). Due to this initial correlation, organised crime and ethnic origin are often associated, and have in essence 'evolved together' (Antonopoulos, 2009, p. 475).

Though the Prohibition era of the 1920s has long passed, there are still known organised crime groups throughout the world with ethnic and cultural links. Media outlets are quick to include nationality in identifying such groups when reporting on criminal activity, which reinforces the subconscious connection between ethnicity and crime (Rawlinson, 1998). In the Czech Republic in the early 1990s, increasing crime, particularly organised crime, was seen as being related to an influx of foreign nationals (Nožina, 2004). A similar sentiment was noted by Antonopoulos (2009) in Greece and has been used in the United States since the early 1900s (Kleemans and Van De Bunt, 1999). Even when no link between an organised syndicate and an individual exists, media reports often connect offenders to 'mafias' based on their ethnic identity (Antonopoulos, 2009). Criminal organisations that lack an ethnic or national identity are rarely acknowledged by the media, which



makes them seem to be less of a concern, fuelling the public fear of minority groups as harbingers of organised crime. This can also make research on mixed ethnicity organised crime less likely to occur, as noted by von Lampe (2012) who suggested that there was a 'fixation' on 'socially marginalised and foreign based offender populations' (p. 88) when research grants were awarded, biasing research towards ethnically distinct groups. Research into both ethnic and non-ethnically linked groups is necessary to understand how much of a role ethnicity plays in organised crime.

Despite knowledge of potential biases in the academic literature, and evidence of mixed ethnicity organised crime, numerous criminal enterprises still exist with ethnic ties, so there are reasonable arguments for paying attention to ethnicity when researching organised crime. For multinational criminal groups, ethnic and cultural connections can ease some of the difficulties in establishing contacts and forming a network (Block, 1994; Paoli and Reuter, 2008). Particularly in disaggregated transnational criminal networks, determining who can be trusted is a concern (Desroches, 2007). Criminal groups commonly reach out to their own nationals that have emigrated elsewhere to create cross-border connections (Pearson and Hobbs, 2001; Fijnaut and Paoli, 2004; Nožina, 2004; Desroches, 2007; Paoli and Reuter, 2008).

Research that rejects the use of ethnicity as a descriptor for criminal organisations tends to be based on local markets rather than transnational enterprises. In local organised crime, being in close proximity to other members of the organisation appears to be more important than ethnicity (Block, 1994; Bovenkerk et al., 2003). Groups with a variety of nationalities and cultural identities often work together in localised criminal networks, which can then expand into larger enterprises. Block (1994) noted the incorporation of numerous ethnic groups in drug trafficking operations in the early twentieth century. Pearson and Hobbs (2001) stated that ethnicity and kinship were less important on a local level than on a transnational level in drug markets. This is likely a reflection of trust, as collaborators in close proximity are probably known and trusted. They found that many of the non-ethnically linked collaborators met in prison and formed alliances, which they then carried on to the outside world. Albanese (2011) and van Duyne (1995)

have also reported several cases in which ethnically defined criminal organisations involved partners or members outside their ethnic group. Nožina (2004) observed that in the Czech Republic, domestic groups often work cooperatively with foreign groups. These examples demonstrate that criminal enterprises frequently operate in groups of mixed nationalities, even if there are distinct ethnic groups involved. However, national origin is not the only relevant social division, so the effects of gender will be explored in the next section.

### **3.2.2 Women's involvement in organised crime**

The roles of women in organised crime and drug trafficking are often not considered, as these are areas which tend to be dominated by men (Rodriguez, 1999; Campbell, 2008; Grundetjern and Sandberg, 2012). However, recent research indicates that women are involved in different aspects of organised crime, including drug trafficking, and often have prominent roles that have been overlooked (Grundetjern and Sandberg, 2012; Siegel, 2014). This section focuses on studies of women's involvement in organised crime, particularly drug crime, throughout the world. No studies could be found on this specific topic in the Czech Republic, at least not in the English language, so studies from other countries were examined for insights into women's involvement in organised crime.

Several authors have concluded that women's involvement in crime is often based on economic necessity (Rodriguez, 1999; Campbell, 2008; Grundetjern and Sandberg, 2012; Bailey, 2013). For example, Rodriguez's (1999) study of female offenders in Puerto Rico found that their involvement in crime was tied to poverty. Most of the women (83.3%) she studied were unemployed and saw criminal activities as a means to survive. Grundetjern and Sandberg (2012) found a similar trend in Norway, noting that both men and women involved in crime tend to come from marginalised backgrounds. Others explored different motivations for crime, such as Campbell (2008), who indicated that economic need was a driver for low-income drug smugglers in Mexico, but that moderate to high-income individuals became involved in the drug market for power and liberation. The business of organised crime provided women with the opportunity to be equal to men in

a generally unequal society, which was appealing. This same dichotomy was addressed by Bailey (2013) in her study of incarcerated women in Barbados. Many women were driven by poverty, but some had the same drivers that are usually attributed to men – greed, a desire for lavish lifestyles, and a search for power. Aside from economic factors, women also became involved in organised crime for other reasons. In his study in Mexico, Campbell (2008) found that women became involved through their partners, which is how women in organised crime are commonly portrayed in the media, which has skewed how they are viewed by society (Siegel, 2014).

Siegel (2014) argued that women have always been involved in organised crime, but have been largely overlooked by researchers. Women in Italian and Russian mafias were typically portrayed, both in the media and in research, as wives and mistresses in supporting roles, so the assumption that women in all organised crime played the same part highlights the pervasive idea that mafias define organised crime. Female crime bosses can be found throughout the world in all different time periods (Siegel, 2014), although women may not appear in organised crime statistics for several different reasons (Beare, 2010). For example, women's involvement may be overlooked by police, it could be low level and not considered integral to the organisation, it could be better hidden within the organisation than men's involvement, women could be better at avoiding detection, or they could be charged with predicate offences only (Beare, 2010). The cultural influences around the roles of women are also important in shaping the nature of women's activity. Many Italian women took over the business, as an extension of caring for their families, when their husbands were arrested or killed (as did Mexican women according to Campbell (2008)), but Nigerian and Ghanaian women took it upon themselves to get involved in crime to make money during an economic crisis (Siegel, 2014). According to Beare (2010), Nigerian women are prosecuted at a higher rate than men for certain crimes (primarily human trafficking), and are convicted at an equal rate, which is rare for women involved in organised crime. This highlights the relevance of women's roles in society depending on their country of origin, as culture influences not only their motivations to become involved in crime, but also the outcomes that they will face if arrested.

Zhang et al. (2007) studied this phenomenon specifically, referring to it as the 'gendered markets' theory. They found that in China, the roles of women in criminal enterprises often mirrored the roles of women in society, similar to the women mentioned in the studies above. Arsovska and Begum (2014) tested this theory in their study of female criminals from the Balkan region and West Africa. They noted that the roles of women reflected their cultural traditions, which differed by ethnic group. This study was particularly relevant to this thesis because criminal groups from the Balkans and West Africa are prominent in the Czech Republic. According to Arsovska and Begum (2014), women in West Africa are often the primary wage earners. Their dominant positions in society were reflected in their roles in organised crime, which were frequently leadership and organising positions (Arsovska and Begum, 2014), which was supported by the evidence on Nigerian women found in Siegel (2014) and Beare (2010). This was similarly noted in a case of a Caribbean woman in Kleemans, et al. (2014), as Caribbean society is also matrifocal, though this was contradicted by Bailey's (2013) work in Barbados. The conflicting results from these studies indicate that the gendered markets theory is not the only explanation for women's involvement in organised crime and that factors outside of cultural norms also influence how women fit into criminal networks. Women from the Balkan region, geographically and culturally closest to the Czech Republic, were less likely to be in leadership positions in organised crime and more likely to work under their significant others (Arsovska and Begum, 2014). Chinese women would also become involved through male partners in the Zhang et al. (2007) study and also held more submissive roles in Chinese society. Czech society places women in a similar position. Based on the gendered markets theory, it would be expected that Czech women would be involved in organised crime in a similar fashion to Chinese or Balkan women, in supporting roles, however Czech organised crime is highly multi-national, and the characteristics of each woman's native culture would impact how they interact with those in their own cultural circles. The analyses in Chapters 6 and 7 examined if there were any trends in female involvement in drug-related or organised crime, and why that might be occurring, as well as trends in nationality of

offenders. This is an area that was overlooked in previous evaluations of the drug policy, which will be discussed in the next section.

### **3.3 Previous evaluation of Czech drug policy**

The most in-depth study of the Czech drug policy to date took place in 2001, two years after the most restrictive policy went into effect, to examine the consequences of a penalty for personal possession of drugs. The *Projekt Analýzy Dopadů Novelizace Drogové Legislativy v ČR* [Impact Analysis Project of New Drugs Legislation] (hereafter known as the PAD report), was a comprehensive evaluation of the 'greater than small' policy commissioned and funded by the National Drug Commission of the Government of the Czech Republic (Zábranský et al., 2001). This thesis used the PAD report as a foundation, so it was studied in detail.

The PAD study design incorporated both quantitative and qualitative methods and was meant to examine policy outcomes on both public health and criminal justice. Originally there were eight hypotheses to be tested, derived from the discussion of the policy in Parliament (Zábranský et al., 2001). The first of these hypotheses was: 'The work of the Czech Police in terms of combating organised crime and street drug-related crime will be facilitated and more effective' (Zábranský et al., 2001, p. 17). This hypothesis was not included in the final report, which is notable because it is the only time organised crime is mentioned in the evaluation, despite not being ruled out by lack of data (as other hypotheses were). It was indicated that it was a secondary hypothesis that could be tested within the framework of the primary hypotheses; however, the results did not specify any findings regarding organised crime. Crime in general was a minimal part of the evaluation.

The eight original hypotheses were narrowed down to four in the final report, with three related to drug use and availability, and one stating that 'There will be no increase in negative health indicators' (p. 17), which was later deemed untestable (Zábranský et al., 2001). During the narrowing process, some were considered 'secondary' – defined as testable within the same framework as the primary hypotheses – and related to drug education, confidence in treatment facilities, and financial implications for police. After

examining the available data, two of the 'primary' hypotheses were combined, and the financial question was made into a broader statement on 'social costs' since a new police programme would undoubtedly increase in police expenditures. The final hypotheses tested in the report were:

1. Availability of illicit drugs will decrease
2. Prevalence of illicit drug use will decrease (or, the increase will at least discontinue)
3. Incidence of illicit drug use will decrease
4. Social costs of drug abuse will not increase after the implementation of the legislative intervention in question (Zábranský et al., 2001, p. 17)

Data constraints dictated the combination of some of the original hypotheses, but the complete elimination of crime as a testable hypothesis is a notable omission.

Evidence that data issues were encountered is seen in the combination of statements under hypothesis two. Gaps in the data also highlighted the difficulties of conducting a policy evaluation too close to the time of implementation. As Sabatier (1988) observed, a longer timeframe is necessary to determine whether or not a policy is actually achieving its goals. Programs that appear successful can falter over time, while those that appear weak can achieve success after several years (Sabatier, 1988). In the case of the PAD report, the short time frame was not the only weakness in the evaluation. Certain indicators used in the evaluation, such as population surveys, were not conducted annually, limiting data availability. In this case the policy went into effect in 1999 and the evaluation was released in 2001, so there was limited data on the changes in drug use over time.

Another example of this issue is in the assessment of drug availability. The availability of 'hard' drugs was perceived to decrease, while the perceived availability of cannabis increased according to student surveys (European School Survey Project on Alcohol and Other Drugs [ESPAD]) in 2001, leading to the overall conclusion that net availability was unchanged (Zábranský et al., 2001). In later surveys, the perceived availability of all

drugs declined (ESPAD, 2004; 2008; 2012; 2016), demonstrating that an early evaluation was not necessarily an accurate predictor. There was also a lag in the efficiency of implementation, as law enforcement personnel need to adjust to a new system, which was evidenced by findings of inconsistent policy application by police (Zábranský et al., 2001). This is further discussed in the analysis in Chapter 6.

The substudies of the PAD report consisted of semi-structured interviews and/or focus groups with three stakeholder categories: healthcare professionals, drug users, and law enforcement (Zábranský et al., 2001). Healthcare workers from drug treatment clinics and organisations participated in 12 focus groups, along with follow-up interviews. Interviews were conducted with 165 drug users and 39 law enforcement representatives, including police and judges. Originally prosecutors were also going to be interviewed, but there were issues of access, so the authors used records obtained from the Supreme Public Prosecutor's Office in place of prosecutorial interviews (Zábranský et al., 2001). These substudies were included in the documentary analysis for this thesis and are included in the examination of policing trends in Chapter 6.

The final sample for the law enforcement component was 29 police officers (16 criminologists and 13 investigators) and 10 judges. Despite the small participant pool a wide variety of opinions were expressed. While some of the law enforcement representatives wanted a strict and clear-cut law, others enjoyed the flexibility they had in charging and sentencing offenders. Having a vague law (prohibiting possession of 'greater than small' amounts of illicit substances – see discussion in Chapter 1) allowed judges to make decisions based on the individual circumstance rather than on a set numerical limit (Zábranský et al., 2001), and also provided police officers with bargaining room to negotiate for information. All but one of the judges agreed that the addition of Section 187a – a penalty for personal possession – had led to 'none of the promised improvement and increased efficiency of sanctions against dealers' (Miovský et al., 2001a, p. 91). The judges felt that all drug offences could be handled effectively by Section 187, so the addition of a possession penalty was not necessary. They also agreed that dealers should be sanctioned severely (they were less certain about user-dealers,

that sell to fund their own use) (Miovský et al., 2001a, p. 93). Strangely this was also reflected in interviews with drug users, who did not object to strict dealer sanctions, even though some of them were also dealers (Zábranský et al., 2001).

In interviews with police, the PAD authors noted that several separate participants were concerned about the age of the drug users they were seeing (Zábranský et al., 2001). This was also indicated by healthcare workers, who noted that people were starting to use drugs at an earlier age but were failing to seek treatment due to fears of sanctions. Healthcare workers also observed an increased politicisation of the issue, with politicians becoming polarised and no longer listening to medical advice, as well as an increasing number of medical professionals that refused to treat problem drug users (Zábranský et al., 2001, p. 33).

Though it is the most comprehensive review of the policy to date, and has been used as a foundation for later drug policy changes, the PAD report is not without critics. Jan Morávek, a policy researcher formerly of Charles University, openly criticised the PAD report for not thoroughly examining all the issues raised within it (Morávek, 2007; 2008). In one study, he analysed the framing of the debates held in the Czech legislature during the drafting phase of the 1998 drug policy. He identified four different frames of reference that politicians utilised during debate on the decriminalisation law: punitive, symbolic disapproval, harm minimisation, and civil liberties. Morávek (2007) argued that the authors of the PAD study looked at the drug problem through only one frame of reference, effectively shutting down dissension. The PAD study focused on health and social costs, which falls under harm minimisation, and avoided discussion of whether the stricter drug law could be beneficial as a symbol that the government does not support drug use (symbolic disapproval), or, conversely, whether it impinged on freedoms (civil liberties). Technically it could be argued that the punitive frame was represented, as the PAD study found no impact of the more restrictive law which would mean it was ineffective as a disciplinary measure. An additional criticism was that although drug trafficking was explicitly stated by legislators as a concern, there was no evaluation of the law's impact on trafficking in the PAD report (Morávek, 2007). If trafficking



had been reduced, it would have been a positive point for the punitive or symbolic disapproval points of view, while if it increased it might have been used to promote a harm reduction view. Instead, it was omitted.

Morávek (2008) also directly challenged the PAD authors for downplaying the significance of 'soft' drugs, particularly cannabis. The PAD study focused on problem drug users, which, while important, are the smallest sector of drug users. Morávek (2008) pointed out that the majority of drug users take 'soft' drugs, including an increasing number of young people in the Czech Republic. The increased use of drugs by young people was acknowledged in the PAD report by both healthcare professionals and law enforcement, but reducing cannabis use by young people was not recognised as an actionable recommendation by the authors. Morávek (2008) argued that the authors downplayed the increasing usage of cannabis in the report by focusing solely on problem drug users (defined previously as people who use opioids, methamphetamine, or cocaine), which gives an unrealistic depiction of Czech drug problems.

Despite these weaknesses, the PAD report provided insights on the drug policy that could not be found elsewhere, including the views of law enforcement. The next section examines the literature on policing in the Czech Republic.

### **3.4 Policing of drug offences and organised crime in the Czech Republic**

There is an extensive literature on policing of drug offences, but a limited number of studies focus directly on the Czech Republic whilst general policing literature is not always applicable in the Czech context or that of other Eastern Bloc countries. This is because these nations underwent significant law enforcement changes due to the Soviet influence and Communist government that were not experienced in the West and the evolution of policing is therefore not directly comparable.

Following the Velvet Revolution, trust in the police was low (King, 1998; Jenks et al., 2003). The police were expected to uphold communist ideology prior to 1989 (King, 1998; Nedelsky, 2009), so they were suspected of being loyal to the previous regime, which many of them were (Jenks et al., 2003).

It had also been an incident of police brutality at a student protest that had sparked the revolution, so that memory soured public opinion of the police force (Janík, 2010). After the Communist government collapsed, the police needed to establish themselves as a force for order without overstepping into their previous roles to establish legitimacy as a fair institution (King, 1998; Jenks et al., 2003). While the distrust in the police was an understandable concern, distrust in public institutions more generally was high early in the democracy, and in fact, the police were trusted more than the court system (Buriánek, 1994). The police were provided with guidance through new legislation in the form of the Police Act of 1991, but the court system remained virtually unchanged from the communist era (Jenks et al., 2003). Police were reluctant to accept the 1991 policy, according to interview data from Jenks et al. (2003), but did apply the law. Police legislation was updated in 2008, bringing it into alignment with changes to the criminal code and other crime-related legislation (Foltin et al., 2013), but the changes to the criminal code always lagged behind the policing legislation.

Studies of Czech police attitudes towards drugs are rare; there are more studies in Western countries like the US, which again makes the PAD study influential. In the PAD study there was little evidence of abuse of power by police under the 'greater than small' legislation, which gave them flexibility and discretion, aside from some noted negative interactions with Municipal Police (Zábranský et al., 2001). This suggests that flexibility in law enforcement could be a strength, rather than a weakness as it is presented in the literature, because it would allow the police and judges to make decisions on a case by case basis.

A survey of police attitudes, conducted in 2000, showed some areas of consensus within police views on drugs in the Czech Republic (Crow et al., 2004). The survey involved 70 police officers and explored their attitudes towards criminal justice policies, police involvement in social order, and police practices (Crow et al., 2004). There were four questions that specifically addressed drug issues, and the police generally agreed on all of them, with 97% of respondents stating that there was a connection between drugs and crime, although only 17.9% indicated that they thought drug use should be a crime (Crow et al., 2004). This suggests a general agreement

with the Czech policy of personal possession decriminalisation. In contrast, 72.7% of respondents did not think that drug treatment should be free, so support for drug users had limits among the police respondents (Crow et al., 2004). This apparent contradiction could be interpreted as police accepting low-level drug use as a personal freedom, but still disapproving of heavy drug use. Jenks et al. (2003) similarly noted that unless they are constrained by policy, police might find drug users to be 'attractive and convenient targets' (p. 107). When asked if law enforcement should address problematic drug use, 74.3% indicated yes, though the question did not follow-up with how it should be addressed (Crow et al., 2004).

These studies were compared with a study by Rhodes et al. (2006) that explored the views of police in a Russian city with high rates of injection drug use, to see if the police in a more repressive Eastern Bloc country shared similar sentiments. In that situation, the majority of the police viewed drug users as potential criminals, implying that they were inherently immoral people. Violence against drug users was considered justified (Rhodes et al., 2006). This led to fear in carrying safe injection supplies, which led to needle sharing and a worsening public health crisis. To compare with a Western context, a UK study by Lister et al. (2007) found a mixed response among drug police when asked about street-level policing practices. While some shared the Russian polices' attitude that drug users should be associated with crime, others took a softer, more sympathetic, stance. Many of the UK police used their rapport with users to gather information about drug dealers, which was of greater benefit than arresting the individual users (Lister et al., 2007). The Czech police tendency to view drug use as a health issue, evidenced by the literature reviewed above, has allowed the police to operate similarly to the UK police, avoiding the adverse outcomes found in the Russian study.

### **3.5 Conclusion**

In this chapter, drug policy options, consequences of prohibition and decriminalisation, the characteristics of organised crime offenders, and the Czech-specific literature have been reviewed to provide a broader context to this study. There are many unanswered questions about the effects of

decriminalisation, particularly on non-drug related criminal activity, that were derived from this review. This study aims to contribute to the literature on the impacts of decriminalisation, particularly in relation to organised crime, drug offences, and ethnicity and gender-based disparities. The next chapter explains the methodological approach taken and the methods used to answer these research questions.

## **Chapter 4: Researching decriminalisation in the Czech Republic**

This chapter describes the development of the methodology, the rationale behind it, and how the research was conducted. The mixed methods research design and methodological process undertaken in this thesis were complex, involving a variety of quantitative and qualitative approaches. There were two major components to the research: a policy analysis component and an empirical component. The policy analysis component utilised the Advocacy Coalition Framework (ACF), which included documentary analysis of parliamentary debate transcripts and government reports to inform the analysis. Within the empirical component, both quantitative and qualitative methods were used to explore the effects of the drug policy changes on crime. The chapter outlines the policy analysis aspect first, describing the ACF and its application. It then details the empirical mixed methods research process, explaining the quantitative and qualitative phases in terms of data sources, sampling, data collection, analysis procedures, and limitations. It concludes with a discussion of the ethical considerations that influenced how this research was conducted.

### **4.1 Research questions**

There were a number of research questions that were addressed to examine the development and effects of the Czech drug policy. The overarching research question that this thesis aims to answer is:

How have the different implementations of drug decriminalisation in the Czech Republic impacted drug offences and organised crime over time?

To break down how that could be answered, the following sub-questions were developed:

1. How and why were decriminalisation policies implemented, and what challenges did the country face during implementation?
2. How did the decriminalisation policies affect law enforcement practices, including interpretation on the ground, and how have the officially reported crime data changed during the policy phases?

3. How and to what extent have the demographic characteristics of people prosecuted for drug offences and organised crime changed across policy phases, and how does this relate to policy implementation?
4. What lessons can be drawn from the Czech experience of decriminalisation and how might they be applied in other contexts?

## **4.2 Research design**

Analysing the Czech decriminalisation required a pragmatic, mixed methods approach, to provide the most wide-ranging possible analysis of the effects of the policy changes. The research took a mixed methods case study approach focusing on the Czech Republic. Selecting a single country to study enabled an in-depth exploration of how policy effects, and external effects, related within a national context. Since the Czech Republic has one of the longest running drug decriminalisation policies in the world, it was an ideal study site to explore the outcomes of decriminalisation. A comparative study was considered, but within the constraints of PhD research the scope would have been narrowed significantly, which would not have allowed for a fulsome exploration of the research questions. A single case study also provides an avenue for a 'natural experiment'<sup>7</sup>, as Gerring (2009) described, '... the experimental ideal is often better approximated by a small number of cases that are closely related to one another, or by a single case observed over time, than by a large sample of heterogeneous units' (p. 91). In this case, the Czech Republic had undertaken a policy that had not been utilised elsewhere, allowing for observations of the resulting outcomes over time. With the single site it was also possible to examine the effects of decriminalisation from a variety of angles. Decriminalisation has wide-ranging consequences, and crime is also influenced by many factors outside the realm of public policy, so this study required the use of multiple methods to approach the questions from different perspectives. This section examines each aspect of the study, beginning with the use of the ACF as a

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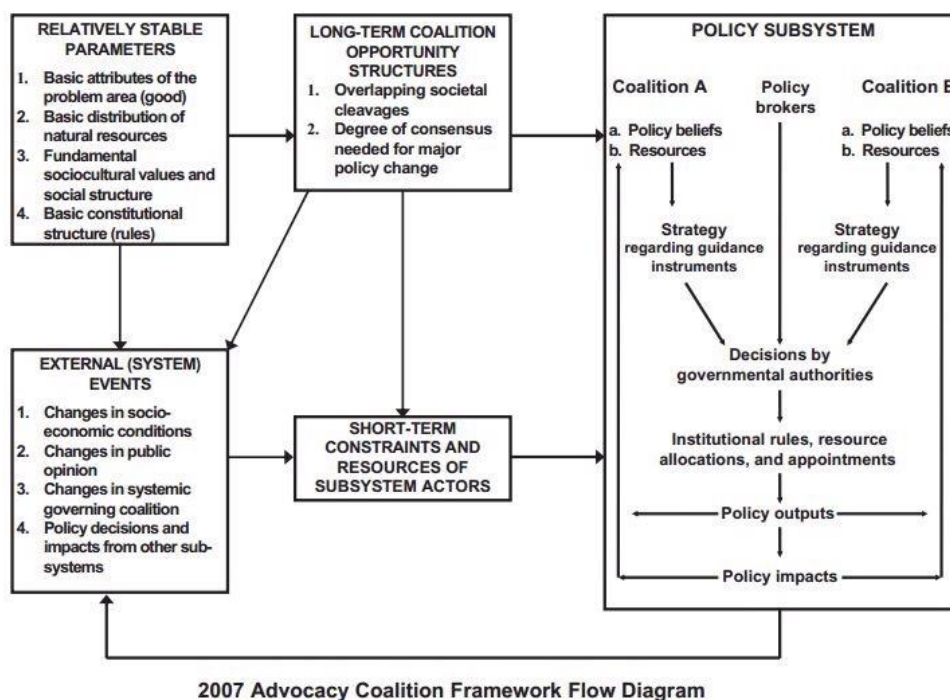
<sup>7</sup> A study in which the conditions are not controlled by the researchers.

tool for analysing the development and subsequent modification of drug decriminalisation in the Czech Republic.

#### 4.2.1 The Advocacy Coalition Framework

The ACF is a policy analysis model that assumes multiple actors will band together to form coalitions around shared beliefs and will then exert their influence to shape public policy (Sabatier and Pelkey, 1987; Sabatier, 1988). It was initially devised by Sabatier and Jenkins-Smith (1988) to provide an explanation for how policy changes are affected by multiple levels of government and outside forces. The model has since been revised as more studies were conducted, with the most recent iteration in 2007. Figure 4.1 shows the flowchart of the policy process as described by the ACF (Sabatier and Weible, 2007). The framework is most useful for explaining complex policies that change incrementally over long periods of time, which is why it aligns well with the Czech drug decriminalisation policy.

**Figure 4.1: Flow chart of the Advocacy Coalition Framework, 2007 version**



From Sabatier and Weible, 2007

The ACF centres on a policy subsystem, which is an often politicised area of focus involving a variety of actors. Originally the framework was used for environmental policy, but it has been expanded to many different policy areas (Sabatier and Weible, 2007), including drug policy (Kübler, 2001;

Ritter, 2009; Hughes et al., 2017). In this study, the policy subsystem is the Czech drug policy, which involves legislators, medical professionals, NGOs, and law enforcement. These groups have debated the drug policy for decades. In these debates, two distinct coalitions have formed and been maintained, which I defined as anti-decriminalisation and pro-decriminalisation. In Chapter 5, the ACF is applied to this policy subsystem to explain the development of the Czech drug policies, defining the stable parameters, external events, and opportunity structures surrounding the decisions that were made.

Like many policy analysis frameworks, the ACF was developed in the US and has been used frequently in North America and Western Europe. While its use has expanded worldwide (Henry et al., 2014), the origin of the framework should be considered when applying it to different countries. One factor that makes the ACF easily applicable in the US is the two-party system of US politics. Since the ACF relies on conflicting opinions between two or more groups, complex multi-party systems can be more difficult to subdivide into coalitions than the US system (see Chapter 2 for a description of the Czech political system) (Kübler, 2001). The ACF has also been criticised because it could only be used in contexts where citizens can openly mobilise (Henry et al., 2014), so it could not be applied to the communist era of the Czech Republic, for instance. These limitations led to the researchers adapting the ACF to include opportunity structures such as the degree of consensus needed for policy change (Sabatier and Weible, 2007; Henry et al., 2014). Contextual differences can also be overcome through the application of additional theories, such as in Kübler's (2001) study of the Swiss drug policy, in which he drew from social movement theory to incorporate the effects of collective action. Similarly, in the Czech Republic, the ACF was combined with the language management framework to study policies regarding the language of street signs (Sloboda et al., 2010). One of the benefits of the ACF is that it is adaptable, and can be used in conjunction with other theories as well as on its own.

Czech drug policy system aligns well with structures of the ACF since the political parties and outside actors naturally divided over the topic of drug decriminalisation into two factions. The ACF has previously been applied in



the Czech Republic to analyse other policy subsystems (Fric, 2008; Sloboda et al., 2010; Trousil, 2012), indicating that the framework works well to describe the political structures of the country. It was also referenced by Nekola (2012) in his work on the rhetoric behind drug policy changes. While there are risks to applying a theory developed in the US to the Czech Republic, the political context of the country is pluralistic and suitable for this type of analysis. The previous applications of the ACF in the Czech Republic support its applicability in this context without additional theoretical requirements. Since the framework is flexible, it does not define the methods of analysis, so use of a mixed methods approach is appropriate.

#### **4.2.2 Mixed methods research**

In order to answer the proposed questions, it was necessary to consider them from different perspectives, which was done by incorporating both quantitative and qualitative data. Quantitative methods were used to analyse the recorded crime rates under each policy and examine the demographic characteristics of offenders over time. Qualitative methods were used to analyse official documents and government-sponsored research reports, and to interview parties involved in the formation, implementation, and evaluation of the decriminalisation policies.

Mixed methods research aims to 'draw from the strengths and minimise the weaknesses' (Johnson and Onwuegbuzie, 2004, p. 14) of both quantitative and qualitative methods (Johnson and Onwuegbuzie, 2004, 14-15; Creswell, 2014). As stated by Johnson and Onwuegbuzie (2004):

If findings are corroborated across different approaches, then greater confidence can be held in the singular conclusion; if the findings conflict then the researcher has greater knowledge and can modify interpretations and conclusions accordingly (p. 19).

Combining methods allows researchers to incorporate different types of data which provides complementary information that can be used to understand complex situations (Sale et al., 2002). Both qualitative and quantitative methods have their strengths and weaknesses, but they can balance each

other when the data types are combined. Each provides a different understanding, which are stronger when combined than they are individually.

Use of quantitative crime rate data to analyse trends was the most logical first step in studying the effects of decriminalisation on crime. While imperfect, crime rates are one of the only ways to measure changes in criminal activity and policing, but the rates can only tell us what the trends are in recorded crime, not any explanations for why those changes occur. While this study focuses on crime, viewing it through the narrow lens of crime rates could lead to a misinterpretation of why the rates of prosecution and conviction changed as they did. Demographic statistics have the same limitations, which was why the qualitative components were necessary for this study. Through interviews and documentary analysis, a clearer picture emerged of how the changes to the criminal code came about, and why the crime rates changed as they did. Qualitative data alone would have been insufficient, as the interviews would only provide individual interpretations of the crime rates, rather than the big-picture view needed for a fuller understanding. As Terrell (2012) stated, 'Quantitative tells us "If"; qualitative tells us "How or why"' (p. 258), which is why both methods are necessary for the evaluation of public policy.

Despite these strengths, mixed methods research is not universally accepted and has been criticised as epistemologically inconsistent, based on the idea that quantitative work tends towards positivism and qualitative towards constructivism (Teddlie and Tashakkori, 2003; Bryman, 2004; Johnson et al., 2007; Terrell, 2012). However, the two approaches do not have to be at odds with each other (Sale et al., 2002). As noted by Teddlie and Tashakkori (2003), mixed methods studies were conducted historically without issue, but in the 1970-1990 period it was suggested that the two paradigms were incompatible in a single study (Maxwell and Loomis, 2003). Now mixed methods is recognised as its own methodological paradigm, distinct from strictly qualitative or quantitative work (Teddlie and Tashakkori, 2003).

Mixed methods studies typically employ a pragmatic epistemological perspective (Johnson and Onwuegbuzie, 2004; Creswell, 2014).

Pragmatism, in this context, describes the concept that ideas should be evaluated on their practical outcomes, regardless of methodological approach (Creswell, 2014). This is not the only definition of pragmatism, but it is based on the common understanding of the term, which is to say it focuses on what works in practice rather its philosophical meaning (Lipscomb, 2011; Creswell, 2014). Defining 'what works' is open to interpretation, but allows for flexibility in determining variables within a study. As defined by Shannon-Baker (2016), 'Pragmatism is based on the belief that theories can be both contextual and generalizable by analysing them for "transferability" to another situation' (p. 322). One of the goals of this study was to explore the impact of decriminalisation in order to provide evidence that could potentially inform policy in other jurisdictions. This was accomplished using as many means as were available, which made a pragmatic approach the most logical choice. In order to coordinate the various forms of data necessary for this analysis, a structured method of sequential explanatory design was selected.

#### **4.2.3 Sequential explanatory design**

There are a variety of ways to integrate data in a mixed methods design (Mason, 2006; Teddlie and Tashakkori, 2006; Driscoll et al., 2007; Johnson et al., 2007; Creswell, 2014). Qualitative and quantitative data can be collected and analysed concurrently or sequentially, they can be fully integrated or separate in the analysis, and they can be used to answer different questions or approach the same problem from different angles. Teddlie and Tashakkori (2006) suggested that there could never be an exhaustive typology of mixed methods research because it can be approached in so many different ways. For this project, the goal was to examine how the various implementations of decriminalisation affected crime rates, with qualitative data used to interpret how and why those results might have occurred. The two types of data are complementary and provide different levels of insight into the effects of drug policy on crime. This type of corroborative mixed methods research can be achieved through a sequential explanatory analysis (also referred to as an explanatory sequential analysis), which places the quantitative and qualitative aspects sequentially rather than concurrently (Driscoll et al., 2007; Creswell, 2014).

In a sequential explanatory analysis, the quantitative data are collected and analysed first and the results are then used to guide the qualitative data collection (Ivankova et al., 2006; Driscoll et al., 2007). This study involved an analysis of official crime statistics from the Ministry of Justice and the Czech National Police and then used the results to inform the development of an interview schedule that would provide context for those occurrences. The interview data were used along with documentary analysis to explain the findings of the quantitative analysis. While this study initially employed a sequential explanatory design, it evolved as the data collection expanded (Johnson and Onwuegbuzie, 2004; Teddlie and Tashakkori, 2006). The originally planned quantitative analysis preceded the interviews, but when new issues emerged from the interviews quantitative data was also sought to explore those areas. The details of this change of sequence are explained in section 4.4.3.

In the next sections, the quantitative and qualitative aspects of the project are broken down and described in terms of data sources, data collection, and analysis. The quantitative component includes an explanation of the data sources, as well as the statistical techniques applied. The qualitative component involved two methods, semi-structured interviews and documentary analysis.

### **4.3 Quantitative research component**

The quantitative element of the project included the collection of secondary data containing prosecution, conviction, and sentencing data, as well as a select sample of individual criminal records. In addition to the data used to calculate crime rates and sentence lengths, data on drug prices and drug use were examined to provide a broad picture of the drug situation in the Czech Republic and how those factors were affected by the policy changes. This information was obtained from the annual reports of the Police, the Ministry of Justice, the Institute for Criminology and Social Prevention (ICSP), and the National Monitoring Centre for Drugs and Addiction (NMCDCA).

### **4.3.1 Use of secondary data**

All of the quantitative data were secondary data, which was necessary due to the historical nature of the data, but which also carries its own set of complications. While secondary data analysis significantly reduces the amount of time and resources necessary for data collection, the variables of an existing data set cannot be changed and may not be appropriate to answer the proposed questions (McCall and Appelbaum, 1991; Johnston, 2017). This issue did arise when using certain data sets. Data from the police did not include the sex of offenders for every year, for example, which made it impossible to compare sex breakdowns with the court records. Johnston (2017), suggests that this can be mitigated by using conceptual and theoretical knowledge to select the appropriate data sets to address the research questions (p. 620). While the data sets in this study were suitable for the research questions, not all of the variables could be included due to the available data. However, secondary analysis can also reduce some of the risks inherent in quantitative data collection as data are frequently collected on a larger scale than would be possible from a single study, increasing the validity of the results (Johnston, 2017). It also allows for the study of historical data and trends over time, which was crucial for this thesis.

Both aggregate and individual data sets were used in this study, which added an additional level of complexity to the analysis. Prosecution, conviction and some demographic data were collected in aggregate, while sentencing and additional demographic data were collected from individual records. The difficulty in obtaining and understanding the individual records was a hindrance to their collection and limited the use of the data, but the individual records provided some insights that were not available at the aggregate level. The cumulative data was much simpler to work with and was easily explained by those involved in its collection and reporting, but it did not include the desired levels of detail which were found in the individual records. The next section details the data sources used, the data collection processes, and the limitations of each set.

### **4.3.2 Prosecution, conviction, and sentencing data**

Data on prosecution, conviction, and sentencing were obtained from the Ministry of Justice Statistical Yearbooks. The Statistical Yearbooks have been produced since 1995 and are publicly available online<sup>8</sup>. The most recent year of publication was 2017, reporting the data from 2016, which was one of the reasons this study only extended to 2016. Data on prosecution rates for adults and juveniles were also obtained from the Czech Police Statistical Surveys, which are publicly available by month and year online<sup>9</sup>. The Police data set included both 2017 and 2018 data, but those were excluded to provide matched samples with the Ministry of Justice. All crimes were recodified in 2010, so sections of the new criminal code were matched to the corresponding sections of the previous criminal code for analysis. Specifically, the data for all drug crimes (Sections 187-188a/283-287) and criminal conspiracy (or organised crime in the 2010 code; Section 163a/361) were selected.

Specific drug offences – including distribution and supply-related offences (187/283), possession of drugs for personal use (187a/284), possession of manufacturing equipment (188/286), and spreading addiction (188a/287) – were all examined, as they were the most relevant to the policy in question. Organised crime was studied using the codes for both criminal conspiracy and membership in an organised crime group. Committing a crime as a member of an ‘organised group’ appeared as an aggravating factor 37 times in the pre-2010 Czech criminal code, but the majority of those crimes were not drug related. As an aggravating factor it was only included in this study for drug trafficking charges under Sections 187 and 283 and was analysed separately from the overall rates of Section 187/283 offences. Organised crimes that were separately charged as a criminal conspiracy were also included, as that was the charge for organised crime groups before the recodification.

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<sup>8</sup> <http://www.justice.cz>

<sup>9</sup> <http://www.policie.cz/clanek/archiv-statistiky-statisticke-prehledy-kriminality.aspx>

In the Statistical Yearbooks, for each section of the criminal code, there was a breakdown of detected crimes, arrests, prosecutions, convictions, and sentencing reported cumulatively for the year. This was further disaggregated by demographics, including the sex, age, and region of arrest of offenders. It was also noted how many offenders were recidivists, were under the influence of alcohol or drugs at the time of the arrest, and whether there were additional penalties incurred. An issue that arose from this data is that the same variables were not recorded each year. Categories were expanded to provide more detail over time, so not all of the data were comparable over the period of the study. A sample of the data from 1995 is provided in Appendix A. Only data that were consistently reported over the entire time period were used, so the data on recidivism and the use of addictive substances, while it would have been useful, were excluded. Additionally, an ICSP staff member provided data on the number of drug offences with aggravating factors from 2008-2014, so that the number of cases with additional penalties for organised crime could be analysed.

The Police of the Czech Republic (national police) statistical surveys have been published monthly since 2000, and are consolidated into annual tables each year. The police data is similar to the Statistical Yearbook data, but is not as detailed in the description of offenders (e.g. juvenile versus adult, rather than specific age ranges). The two data sets were examined separately and then compared to identify trends in crime rates. Comparisons were limited to rates of prosecution since that point in time is reflected in both data sets. The police do not monitor convictions or sentencing once someone enters the court system. Individual records were also obtained to supplement the aggregate data and provide a more fulsome picture of the serious offenders.

Individual offender files were obtained from the ICSP in Prague. Court records from the Ministry of Justice are stored and analysed at ICSP through a web-based proprietary database called CSLAV (Centrální Statistické Listy a Výkazy - Central Statistical Sheets and Statements). CSLAV cannot be accessed remotely, so data collection had to be completed within the ICSP office, with access arranged by the Director of the ICSP, who I met at a conference (details of access are described further in section 4.4.1). Files

were collected from 2005-2015 as that was what was available at the time (October 2015). Searches in CSLAV could only be conducted for one year and one code section at a time, then each person's file from within the search had to be individually copied. There was no way to export the data aside from cutting and pasting each record into Excel, which turned out to be more complicated than it seemed. Each cell copied as a picture, necessitating an additional step of retyping each cell into a new file in order for Excel to be able to process the data. The system was also highly unpredictable, and frequently deleted previously copied records that would then need to be recopied. Due to the time-consuming nature of this task, the number of individual records obtained was narrowed down to individuals that had received an unconditional prison sentence for an organised crime offence, or an unconditional prison sentence of 60-months or more for a drug offence. The reasoning behind this decision was that it would restrict the records to the most serious drug offences, those that included aggravating factors such as involvement in an organised crime group. Lower level offences would automatically be excluded because a 60-month penalty does not exist for minor offences. In total, 1,465 records were obtained. Of those, 1,413 were used in the analysis – those that applied to Section 187/283 for drug crimes and Section 163a/361 for organised crime. The remaining 52 were for offences under Sections 187a/284, 188/286, and 188a/287. While the records were obtained for those offences, the number of individuals that were sentenced to substantial prison time were too few for any meaningful analysis of trends.

Time series dates varied depending on the offence as some of the categorical offences were introduced at midpoints in the analysis period, most notably the personal possession offence, which came into force in 1999. Each offence was analysed from the earliest available date, and mid-year population estimates were obtained from the Czech Statistical Office to calculate rates for each year from the absolute counts of prosecutions and convictions. The interrupted time series analysis was run using the rate per 100,000 persons for each year. The next section looks at the limitations of these particular data sets and how they were addressed in the data analysis.



#### **4.3.2.1 Limitations of crime rate data**

Crime statistics are a frequently criticised form of secondary data (Black, 1970; Skogan, 1974; Maguire and McVie, 2017). Not all crimes committed are detected, or reported, so an unknown percentage of crimes are not included in official statistics (known as the 'dark figure' of crime) (Biderman and Reiss, 1967; Skogan, 1977; MacDonald, 2002; Stevens, 2007; Maguire and McVie, 2017). Three conditions must be met for a crime to appear in official statistics: it must have occurred, been recognised by police as a crime, and officially recorded. At that point, the police have the discretion to categorise the crime in a variety of ways (e.g. robbery versus theft) which can change the perceived seriousness of the crime (Skogan, 1974; Brown, 1981; Corsianos, 2003; Boivin and Cordeau, 2011). Organised crime is particularly hard to detect because it involves the pursuit of many people at once. It is challenging to prove long term involvement in an organised group; so cases are often tried directly on the single incidence of crime rather than on conspiracy or organised crime charges according to interview respondents (Ministry 2, Ministry 3). Prosecution data for organised crime is therefore unlikely to be a reliable indicator of the levels of organised crime in the Czech Republic.

Another complication is that crime statistics, and crime, are socially defined (MacDonald, 2002; Maguire and McVie, 2017). What is considered a crime in one location could be legal in another location, or a different time period, making comparisons problematic. Drug decriminalisation exemplifies this issue since drugs are still prohibited in most countries and the status of their legality has changed over time. To mitigate the problems associated with officially reported crime rates, the statistics were used to look for trends rather than absolute counts and were triangulated with other sets of similar data to corroborate trends (Skogan, 1974; Maxfield et al., 1980; Anderson et al., 2011). The rates of prosecutions and convictions were used to analyse the activities of police and the courts in handling these cases during each time period, along with trends in crime during times of political change, rather than actual rates of crime that occurred as a consequence of the policy change (Maxfield et al., 1980). Though it was clearly not a perfect measure, it provided some indication as to how law enforcement procedures

changed over time and under each policy, without the expectation that the results reflect the actual rates of occurrence of specific crimes in the Czech Republic.

Another limitation was the time span available. Only having individual records from 2005 limited analysis since the aggregate data extended back to the early 1990s. Also, certain variables could not be tied to the year in which they were reported, so the offences that were committed prior to 2005 could not be linked to the year of the offence. As convictions frequently occur in different years than crimes are committed (as verified by ICSP analysts), they are therefore not the best statistic to enable a year-to-year comparison. In the individual records, both the year of the crime and the year of conviction are listed. Crime dates could only be estimated by the length of court proceedings when individual records were not available. Similarly, the police data only dated back to 2000, so there was no publicly available police data for the first phase of decriminalisation (1990-1998). This was further complicated by the fact that Czech law allows a person to be sentenced based on the criminal code at the time the crime was committed or the time of conviction, whichever option is more favourable to the perpetrator, so some people were sentenced under the old criminal code versions even in recent years if they committed crimes prior to 2010. This issue was mitigated by analysing the matched code sections concurrently, so someone who had committed a personal possession offence before or after 2010 would appear in the same data set, regardless of which code was used for sentencing.

Finally, the potential unreliability of early data limited its usefulness. While data exists on overall crime rates prior to 1990, the Communist government was not known for transparency and may have underreported crime rates to appear in control, as noted in Chapter 2 (Hignett, 2004; Robertson, 2006). Therefore, comparisons to the Soviet era and even to the early years of decriminalisation may be based on inaccurate estimations of crime. The next section looks at how the data were analysed, focusing on the interrupted time series analysis.

#### **4.3.2.2 Statistical analysis**

Code sections were analysed individually by plotting the prosecution and conviction rates over time to look for trends, then conducting an interrupted time series analysis. These types of analyses are frequently used to evaluate natural experiments derived from policy changes, as they demonstrate the change that occurs over time (Bernal et al., 2016). Interrupted time series analysis examines how an intervention affects a series of sequential data points, comparing the levels and slopes to determine whether the intervention made a significant difference in the trend (Wagner et al., 2002; Ramsay et al., 2003; Bernal et al., 2016). A change in the level ( $y$ -value) indicates an abrupt change following the intervention, while a change in the slope indicates a gradual change (Wagner et al., 2002). It is recommended that interrupted time series plots be analysed visually prior to statistical analysis, to evaluate trends and estimate changes in level or slope (Wagner et al., 2002; Bernal et al., 2016). Visual examination revealed clear trends for several of the offences that aligned with the changes in policy, supporting the use of this method despite its limitations, which will be outlined below.

Specific requirements must be met for an interrupted time series to be an appropriate method for analysis. A precise date for the intervention is crucial so that a direct comparison can be drawn before and after (Ramsay et al., 2003; Bernal et al., 2016). In this study, the dates the new policies went into force provide that distinct division. The previous criminal code could be used if the crime was committed before the change and it was beneficial to the offender, which presented a grey area around the intervention, but that was mitigated by merging the data sets for like offences by year. Lags were also applied to adjust for a more gradual transition. The second requirement, according to Bernal (2016), is that the intervention would rapidly lead to a new outcome. Since this intervention changed the legal process around drug possession, the change would begin to appear immediately after the intervention, satisfying this condition. The third prerequisite – data requirements – is the most difficult to capture, since there are no agreed-upon guidelines, as explained in the next section.

Interrupted time series only works if there are data on both sides of the intervention, but there is no consensus on the minimum number of data points. Zhang et al. (2011) ran simulations to determine the power of different arrangements of data points in interrupted time series since there was no accepted method for calculating power. They found that power was increased by equal numbers of data points on either side of the intervention, larger numbers of observations per point, larger effect sizes, and negative autocorrelation (Zhang et al., 2011). They tested sets from 12-72 points (6-36 per side) and concluded that small data sets could still have sufficient power given the other factors involved, but that lower values should be interpreted with caution. Hawley et al. (2019) reached a similar conclusion regarding observations per point and effect size, finding that even large data sets did not have sufficient power when observations were limited and effect size was small. In a later paper, Penfold and Zhang (2013) recommended at least 8 data points on each side. Wagner et al. (2002) suggested that interrupted time series studies should have a minimum of 12 points per side, with a minimum of 100 observations per point. Ramsay (2003) suggested that 10 points on either side would be necessary, while Cochrane Effective Practice and Organisation of Care (EPOC) requires only three points on each side (EPOC, 2017). While there is no agreement on the minimum, Bernal et al. (2016) also noted that more is not necessarily better, as historical trend changes could be picked up that are unrelated to the intervention.

In this study, the number of data points varied by offence and were complicated by the two interventions. Most of the offences had more than the minimum 24 data points to meet Wagner (2002) and Ramsay's (2003) criteria, but they were divided into three periods rather than two. The number of data points for each can be seen in Table 4.1.

**Table 4.1: Data points on either side of the intervention**

| Offence  | Before (1990)               | After1 (1999) | After2 (2010) |
|----------|-----------------------------|---------------|---------------|
| 187/283  | 7-Prosecution, 8-Conviction | 11            | 7             |
| 187a/284 |                             | 11            | 7             |
| 188/286  | 7-Prosecution, 8-Conviction | 11            | 7             |
| 188a/287 | 7-Prosecution, 8-Conviction | 11            | 7             |
| 163a/361 | 6                           | 11            | 7             |

None of the variables met the more stringent requirements for sample size due to the recency of the change; however, the ability to use a time series with data constraints is one of the strengths of interrupted time series analysis, since other forms of time series analysis require at least 50 points (Zhang et al., 2011). With no monthly data for the earlier periods, and only a small number of years for each of the policies, the reduced number of data points could not be avoided. They were also not equally balanced on either side of the interventions. These weaknesses were partially mitigated by the large number of observations for each point for some variables, such as Section 187/283, which has had over 1000 since 1998, but other offences did not have such large samples. The limitations of the method for each separate offence will be discussed in the individual analysis sections.

The analysis was run using the *itsa* command in Stata, as described by Linden (2015). This command performs interrupted time series analysis using an Ordinary Least Squares (OLS) regression approach with Newey-West standard errors, using the following equation (from Linden, 2015):

$$Y_t = \beta_0 + \beta_1 T_t + \beta_2 X_t + \beta_3 X_t T_t + \varepsilon_t$$

$Y_t$  is the outcome variable for each time point,  $T_t$  is time,  $X_t$  represents the intervention, and  $X_t T_t$  is the interaction between time and the intervention (Linden and Adams, 2011).  $\beta_0$  represents the starting level,  $\beta_1$  is the slope pre-intervention,  $\beta_2$  is the level post-intervention, and  $\beta_3$  represents the difference in the slopes post-intervention (Linden, 2015, p. 481; Linden and Adams, 2011).

A risk with time series analysis is serial correlation, or autocorrelation, which is when the values in a time series are correlated to other values or errors correlated with other errors. Newey-West standard errors are meant to correct for autocorrelation and heteroscedasticity, but to avoid any issues that could arise, two additional tests were run for each variable. An autocorrelation calculation and graph were created using the *corrgram* command in Stata (Torres-Reyna, 2013). Nearly all of the variables showed significant evidence of autocorrelation, with the exception of Section 187a/284 prosecutions. Following that test, a combined test to determine the optimum lag to apply to each variable was conducted (*varsoc* in Stata). This

command calculated the Schwarz's Bayesian information criterion (SBIC), the Akaike's information criterion (AIC), and the Hannan and Quinn information criterion (HQIC) for each code section to identify the ideal lag for the analysis (Torres-Reyna, 2013). In most cases, all three calculations were in agreement on the ideal lag, and the interrupted time series analysis was run using that information. When they did not match, I had to make a judgement call and selected the lag suggested by the majority of the indicators. Due to this calculation, the lags differed between variables and are specified in their individual analyses.

### **4.3.3 Demographic data**

Demographic data were obtained from the Statistical Yearbooks, police statistical surveys, annual reports from the police, and individual records. Both the Police and the Ministry of Justice data sets provided information about the number of juveniles being prosecuted and convicted, though age ranges differed by data set. Some years had different reported age ranges, either three categories: children (<15), juveniles (15-17), and minors (<18), or two categories: juveniles (15-17) and children (<15). Since 15 is the age of criminal responsibility in the Czech Republic, the 15-17-year-old data were included in this project, and data on younger children were omitted when possible<sup>10</sup>.

Data on the sex of offenders were found in both the Statistical Yearbooks and in some years of the police reports, but because of the inconsistency of the police data ultimately only the Justice data were used. Rather than listing separate values for sex, the Statistical Yearbooks included a count for women and a separate count for girls in the juvenile category and it was therefore assumed for this research that the remainder of the total recorded offences were males. There was no additional category for sex aside from women and girls, so non-binary and transgender offenders were likely improperly recorded and listed by biological designation at birth. Analyses for those demographic groups could therefore not be carried out.

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<sup>10</sup> If a data set only included a category for adolescents or minors without differentiating between children and juveniles, some data for children may have been captured.

Nationality of offenders was obtained from the annual reports of the National Police Drug Headquarters as well as the individual records, which indicated the citizenship of offenders. There was no record of race or ethnic origin in any of the data sources, so the only ethnic or racial designation included in the analysis was nationality.

#### **4.3.3.1 Data analysis and limitations**

Data regarding the rates of juvenile and female offenders were analysed via time series plots without additional statistical analysis due to the small sample sizes, and rates were plotted over time to look for trends. The limited amount of data also restricted the types of analysis available, so cross-tabulations in SPSS were used to compare the nationalities of offenders between policy periods. Only the latter two time periods – 1999-2009 and 2010-2016 – could be included due to a lack of data prior to 1999.

The lack of reporting on demographics early on was the primary limitation of these data. For both sex and nationality only one data source could be used, which meant there could be no comparison between Justice and Police data sets. Each data set was constrained by the reporting method of that particular year, so it is possible that children under the age of 15 were inadvertently included based on the way the data was reported. This should not change the overall trends because there were very few recorded crimes by children, but it would make the exact counts potentially inaccurate. The individual-level data was limited even further, with only 2005-2015 included, so long-term trends were harder to identify.

#### **4.3.4 Drug use data**

Data on drug use were obtained from the NMCDAs annual reports which have been published since 2001. Since drug use could be measured in a variety of ways, the statistics on problem drug use were chosen to focus on the heaviest users with the most consistent data reporting. Heavy users were also more likely to appear in the crime rate statistics due to regular use over threshold levels, so changing trends in problematic use could provide insights into trends in drug offences. Drug pricing data were obtained from the NMCDAs reports and the National Police annual reports and online drug pricing data came from Silk Road 3.1, a well-known online marketplace for

drugs. The pricing data were all collected at the same time to try to match street prices to online prices. Only one online site was used however, and pricing may be more or less competitive on other websites.

#### **4.3.4.1 Data analysis and limitations**

The most significant limitation to the drug use data is that users who were not classified as 'problematic' were excluded and therefore the data does not provide a comprehensive view of drug use in the Czech Republic. However, the goal of the research was to examine policy effects on crime, so this data set is meant only to provide a broad understanding of how drug use has changed over time. Narrowing the scope to those deemed 'problem drug users', a group likely to be included in the crime statistics, provided a method of surveying the prosecutions and convictions of Czech drug offences without needing to account for infrequent or experimental drug users. Qualitative data from the interviews and documentary analysis also supplemented the numeric data and provided a more detailed view of how use has changed over time, which helps to minimise the effects of the quantitative data limitations on the overall analysis.

Pricing data also had significant limitations. Prices were generally listed as a range, so the analysis included the entire range that was reported using either the most common price paid (when reported) or the midpoint to establish trend lines. Not all drugs were included in the pricing lists each year, so only those that were regularly reported could be included. The police data and the NMCDA data also conflicted at times, but it was decided that the NMCDA data would be used when irreconcilable conflicts occurred because the NMCDA data were frequently more complete and provided a better sense of the market than the somewhat inconsistently reported police data. There was also more context provided in the NMCDA reports supporting the use of the data.

#### **4.3.5 Potential data sources that were deliberately excluded**

Drug seizure data seemed like a logical choice for inclusion during the planning phases of the project, but it ended up being excluded for several logistical reasons. In the Czech Republic, drug seizures are monitored by two separate agencies: The National Police and the Customs Agency. Prior



to 2002, the two did not coordinate their reports and double-counted some seizures. The NMCDA collected both sets of data and determined where double-counting occurred, combining the two data sets for a more accurate calculation of drug seizures, which led to coordinated reporting from both agencies. Theoretically this would have made it possible to account for the double-counting, but the inconsistency of reporting in general was still a concern. Drug seizure data is notoriously inaccurate since only a small percentage of drugs in the market are ever seized, and it says more about policing than drug quantities (Zábranský et al., 2002; Griffiths and Mountney, 2010; Willis et al., 2011). Reports from the NMCDA estimated that only 0.41% of the circulating drugs in the Czech Republic were seized in 2001, making seizure data an unreliable indicator of actual trafficking activity (Zábranský et al., 2002). Even if the percentage made up a higher proportion of circulating drugs, increased seizures could occur both when trafficking increases as well as when police become more efficient at intercepting shipments, so it would still not be possible to establish a causal relationship to policing. This issue was noted when reviewing the data from Portugal, so there was no way to interpret how the decriminalisation policy was affecting trafficking (Hughes and Stevens, 2012). The possibility of inaccuracies from the double counting and data pooling issue, combined with the general limitations associated with drug seizure data, led to the decision to exclude drug seizures from the final analysis.

For the crime rate data, offences were selected based on the goal of studying drug-related and organised crime. While acquisitive crime is frequently associated with drugs, what Goldstein (1985) referred to as 'economically compulsive behaviour', it was decided that only crimes directly related to the production, distribution, or possession of drugs would be included under the umbrella of 'drug offences'. The Czech definition of 'property crime' changed in 2002, so trying to compare rates of acquisitive crime between those time periods would be impossible. There would also have been a tenuous connection between acquisitive crime and drug use when using aggregate data, as most of the recorded property crime would not be drug-related. Since this complicated the collection and analysis, and made data prior to 2002 categorically different than post-2002, property

crimes were excluded. Violent crime is also impossible to tie to drug-related instances, so it was similarly excluded from the analysis.

Self-report and victimisation studies were considered as an additional data source. Self-report surveys allow people to comment on their personal experiences with crime, either as a perpetrator or a victim. These were excluded for three reasons. The first is that they have similar issues of reliability as official crime statistics as what is remembered is not necessarily accurate, what people consider a crime may not be considered a crime by the police, and they are not representative of all types of crime (MacDonald, 2002; Maguire and McVie, 2017). The second reason is that the types of offences measured in this study do not lend themselves to a self-reporting methodology since drug crimes are highly subjective. In previous studies, people that sold drugs to fund their own use did not consider themselves drug dealers (Zábranský et al., 2001), so their responses on a self-report survey would not be accurate for what was being measured in the study. People who use drugs are also unlikely to consider themselves victims of a crime at any point in a drug buying transaction, and will frequently not report it even when they are victimised during a purchase. Drug trafficking rarely has direct individual victims, and organised crime often victimises people without their realising it (e.g. through fraud) (Maguire and McVie, 2017), and thus would go unreported on a victimisation survey. Finally, the data sources used in this project were frequently translated into English by the agencies that published them, so there was no additional translation needed. Victimisation surveys from the Czech Republic are not in English and are likely to include subtleties that could be lost in translation. The translations that were used in this thesis, such as police reports, tend to be direct, avoiding colloquialisms or metaphorical language, so there was less risk of the data being inaccurately portrayed. Through this rationale it was decided that victimisation or self-report surveys were unlikely to add anything to the data and would possibly be misinterpreted so they were excluded.

#### **4.4 Qualitative research component**

While the quantitative data showed the trends in crime rates and demographics there was no way to interpret why those changes occurred,

so those explanatory facets were contributed by the qualitative phase of the research. Qualitative elements included both in-depth, semi-structured interviews and documentary analysis of official government reports, police reports, and parliamentary debate transcripts. This section outlines the interview process first, followed by the documentary analysis.

Interviews were selected as a method to add context to the quantitative data and develop an explanation for the findings. The most recent policy change was in 2010, so many of the people involved are still working in the positions they were in at the time. By interviewing those that were involved in the policy decision or implementation, I could further understand why the changes were made and the thought processes behind them. I could also gain insight into how the policy played out on the ground and what happened during the implementation that would not be evident from simple statistics. Many of the interview participants were also involved in, or witnessed, the 1999 policy change and could provide details around that change as well. Of the different types of interviews, semi-structured were determined to be the best option. Semi-structured interviews permitted me to guide the conversation, while allowing for flexibility in adapting the interview to each participant (Harrell and Bradley, 2009; Wincup, 2017). A structured interview would not be appropriate, since the interview participants had such different roles in the policy process, and my understanding of those roles was too limited to properly target structured questions. Likewise, an unstructured interview would have left the respondents with no concept of what type of information I was looking to obtain, and their varied backgrounds could have led to tangential information that would not answer the research questions.

#### **4.4.1 Interview participant recruitment**

One of the goals in selecting participants was to find people that were as close to the policy process as possible during the changes of 1999 and 2010. To accomplish this I used purposive (or purposeful) sampling, described by Etikan et al. (2016) as 'the deliberate choice of a participant due to the qualities the participant possesses' (p. 2). The criteria for selection required that participants possess inside knowledge of drug policy development, implementation and/or outcomes, so it was a select group that could be targeted. Specifically, this group included individuals that either

worked directly on the development of the drug policy, worked on its evaluation, implemented it, or researched the criminal organisations of the Czech Republic. I also wanted a variety of viewpoints, rather than a strictly Ministerial interpretation of drugs and crime. I aimed to find interview participants that would represent both pro- and anti-decriminalisation outlooks, and sought participation from people with Ministry, law enforcement, and/or research backgrounds to include the unique perceptions of different areas affected by the policy. Due to the requirement that interview participants possess insider knowledge, the people approached also tended to be elites – those at the top of their professions who could provide details about decision making at different stages of the policy process. This introduced a number of additional considerations, which will be discussed with the interview process. I also employed snowball sampling when necessary, since not all of the desired participants were easy to contact and it allowed me to access a larger sample. One downside of this method was that it resulted in a more similar sample than I had hoped for, but it was necessary to expand the sample size.

Initially, individuals were selected for interview requests based on the literature. A list was generated of authors that had published work on the Czech drug policy, either academic or government reports, along with those involved in the 2001 policy evaluation. I also considered the other views that I wanted to see represented, and added to the list police officers (Czech, German, and Austrian to attempt to reach cross-border investigators), investigative journalists, prosecutors, customs officials, non-governmental organisations, research organisations, and experts in drug decriminalisation who had conducted research outside of the Czech Republic. I also had to consider that both drug policy and organised crime experts would be needed, and most people are not experts in both areas, so I tried to balance my requests to have equal number of people within fields of expertise.

I assumed (correctly) that government and academic sources would be easier to recruit, so I put effort into recruiting crime experts early on. I sent out a scoping email to the investigative journalist community first, seeking participants who had investigative experience with Czech organised drug crime. They were receptive to the idea and agreed to send out my open

request for participants, which resulted in two contacts and one interview. To gain more connections within the realm of Czech drug crime, I attended a conference on cross-border crime in May 2015. It was being held in Prague and I knew it would be an opportunity to meet potential interview participants, so I contacted the conference organiser and explained the situation. He insisted that I present, so I put together a presentation based on my preliminary research when writing my PhD proposal, and was accepted to the conference. Through this conference I met the Director of the Institute for Criminology and Social Prevention (ICSP), who was integral to the collection of my quantitative data, and a police officer in the organised crime unit of the Czech National Police. From these initial contacts, I used snowball sampling to obtain the names of potential interview participants, which was a particularly important strategy for the police because police and public prosecutors are not easily accessible and I had to rely on my organised crime contact to connect me to the drug enforcement unit. For the contacts identified from the literature, I sent email requests to their professional email addresses along with an information sheet about the project (found in Appendix B). In some cases, the Director of the ICSP served as a gatekeeper for me by allowing me to use his name when reaching out to certain contacts, potentially increasing the chance of them agreeing to participate.

As the interviews were underway, I adjusted my list of contacts to fill in gaps in the subject area. Law enforcement was the most difficult to recruit, partially due to their lack of accessibility, but also because of the language barrier. Police and prosecutors were far less likely to speak English than researchers, which I will elaborate on in section 4.4.2.1. At the end of each interview I continued my attempt at snowball sampling by asking the participants for suggestions. I then investigated those leads to see if I thought they were a good fit and contacted those that seemed most likely to be able to contribute to the aims of the research. In most cases, the interviewees suggested each other, or others on my list that had previously declined to be interviewed, so I believe that I established a reliable sample of respondents in the field of Czech drug policy development and implementation. Ultimately, my recruitment efforts resulted in 30 interview

requests with 17 people agreeing to be interviewed. Four of those respondents failed to complete their interviews despite repeated attempts at scheduling, which resulted in a final sample of 13.

The most significant limitation of this study was the small sample size of interview participants. More interviews might have led to more, and potentially more varied, insights into why the changes occurred as they did, and what that means about Czech decriminalisation. With the small sample, there were conflicting views that could never be resolved through the collection of more perspectives. Increasing the viewpoints of practitioners would also have added a useful lens. Getting the opinions of more police officers, particularly lower-ranked, street-level officers, as well as to include prosecutors and judges, could change the resulting findings and recommendations, but access was difficult to arrange and the language barrier was a larger problem in law enforcement, as described in the section on the interview process. Including more medical professionals and NGO employees would provide different perspectives as well, which would broaden the applicability of the results.

The interview participants were anonymised to maintain confidentiality as much as possible. Pseudonyms were considered as identifiers, but it seemed more important that the respondents be identified by their affiliations (e.g. law enforcement) rather than by name. Only two of the respondents were female, so using names would also make it easier to determine identities if sex were identifiable. Instead, I created the following chart and labelled each individual by the category of occupation. The participants were grouped into the categories of 'Researcher', 'Ministry', or 'Law Enforcement'. Each participant was then numbered within their category. Table 4.2 indicates the codes and general areas of expertise of each participant. Since the participants were elites, and typically at the top of their respective professions, the fields of specialisation are very general to minimise the risk of identification.

**Table 4.2: Labelling system for interview respondents**

| <b>Respondent Code</b> | <b>Area of Specialisation</b> |
|------------------------|-------------------------------|
| Researcher 1           | Organised crime               |
| Researcher 2           | Medicine                      |
| Researcher 3           | Drug policy                   |
| Researcher 4           | Drug policy, evaluation       |
| Researcher 5           | Organised crime               |
| Researcher 6           | Drug policy                   |
| Researcher 7           | History, organised crime      |
| Ministry 1             | Medicine, epidemiology        |
| Ministry 2             | Organised crime               |
| Ministry 3             | Drug policy, drug crime       |
| Law Enforcement 1      | Police                        |
| Law Enforcement 2      | Police                        |
| Law Enforcement 3      | Customs                       |

As seen in Table 4.2, the participants were mixed in their areas of specialisation, providing a diversity of opinions. A weakness of the sample is that the majority of the participants took a pro-decriminalisation stance, which limited the viewpoints of the anti-decriminalisation coalition. However, the views of the anti-decriminalisation coalition were prominent in the parliamentary debate analysis, as their arguments were plentiful in the midst of the decriminalisation discussions, which helps to compensate for the lack of interview data.

#### **4.4.2 Interview process**

The interview schedule was developed primarily from the quantitative findings as well as concepts derived from the literature. The original research questions were open-ended, allowing for a degree of flexibility in the interviews so that different participant interpretations could be used to answer them. Interview schedules were based on the sequential explanatory

concept that the interviews should help explain the quantitative results, rather than be conducted concurrently (Ivankova et al., 2006; Creswell, 2014). Since the participants came from a variety of organisations with differing levels of involvement in the policy process the interview schedule was not identical for each respondent, though the core concepts remained the same. A sample interview schedule is provided in Appendix B.

Interviews were conducted between February 2016 and September 2017. Whenever possible interviews were conducted in person, but due to geographical limitations and time constraints for the participants, several had to be conducted by telephone or email. Five interviews were conducted face-to-face in February 2016 in Prague, an additional face-to-face interview was held in Leeds, five were held over the telephone, and two were conducted through email. Expanding the methods to include alternatives to face-to-face interviews allowed for flexible scheduling of hard to reach participants (Sturges and Hanrahan, 2004; Irvine et al., 2013), which was necessary since the interviewer was often in a different country and time zone than the participants. Telephone interviews have been criticised because there is less opportunity to develop rapport with participants; however, they have been comparatively shown to be equally effective in terms of gathering information (Sturges and Hanrahan, 2004; Irvine et al., 2013), and were equal in length to the in-person interviews, so it was unlikely that the mode of interview compromised the quality of the interview data. The two interviews conducted by email were in Czech, with both questions and responses translated by a professional court translator. The in-person and telephone interviews were all in English. Complications associated with language are detailed in section 4.4.2.1.

Each interview was audio-recorded with the consent of the participant, with the exception of the two email interviews. None of the participants declined the audio recording. Interviews were transcribed verbatim by myself, then edited to remove filler words (e.g. ums, ahs) and false starts which did not modify the analysis, which was indicated as an acceptable practice by Braun et al. (2012). Most of the respondents were not native English speakers, so it was important to provide them with the opportunity to review the transcripts prior to analysis. If something was unintentionally stated incorrectly, I wanted



them to have the chance to correct the transcript to reflect what was actually intended. It was stated in the email that accompanied each transcript that the purpose of the review was to correct wording or sections in which the audio recording cut out, to discourage them from changing too much of the text. Transcripts were emailed to each respondent and they were given three months from the time the transcript was sent to withdraw from the study. No one opted to withdraw. Most of the participants responded quickly with any corrections, which were primarily grammatical with only a few slight changes in phrasing. Nothing was changed that would alter the tone or content of the interview. The original verbatim transcripts were used for analysis if the participants failed to respond to the transcript review. If the ideas were unclear during the interview, all interviewees responded well to follow up questions or requests for rephrasing. Since the ideas from the interviews were deemed to be more important than the tone of the speaker, changing the word order to reflect English grammatical conventions as opposed to Czech would not change the context of the interview, so small changes were made to the quotes to make them more understandable to English-speaking readers. The language difference was not as much of an issue as I assumed it would be before embarking on this research, but it did introduce some limitations, described in the next section.

#### **4.4.2.1 Challenges related to the language barrier and outsider status**

While fluency in English was not a requirement in participant selection, potential interviewees who were not fluent in English generally deselected themselves from the process by declining the interview. The two interviews that were conducted in Czech were arranged in English via email. One was arranged through an English-speaking assistant while the other was arranged in English with the participant, who preferred to answer interview questions in Czech but could speak English conversationally. Interview questions and responses were translated by a professional translator/interpreter that regularly works in the Czech court system and was selected specifically for their familiarity with legal terms. They signed a confidentiality agreement prior to receipt of the interview responses.

My ability to speak to specific Czech populations who could be potentially useful, such as many law enforcement representatives, was limited by my

lack of Czech language knowledge. Municipal police and many national police were out of reach because they did not speak English. The Public Prosecutor's Office was also not able to accommodate English interviews though we corresponded by email in Czech (produced using online translation programs) and they were amenable to assisting with the research, but I did not end up using prosecutorial records in the analysis due to the language difficulties. The language barrier limited the sample to elite participants who were fluent in English or accessible by someone fluent in English, and also limited responses to the level of English spoken by the participants. The responses would probably have been more nuanced and natural in the participants' native language, but only two opted to use the offered interpreter/translator.

As a non-Czech researcher I was an outsider to the country, which I assumed would be a barrier to access. This turned out to be less of an issue than anticipated aside from the language difficulty. Several interview respondents found it interesting that someone outside the country would be studying it and others mentioned in their interviews that they were pleased that the country was gaining wider international recognition for its evidence-based drug policy. While obtaining quantitative data, the agencies and individuals that I worked with were very open and transparent. That may have been the case with a Czech researcher as well, which was implied by correspondence with the Public Prosecutor's Office that referred to research conducted there by Czech students, but it was unexpected.

My outsider status is likely to have shaped how people related to me however, particularly in certain parts of the study such as interviewing Czech Ministry representatives or law enforcement. They may have been more likely to respond in ways that promoted or maintained the Czech public image, which could be a limitation if it was not an accurate depiction of what had actually happened (Berry, 2002). Since the participants were all elites at the top of their respective fields, all white, and primarily male (11/13), there are certain biases that may have come through that would have been mitigated by a more diverse sample (Odendahl and Shaw, 2002). It is entirely likely that women, immigrants, and/or non-white participants would have had different experiences with the drug policy than the sample that I

interviewed. Their elite status also created a power differential between the participants and myself, since they knew that their expert opinions would carry a lot of weight (Berry, 2002; Odendahl and Shaw, 2002). I found that all of the respondents claimed to be highly supportive of law enforcement, which may have been emphasised in an attempt to uphold a particular image of how the Czech Republic has adapted to post-communist life. It is also unlikely that this specific sample had experienced negative interactions with the police, while a different subset of people might have responded differently. These questions of how the participants presented themselves and how their societal roles and expectations might influence their responses was a consideration in the analysis.

#### **4.4.3 Documentary analysis**

Documentary analysis was used to complement the interview data, to examine historical reasons for policy change such as the opinions of policymakers in parliamentary debates. The earliest policy change was in 1989, so finding people that were directly involved was more difficult than finding those that had worked on the 2010 policy. Documents, such as parliamentary debate transcripts, from the period helped to provide context for the changes and the rationale of the politicians at the time. Documents from the development and monitoring of each of the drug policy changes were analysed for supporting or conflicting evidence of the primary findings. Some of the interview participants were also historical researchers that shed further light on the earlier policy periods and what was happening in the Czech government at different times. This section outlines the process of documentary analysis, including sources of data and analysis methods.

Transcripts of parliamentary debates were obtained from the Joint Czech and Slovak Digital Parliamentary Library<sup>11</sup>, a publicly available online repository of legislative documents. The documents from the Czech Chamber of Deputies were scanned for relevant debates surrounding the drug law sections of the criminal code, specifically looking for any debates

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<sup>11</sup> <https://www.nrsr.sk/dl/?lang=en>

regarding the policy changes of 1999 and 2010. The debate transcripts were all in Czech, so searches were run using the numeric codes for the different versions of the criminal code (e.g. Act No. 140/2009 Coll.). Text searches were also run using the criminal code section titles in Czech and carried out using words related to drugs or organised crime. Each document that appeared in the search was then scanned for content using translations from Google Translate to determine their relevance. Some of the results that came back in searches for 'drug' were in regard to pharmaceuticals, for example, so only those directly related to the illicit drug policies were included. Once the most relevant sections were selected, they were sent to a translator at Charles University in Prague for an official translation. The degree to which the human translator matched the automated translations gave me confidence in the use of Google Translate for screening purposes.

In addition to the parliamentary debates, the annual reports of the NMCDA and the police were read and analysed. NMCDA reports were available in English until 2013, so only the most recent reports required translation. The police reports were in Czech prior to 2004, but have been translated to English since then. Other grey literature, including reports from ICSP and the PAD (Projekt Analýzy Dopadů Novelizace Drogové Legislativy v ČR) report from 2001 were also examined for passages explaining the development of the drug policies, their implementation, or their resulting outcomes. The language limitation was also an issue in this analysis. There has been work published on the drug policy in the Czech language, and while some of this literature was included through the use of translation software, broad searches could not be accomplished. The Czech version of Google Scholar was searched using the terms 'policing,' 'drug policing,' and 'organised crime,' which brought up several pertinent pieces. Financial constraints limited the use of a translator to only the most necessary documents, so only the most directly relevant work was selected for review.

Once translated, the documents were uploaded into NVivo along with the interview data. The documents were thematically analysed along with the interviews, as described in the next section. As the first step for much of the documentary analysis was translation, there was a strong potential for loss of nuance, which cannot be translated. Certain quotes from parliamentary

debates had to be omitted due to the use of idioms that did not translate well into English. Each of the translated sections had to be very clear and precise, which was limiting in the parliamentary debates. To mitigate this, previous analyses of the debates, or parts of them, were consulted. Framing for the analysis was based on previous analyses done by Morávek (2007; 2008), Nekola (2012), and Radimecký (2007). These pieces analysed the rhetoric surrounding the drug policy, which helped to contextualise the debates for a non-Czech speaker and helped with the selection of quotes.

For documents that were already in English, there were different limitations. Like all secondary data, documents are produced for a purpose that may not align with the purpose of the research study. What the writers were asked to accomplish may not include information that would have been beneficial in this analysis, so it is limited to what was already produced (Shaw et al., 2004). They may also be 'aspirational', referring 'to a possible future reality rather than one that actually exists' (Shaw et al., 2004, p. 261). This was mentioned in one of the interviews (Researcher 2), that the National Drug Strategy documents were goals rather than realities, so it was a consideration during the analysis of the documents. When the policymakers were discussing what they thought would happen from changes in the drug policy there was possibly an aspirational quality to their arguments rather than an objective view of what outcomes might occur. That was one of the reasons the interviews were essential, since they filled in information that could not be found through any other source. The next section details the analysis process for the documents and interview transcripts.

#### **4.4.4 Thematic analysis of all qualitative data**

The qualitative data were analysed thematically using NVivo. Thematic analysis is a method devised by Braun and Clarke (2006) that allows a researcher to analyse qualitative data in a flexible way, working around themes in the data rather than a theoretical perspective. A requirement of thematic analysis is to select an inductive or deductive approach, which indicates whether the themes were derived from the data or developed prior to data collection (Braun and Clarke, 2006; Braun et al., 2012). In this study, themes were developed using inductive reasoning, by examining the data and grouping concepts that appeared repeatedly and coding them together.

Themes came primarily from the interview data by examining topics that came up frequently, particularly when participants from different fields raised the same issues, with the documents used as supporting evidence. Initial categories included both broad topics, such as drug crime or policing, as well as more narrow topics, such as morbidity associated with drug use. This turned out to be overly complex and resulted in quotes being coded into multiple nodes. Having them coded in this way made it difficult to analyse each section without also referencing the other areas of the study. While this is probably a good indication that the data is consistent and interconnecting, it made the analysis difficult to organise. Sections from the broader themes ended up being recoded to simplify the organisational system. In the recoding process, as recommended by Braun and Clarke (2012), the original nodes were pooled together to create overarching themes (e.g. Tolerance, Enforcement). A manual evaluation of the interview data was conducted following the NVivo coding sequence, to ensure accuracy in coding, as recommended by Welsh (2002). This process of coding and recoding is a common issue with the use of software for thematic analysis as it lends itself to overcoding. Manual coding and rereading the data reduces this risk.

Computer-assisted qualitative data analysis has been praised as a way of improving transparency and reliability (Welsh, 2002; Sinkovics and Alfoldi, 2012). There is some criticism that it makes the analysis too automated and too similar to quantitative analysis (Welsh, 2002), but in this case NVivo was appropriate due to the range of source material that needed to be coded and connected. It was helpful to use the program to code interviews, documents, and debate proceedings under the same nodes. It was also useful when connecting the themes that arose in the interviews to the questions raised by the quantitative data. Without the use of software to organise the information, I believe that some of the potential connections may have been missed. The downside of using NVivo was the possibility, and occurrence, of overcoding. There were so many options for coding, that it became unwieldy and included overlapping nodes which then needed to be pared down to focus the analysis. Ultimately it was beneficial however, as the coding and recoding process required repeated reviews of the data when considering themes, rather than being able to code them efficiently the first time through.

Analysing the data using a mixed methods approach was also complicated. Since the qualitative data was meant to explain the results of the quantitative analysis, the questions were developed with that in mind. Using semi-structured interviews rather than structured led to many participants discussing unrelated topics, so themes emerged that were not originally intended, ultimately expanding the scope of the research and improving the depth of the information. One example of this was the financial aspect of the policy and how funding was distributed among involved agencies. I had gone into the interviews thinking that they would help to explain the trends in crime rates and offender profiles, but the role of funding was more of an afterthought. I knew that funding would be attached to the policy changes, and that there would be reallocations of funding following policy changes, but it did not occur to me to seek out the budget data until the funding changes experienced by the health and education sectors and by the police were brought up in interviews. 'Funding issues' ended up becoming a node from the interview data, after being mentioned by three separate participants without prompting or budget-related questions. Then the NMCDAs reports were used to determine funding allocations and how they had changed over time, demonstrating substantial differences in agency funding over time (analysis in Chapter 6). Due to topics like this, that were not originally intended to be part of the analysis, the analysis ended up being lopsided with the qualitative data going in-depth on topics hardly touched in the quantitative data and vice versa. Topics such as the funding issue required quantitative analysis that had not been completed, so the quantitative data had to be retroactively collected and analysed. Likewise, topics from the quantitative data that I thought would come up, such as drug pricing, did not. While it was still an explanatory analysis, the sequence of quantitative and qualitative ended up being more flexible than originally conceived. The documentary analysis was thus key to tying together to the pieces that were heavily weighted towards either interview data or quantitative data, as there was typically some form of explanatory document related to each theme.

Following the coding process, the content under each theme was revisited. The identities of the interview participants as well as the authors of the documents were considered and their potential motivations and perceptions

were explored. For example, law enforcement representatives did not mention the funding being a problem, because from their perspective it would not have been a pressing issue, whilst medical professionals did not discuss bureaucratic formalities (which were a vital issue for the police participants) perhaps because they are removed from those aspects of policy implementation. Differences in participant points of view were then analysed along with the themes to try to develop possible explanations for the changes that occurred over time, and why they might have been interpreted as they were. The thematic analysis is interspersed with the quantitative analysis in Chapters 6 and 7.

#### **4.5 Ethics**

This research received ethical approval from the University of Leeds Ethics Committee in July 2015. Interviewing elites does not have as many ethical risks as other groups as they are already in a position of privilege and power (Blakeley, 2012; Lancaster, 2017), though it is more challenging to preserve their anonymity. While exposure of their identities could lead to negative consequences, for example if a Ministry employee was critical of the government, the threat is likely not as dire as it would be for someone in a vulnerable position (Lancaster, 2017). The primary ethical concerns in this case were informed consent, confidentiality and data handling. Most of the data were available publicly, but the interviews and individual offender records were not, so data storage was an important consideration.

Each participant received an information sheet detailing the study when the interview was requested. Upon agreement to participate, the respondents were asked to sign an informed consent form. Forms were sent via email and printed copies were brought to in-person interviews. They were then returned in-person or via email, or oral consent was provided during the interview. Following the interview, participants were given the option to read their transcript if they wished and were allowed to make minor changes, as described in section 4.4.2. They were also given the opportunity to withdraw from the study up to three months after receipt of the interview transcript. This procedure was followed for all participants except the interviews conducted via email, as they were written and did not require transcription.



Anonymity was maintained to the degree that it was possible, though it was acknowledged that some experts might be identifiable due to the nature of their positions. There are few Czech experts in the areas of drug policy and organised crime, so the interview participants were a connected group and frequently mentioned and suggested other participants for further interviews, which is similar to the situation encountered by Lancaster (2017) in her studies of Australian drug policy. Quotes were anonymised, but based on the areas of expertise it is likely that the respondents could be identified to those familiar with Czech drug policy studies. Interviews were coded and anonymised and titles were not included to maintain anonymity, but it could not be guaranteed, and respondents were made aware of this prior to participation.

The most ethically dubious area of this study was the handling and storage of the interview transcripts and individual offender files. Publicly available data did not require any specific storage. The individual offender files were saved to an encrypted flash drive at the ICSP offices and immediately transferred to the University of Leeds personal password-protected drive (M :) upon my return to Leeds. Upon completion of data analysis they were erased from the flash drive and only kept in password-protected folders on the university server. Following the interviews, the audio files of the interviews were transcribed and saved in password-protected files on the university server and original recordings will be destroyed following completion of the thesis. Transcripts were anonymised and coded, with the identifiers stored separately in a password-protected file. Interview transcripts were saved on NVivo on my password-protected personal computer and will be deleted upon thesis completion. Printed copies of qualitative and quantitative data were stored in a locked filing cabinet in the University of Leeds Social Sciences Building and destroyed upon completion of data analysis.

## **4.6 Conclusion**

This chapter has provided a comprehensive account of the research design and methodological approach employed in this thesis. It has outlined the research questions, and the rationale for using the ACF and a mixed

methods approach to answer those questions. The numerous data sources used for the quantitative analysis, the different analysis methods, and the limitations of each were provided. Both the qualitative methods – semi-structured interviews and documentary analysis – were described, along with their strengths and limitations. Finally, personal and ethical considerations were explained. The next chapter applies the ACF to the Czech drug policy context by describing how coalitions formed and shaped the historical development of the different drug decriminalisation policies.

## **Chapter 5: The Advocacy Coalition Framework in Czech drug policy analysis**

This chapter describes the development of the Czech drug policies through the lens of the Advocacy Coalition Framework (ACF). The Czech political situation was analysed for this research within the frame of the ACF, looking at the stable factors and structural changes in the government and the coalitions that formed around the drug policy. As discussed in Chapter 4, the ACF provides a useful analytical framework for understanding the incremental changes that were implemented in 1999 and 2010, as the primary stakeholders in the development of the drug policy divided into two opposing coalitions based on their philosophical beliefs about drug use and decriminalisation. Using data from a variety of sources, including parliamentary debates from the Chamber of Deputies, interviews, and documentary analysis, the goals and rationale for each policy change were examined. The policies were then analysed in light of the policy subsystem following the path from agenda-setting to implementation and incorporating the political changes and external events that impacted the policy agendas. The chapter begins by outlining the parameters of the ACF in regard to Czech drug policy, then delves into the events that occurred within the policy subsystem as a result of each policy change.

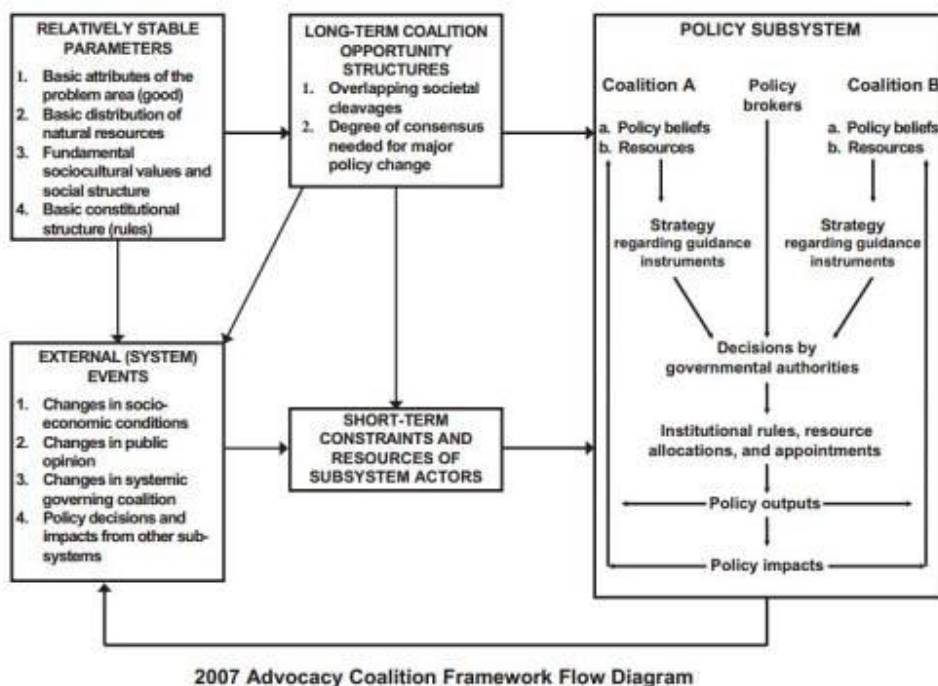
Different amounts of evidence were available for the different time periods so the discussion is limited to what was available vis-à-vis parliamentary transcripts, speeches by Presidents and Government officials, and academic and grey literature. Documentary data are also supplemented with interview data when relevant. The majority of the interview participants fell into the pro-decriminalisation coalition (researchers, medical professionals, and civil servants) and these participants seemed to approve of the current policy more than those in the anti-decriminalisation coalition (law enforcement). Of the interview participants, five had a direct connection to the drug policy. Three were civil servants who worked on policy documents or working groups related to the policy and two were researchers who conducted similar research that was provided to the government to guide policy decisions. The remaining interviews were carried out with people who had either studied the

policy or had experienced it as Czech citizens, but who were not personally involved in policy decisions. Each policy period analysis includes discussion of the perceived problems associated with drugs at the time, the proposed policy solutions which were put forward, and the eventual decision which was made about how to proceed. Interview data primarily contributed to the analysis of the current policy, since most of the participants had limited involvement in the previous iterations, so the analysis of the preceding policies relied heavily on documentary evidence.

### 5.1 Defining the parameters of the ACF in Czech drug policy

This section describes the aspects of the ACF that have remained the same across policy periods and explores the types of external events that have influenced policy decisions. As previously discussed in Chapter 4, the ACF is based on the following flow diagram to explain the policy process:

**Figure 5.1: Flow chart of the Advocacy Coalition Framework, 2007 version**



From Sabatier and Weible 2007

The 2007 version of the diagram is modified from the original 1988 framework (Sabatier, 1988). Sabatier and colleagues have adapted it over time to incorporate different political systems and outside factors making the framework more useful in non-US contexts. The primary differences

between this version and its predecessors are the addition of new elements to the long-term opportunity structures and the addition and direction of the arrows, indicating which factors influence others (Sabatier and Weible, 2007). The ACF works well for analysing Czech policy changes, as the government is pluralistic and the drug policy subsystem involves actors outside of government, including law enforcement, medical professionals, and advocacy groups. The long-term opportunity structures and relatively stable parameters in the Czech Republic have not changed over the 26 years that this study examines, so these will be defined first. Subsequently, the types of events which have prompted policy change will be discussed and the policy phases will be analysed in chronological order.

### **5.1.1 Long-term and stable aspects of the ACF framework pertaining to the Czech drug policy**

There are several relatively stable parameters in Czech politics that provide the context within which drug policy is developed. The first is a multi-party political system set in a parliamentary republic (Janík, 2010). When the ACF was originally developed in the US, it was framed around a two-party political system, which worked well with the idea of competing coalitions. This has been adapted to allow for multiple parties, with the addition of 'degree of consensus', but it also changes how the coalitions form and function since they do not necessarily breakdown on party lines. After decades of a single-party government, the country embraced the multi-party system in the 1990s. In 2017, there were nine parties in the Chamber of Deputies that received at least 5% of the vote, the threshold for representation, and thirteen parties represented in the Senate (Czech Statistical Office, 2018b), so there are a wide variety of opinions and viewpoints within Parliament. The largest parties and their views on drug policy were described in Chapter 2. This relatively large number of parties can act as a constraint on making significant policy changes in the Czech Republic due to difficulties in building consensus amongst them (Janík, 2010). The impacts of the parties on the policy subsystem will be examined further in the analysis of the policy changes, and the existence of multiple strong parties is an important stabilising factor that has remained unchanged over the policy phases.

Another stable parameter is a fundamental belief in personal freedom as a human right (Pew Research Center, 1991; Sunstein, 1995; Holy, 1996), along with widely-held anti-authoritarian sentiment which is a relic of the country's communist past (Pew Research Center, 1991; Evans and Whitefield, 1995). Having rights previously denied and feeling (and being) under surveillance (Nedelsky, 2009) has made personal rights a significant feature in Czech society. This is evident even amongst those in positions of authority, as seen in political speeches and police interviews, and maintaining human rights has remained a consistent goal of the government. Respect for freedom also extends to political parties and acceptance, for example, a 1991 poll found that the majority of Czechoslovaks believed in allowing all political parties, even those that were against democracy (Pew Research Center, 1991). While the general public rejected communism, members of the Communist Party still held offices in the early 1990s, and do still hold political power, which introduces an area of conflict amidst the stability of the multi-party structure.

A final parameter that has had an impact on the drug policy subsystem is a history of increasing drug use, organised crime infiltration within the Czech Republic, and drug trafficking. While many changes have been made to drug and crime policies to try to combat these concerns, they have remained issues in Czech society, and have thus continued to influence public opinion and public policy. While this factor only shapes drug and crime policy it was included due to its impact on the policies discussed in this thesis.

### **5.1.2 External events that fall within the ACF framework**

External events have also occurred during the time period of the study that influenced policy formation and the implementation of policies. Changes in government occur irregularly in the Czech Republic, by design. Members of the Senate (Senators) have six-year terms, Presidents have five-year terms, and Members of the Chamber of Deputies (Deputies or MPs) have four-year terms, so changes in representation are regular and staggered. Parties that have held a majority have been able to change the drug policies according to their stance on drugs, so these changes are relevant in this context. Coalition governments are also common, due to the large number of active political parties, so like-minded parties can band together to change policies

that fit their political agendas. In the ACF, coalitions can form around a single issue, even when the actors disagree on other policies, so the development of the Czech drug policy across party lines can be understood through the framework as coalition building based on policy beliefs. Parties are not necessarily stable however, as new parties arise and others dissolve or merge together, which presents another potential external event in the form of political change.

There are frequent changes in the Czech political parties. In recent years, several new parties have emerged which have made significant impacts on public policy (e.g. ANO 2011, TOP 09, Pirates). The changes that have affected drug policy will be included in this analysis, but it does not cover the full extent of the political party shifts that have occurred. Czech politics is also challenging to study from a Western perspective, because there is a different conception of the political spectrum in post-communist countries such as the Czech Republic which alters the understanding and analysis of the policy process.

For example, in countries like the US it is characteristic of right-wing parties to favour stability over change, but in the Czech Republic that sentiment is associated with the left (Aspelund et al., 2013). Aspelund et al. (2013) speculated that this could be due to essentialist ideas about national identity, that 'there is some right way of being and some right national or social identity that must be embraced' (p. 414). In some cases, particularly in the post-communist era, change was necessary to achieve that ideal national identity and was thus embraced by right-leaning parties. Nationalist ideas can also be associated with right-wing parties, but Vachudova (2008) noted that the parties which were successful in the Czech Republic were not associated with extreme nationalists and were more moderate in their ideas, while the more radical parties did not gain widespread support. Civic Forum, which were popular and easily won a majority in their first election, were nationalistic but not divisive as they did not reject Western society or promote anti-minority rhetoric (Vachudova, 2008). However, this is not necessarily true of the right-wing parties currently operating in the Czech Republic, who often hold anti-immigrant views. Shifts in public and political attitudes towards immigration and minorities are essential to this study, since

racist attitudes are frequently associated with disproportionate treatment in the realm of drugs and organised crime (Nožina, 2004; Antonopoulos, 2009). There is an undercurrent of political conservatism in the general public according to public opinion surveys, with most people identifying as right-wing (Červenka, 2018). This tendency has remained consistent over time. Only for a brief period from 2011-2014 did the public swing towards the left, and only two of the major political parties are predominantly left-wing (Communists and Social Democrats) (Červenka, 2018), though, as mentioned above, parties with extreme views do not tend to get elected. Political shifts have the potential to shape drug-related and criminal justice policies, and will be considered as an external event throughout the analysis of each policy phase.

Public opinion about drugs and drug users has also shifted over time, as concerns have been raised about public health and public safety issues associated with drug use and the drug market. How this situation has evolved and influenced the policy direction will be explored further in the chronological analysis of the policy subsystem during each phase.

## **5.2 Coalition development – the 1990 government restructuring**

When Czechoslovakia officially became independent, in the final days of 1989, the Communist government was replaced by a transitional government led by political movements known as Civic Forum on the Czech side and Public Against Violence on the Slovak side (Elster, 1995). Civic Forum was formed when a number of influential people in the political sphere, primarily dissidents, decided to join forces to overthrow the Communist government and prevent it from regaining its stronghold (Kopeček, 2010). They needed to move quickly, before the Communist Party could mobilise, so the platform of the group focused on anti-authoritarianism and the freedom of the people of Czechoslovakia, which would garner support from most people. That said, the group also contained a number of former Communists, including the Prime Minister, which contributed to the peaceful exchange of power (Elster, 1995; Kopeček, 2010). The collaboration involved in the development of Civic Forum formed a



foundation of cooperation between parties which has persisted in the multi-party political system.

Civic Forum redirected public policy and swiftly amended the laws, but maintained the structural frameworks of government that were previously established. The changes made were moderate, achieved via amendments to the existing laws (Kopeček, 2010). Ján Carnogurský, the first Deputy Prime Minister of the Czechoslovak Socialist Republic (Czechoslovakia prior to 1990) stated:

The current primary aim of the government is the rapid completion of the laws governing the democratic character of the Republic . . . Our legal order must be brought into conformity as soon as possible with our international obligations that ensure the citizens' civil, political, economic, social and cultural rights. (December 13, 1989)

In 1989 Carnogurský collaborated with the other members of Civic Forum to work towards a common goal of decommunisation and the expansion of human rights, but he would later reject the union with the Czech Republic as a strict Catholic and founder of the Christian Democratic Party in Slovakia. His position as Deputy Prime Minister is indicative of the collaborative nature of Civic Forum, since it demonstrates that leaders put aside their personal differences, such as a desire to separate the Czech and Slovak sides of the country, in order to establish the new government. As it relates to the formation of coalitions, this also demonstrates the introduction of numerous voices to the political realm that had previously had no say in government.

Religious organisations were banned during the Soviet era which led some religious leaders to rebel against the Communist government. Carnogurský was driven to political action through his religious repression, and came to provide legal counsel to dissidents during the communist era (for which he lost his licence) (Doellinger, 2013). Religious leaders being allowed back into the public spectrum was a turning point, though the effect on coalitions with outside entities may not have been as strong on the Czech side as the Slovak (one of many cultural differences that led to the peaceful division of the countries in 1993). The Czech Republic is an outlier in Central and

Eastern Europe, with only 29% of citizens stating that they believe in a god compared with 69% in Slovakia (Evans, 2017; Pew Research Center, 2018). The percentage was higher in Czechoslovakia (45%) in 1991, but that included both countries and the Slovak people were among the most religious in Eastern Europe (Pew Research Center, 1991). Though there is one prominent Czech political party based in Catholicism, the Christian and Democratic Union-Czechoslovak People's Party (Christian Democrats), most of the parties have no religious affiliations. Since the Christian Democrats could not be openly involved in government during the communist era, their influence was limited prior to 1989, but they quickly became a prominent group in the Czechoslovak government and have remained influential.

In addition to the return of religious groups, NGOs also came into the political sphere under the new government, providing powerful voices. Under the communist regime, NGOs were not allowed to operate (Kalina, 2007). However, they became a principal player in drug policy as they provided necessary care in the areas of mental health and substance use during the transition from communism to democracy (Skála et al., 1994; Kalina, 2007). Since the healthcare system was changing from the state-run system to a combination of public and private services, the gap in medical coverage for people who used drugs could have been disastrous, but NGOs provided what the privatised health care system could not (Kalina, 2007). Researcher 2 suggested in their interview that 'there was very systematic support of NGOs and services for illegal drugs' in the early 1990s, indicating government approval of the role of NGOs.

One of the most politically influential NGOs is SANANIM, which was founded in 1990 to control the increase in drug use and addiction that was expected to occur when the borders were opened (SANANIM, 2007). They provide therapeutic drug treatment services to thousands of Czech citizens each year, including specific outreach efforts for mothers and members of the Roma population who are often not reached by other avenues of treatment. In addition to their harm reduction work in communities, one of the stated objectives of SANANIM is: 'Collaboration at local and central level in the planning and implementation of drug policy, including foreign co-operation and change in the public's view of drug addiction' (SANANIM, 2007). They

are dedicated to political action – to increase harm reduction services and to destigmatise drug users. SANANIM is funded by the federal government, local governments, and private donors. Several other NGOs have also been involved in the treatment of drug addiction and the promotion of harm reduction and culturally integrative drug policies. These include Drop In, which provides counselling, opioid substitution therapy, and medical outpatient services for non-alcoholic drug users, and Společnost Podané Ruce, which provides services to not only drug users, but former prisoners, the homeless, and other groups in need of medical, housing and legal assistance. All of the drug-related NGOs in the Czech Republic operate under the umbrella of the Association of Nongovernmental Organisations (ANO, not to be confused with the political organisation with the same acronym) (Kalina, 2007). The political involvement of these organisations forms an essential part of the advocacy coalitions around drug policy, particularly when aligned with the medical community.

Healthcare professionals have been closely involved in Czech drug policy since the communist era. The country was an early adopter of harm reduction activities such as needle exchanges, and had also offered treatment for drug users rather than punishment for years before the Velvet Revolution. Communist Czechoslovakia led the region in the treatment of addiction (Kalina, 2007), and in turn managed to stay ahead of the HIV/AIDS crisis. Rates of HIV and AIDS in the region have always been low, particularly for injecting drug users, who have high rates of HIV in other Central and Eastern European countries. As Researcher 2 stated during the interview, the Czech Republic has been active in public health for over 130 years and has traditionally been a leader in 'abstinence-oriented services: recovery services, therapeutic communities and psychiatric hospitals for addicts'. Drug use has never been addressed through criminal justice punishment, but rather through medically oriented options. Despite the right-leaning government being in power at the time, having the support of the medical community for the pro-decriminalisation coalition increased their influence in the policy process.

While the political climate of Czechoslovakia was somewhat chaotic in the early 1990s, the diversification of politically active voices allowed for a

variety of opinions to be represented in policymaking, paving the way for coalition building. In the June 1990 election, the first to determine the new Parliament, Civic Forum and Public Against Violence won 170 out of 300 seats, with the Communist Party winning 47 and the Christian Democrats 40 (Elster, 1995). As they began to govern, the differences between the parties surfaced and coalitions between like-minded groups started to form. The collaborative effort that it had taken to overthrow the Communists had disintegrated, but the new government demonstrated an interest in maintaining a multi-party system. Civic Forum was dissolved after only two years as the leaders of the party moved on to higher positions in government or founded their own political parties, but several new parties emerged and the Civic Democrats were their most prominent successors (Kopeček, 2010). Section 5.4 further expands on the formation of coalitions as the decriminalisation policy went into force, and political parties decreased their collaboration around the decommunisation of the country and began to promote their individual policy beliefs. The next section looks at the initial legal actions of the new government and how they shaped the environment for future drug policy changes.

### **5.3 Beginning to govern the new Czechoslovakia – crime and drug policy**

After the Velvet Revolution, polling indicated that the Czech people were generally optimistic about the future while the Slovak people were not (Pew Research Center, 1991). Vaclav Havel was elected President on December 29, 1989 as a member of Civic Forum, and immediately began the process of reforming the laws put in place by the Communists. At the time the collaboration within government was still intact and changes could be made with little debate. Criminal justice policy was an area that was targeted for reform, since many of the laws were focused around the communist ideology. In a speech in 1990, three days after his election, Havel made the following statement regarding criminality and imprisonment, declaring an extensive amnesty:

In our country there are many prisoners who, though they may have committed serious crimes and have been punished for

them, have had to submit . . . to a debased judiciary process that curtailed their rights. They now have to live in prisons that do not strive to awaken the better qualities contained in every person, but rather humiliate them and destroy them physically and mentally. (January 1, 1990)

This amnesty freed prisoners sentenced for premeditated crimes for up to two years and those sentenced for negligent crimes for up to three years (Whitney, 1990). Those with longer sentences could have up to half of the years remitted, not including those charged with abuse of position or violent crimes (Whitney, 1990). The prison population in Czechoslovakia fell from over 35,000 to approximately 14,000 overnight, and continued to decrease throughout 1990 (Human Rights Watch, 1991). Drug offenders were eligible for amnesty, assuming their crimes did not also include exempted categories such as homicide or terrorism. In addition to the amnesty, extensive amendments (more than 100 changes) to the criminal code were introduced, including the abolition of the death penalty and the decriminalisation of drug possession for personal use (Zeman, 2007).

The prioritisation of human rights was challenged, however, when 'lustration' laws were passed to seek out people that were involved in the Communist government or secret police (David, 2003; Crow et al., 2004; Nedelsky, 2009). Lustration allowed the government to investigate citizens and remove them from their positions, or deny them appointments, if they were found to have been members of the secret police, informants, or in positions of power in the Communist regime (Crow et al., 2004). Lustration was controversial amongst the transitional government, and opponents argued that it violated human rights and would be used only for vengeance and political rivalry (David, 2003). The alternative argument was that the removal of officials and police that had held positions of power under the Communist government would open up the positions to those that had previously been excluded (David, 2003). In other words, since the former government had been responsible for a number of human rights violations, removing them would also be a method of restoring rights. A law was also passed which prevented unlawful and arbitrary lustrations, which were occurring in 1990 (David, 2003). Despite opposition, the law was determined to be essential for

national security and went into force in 1991, creating an area of conflict in the government.

In contrast, changes to the criminal code related to drugs – decriminalisation for personal possession and the addition of ‘psychotropic and other addictive substances’ to the code – were well accepted. Adding the phrase ‘for another person’ in Section 187, which decriminalised possession of drugs for oneself but not for others, was non-controversial because drug use was not a significant issue at the time (Zeman, 2007). Trafficking, selling, or otherwise distributing drugs to another person remained a criminal offence. Penalties for such crimes were also increased, adding one year to the maximum prison sentence that had been established under the Communist government. Havel viewed restrictive drug laws as a threat to the freedom of the Czech and Slovak people, and as likely to lead to the ‘prosecution of victims rather than perpetrators’ (p. 456), as he stated in the veto of a recriminalisation law in 1999 (Havlik et al., 2014). The lack of resistance in Parliament suggests that others apparently shared his view in the early 1990s, but the stricter penalties imposed on drug offences imply a desire to continue limiting drug supply, which was the subject of debates as the decriminalisation policy went into effect.

Though the primary values and political structure of the country had been maintained in the early 1990s, the aforementioned stable parameters of the ACF were still in development as the government and the public were still in transition. Similarly, long-term opportunity structures, such as the need to achieve consensus between opposing groups, were also emerging, creating a short-term constraint as the government adjusted to the new system. Decriminalisation had been agreed upon early on, but as the country began to enact the multitude of new laws and disagreements occurred, the adjustment to the new political systems probably hindered its progress. The policy subsystem was forming throughout these years though, with political figures divided on how drug policy should progress. The formation of the coalitions, and how they changed the law over the next decade, is examined in the next section.

#### **5.4 A response to increasing crime – development of the 1999 policy**

From 1990-1995, the rate of recorded crime in the Czech Republic rapidly increased (as seen in Figure 2.3 – Chapter 2). While crime remained low compared to other European nations (Killias et al., 2003), the Czech government was concerned about the rise. The police were also weak in the early 1990s, as they were aware of their position of authority and need to enforce the laws, but were still sensitive to the lingering distrust from the communist era, which is likely to have influenced rates of crime and criminal apprehension (King, 1998; Jenks et al., 2003; Crow et al., 2004; Zeman, 2007). From 1995, Parliament discussed how to reduce crime, with stricter drug laws a frequently considered option (Zábranský, 2004). President Havel may have been opposed to the criminalisation of drug use, but that stance lost popularity in the face of the crime wave. The government, after the dissolution of Civic Forum, was in the hands of a coalition consisting of Civic Democrats (the primary successor to Civic Forum), Christian Democrats, and the smaller party of the Civic Democratic Alliance. All of these parties were right-leaning, but not necessarily anti-decriminalisation. The Christian Democrats opposed drug use, and therefore decriminalisation of possession, while the two Civic Democratic parties were more open, with some members supporting decriminalisation and others opposed to it; yet, the increasing crime and drug use made members question the decriminalisation policy and its impacts allowing for anti-decriminalisation alliances to form.

The Christian Democrats aligned themselves with the Communists on this issue (Zábranský, 2004; Zeman, 2007) despite being on opposite ends of the political spectrum. Both groups opposed the liberalisation of the drug laws, as mentioned in Chapter 2, based on their policy beliefs rather than overarching political philosophies. In the ACF, there are understood to be different levels of beliefs. 'Core beliefs' are essential to one's being, and involve beliefs about human nature and values, such as religious beliefs or deep-seated political beliefs that cross policy areas (Sabatier, 1988; Sabatier, 1998; Sabatier and Weible, 2007). Core beliefs are less likely to change than 'policy beliefs', which are less ingrained, and relate to specific

policy issues, such as drug decriminalisation (Sabatier and Weible, 2007). Coalitions tend to form around policy beliefs, when different groups want to enact policy based on their shared belief, regardless of political differences in other policy areas. The Christian Democrats were opposed to decriminalisation as an act of symbolic disapproval, believing that drug use should be illegal to indicate that it is harmful (Morávek, 2007), whilst the Communists saw drug use as an amoral outcome of capitalism, which should be absent from communist society (Zábranský, 2004; Radimecký, 2006). While their fundamental core beliefs differed, both parties shared a policy belief against the decriminalisation of drugs, allowing them to form the foundation for the anti-decriminalisation coalition of the drug policy subsystem as a united front. The other prominent members of the anti-decriminalisation coalition were the law enforcement community, who are responsible for the implementation of the criminal code and were generally inclined to oppose drug use.

The pro-decriminalisation coalition did not have such clean definition along party lines. Members of both the Social Democratic Party (left-leaning) and the Civic Democrats (right-leaning) supported decriminalisation, but some members of those parties were also aligned with the anti-decriminalisation coalition based on their individual core and policy beliefs. The pro-decriminalisation coalition agreed with Havel's interpretation, that decriminalisation would allow for suppliers to be punished while not prosecuting users (Havlik et al., 2014), and supported harm reduction policies for drug users rather than punitive policies. Though the government was primarily anti-decriminalisation from 1992-1995 due to the rise in crime and drug use, the pro-decriminalisation coalition had an active membership outside of parliament with considerable influence. Academic policy experts, medical experts, and NGOs were ardently in favour of decriminalisation, typically for harm reduction reasons, and added strength to the coalition outside of Parliament. They did not blame drugs for the increasing crime rates and did not think that changing the laws would have any impact. Since the Czech Republic had a history of treating substance use as a medical issue even during the communist era (Kalina, 2007), the medical argument was persuasive.



#### **5.4.1 Anti-decriminalisation legislation – strategies and decisions in the policy subsystem**

Multiple bills were introduced in the mid-1990s to restrict the amount of drugs people could possess without prosecution (Zábranský, 2004; Morávek, 2007; Zeman, 2007), backed by the anti-decriminalisation coalition of Communists, Christian Democrats, and law enforcement. The goal was to decrease drug use in order to decrease crime; however, the Czech Republic was one of the first countries to decriminalise drugs without differentiating between substances, so the evidence base surrounding decriminalisation did not exist at the time to predict the effect of recriminalisation. Both coalitions still used data to support their arguments, which is typical of coalition strategy within the ACF, with the anti-decriminalisation coalition referring to crime rates and drug use rates and the decriminalisation coalition using the low rates of HIV/AIDS and the high uptake of treatment.

The first bill to recriminalise drug use was introduced in 1996 by Deputy Pavel Severa, a Christian Democrat who actively opposed drug use. If adopted, his proposal would have added possession for personal use back into Section 187 of the criminal code with either a financial penalty or up to three years in prison. It also would have included the elimination of the penalty if the offender voluntarily sought treatment for addiction, demonstrating that even some in the anti-decriminalisation coalition were supportive of harm reduction and a medical approach to substance use. His reasoning for recriminalisation was three-fold:

First of all, drug trade in public places, streets and squares, will be reduced – as the repressive aspect towards drug dealers – the possibility to offer drugs to people who would not actively seek it, will diminish, and it will be more difficult to reach the uninformed, i.e. children and adolescents.

Second of all – early detection of short-time drug users will allow adopting preventive measures regarding drug-related criminality, which is escalating. Some users will be detected before their situation seriously deteriorates, forcing them to commit crimes due to lacking drugs or financial means. Also,

early detection will allow treatment of these users that would sooner or later become necessary.

Third of all – early detection allows monitoring users' health in connection with drug addiction and regarding communicable diseases. (Deputy Pavel Severa, April 23, 1996)

Deputy Severa's proposition suggested that recriminalising drugs would be beneficial based on both harm reduction and moral reasoning. His reasoning was flawed, since selling drugs in public was already illegal under the decriminalisation law, making his first point moot. His second and third points were more relevant in the legal context, since they allude to enforcing treatment through the criminal justice system. Treatment for offenders in the Czech Republic is quasi-compulsory; the law does not force anyone into treatment, but they can elect to go in lieu of prison time. This option, called 'protective treatment', has been part of the sentencing process in the Czech Republic since 1950 (Kruithof et al., 2016). Support for compulsory treatment came from law enforcement, as well as amongst those who are opposed to decriminalisation, but still consider drug use a medical issue. For example, a police officer who was a participant in this research indicated in his interview that they did not support decriminalisation, but would prefer to see compulsory treatment introduced:

My opinion is that it would be much better to start with criminal proceedings and then to have the possibility of diversion to some alternative measures, especially to treatment. In order to have some instrument to [put] pressure on them to participate in the treatment because they usually do not want to [go] through treatment. They don't like it. (Law Enforcement 2)

Support for compulsory treatment could be found from other MPs as well, including MP Vladimír Koronthály (Christian Democrats), who stated:

The goal of a law that punishes drug possession is not criminalisation; it is helping people overcome their fear of treatment by making treatment enforceable in some way. (April 23, 1996)

This quote is interesting, because typically decriminalisation is associated with decreased stigma leading to an increase in treatment, but MP Koronthály argued that a prohibition model with compulsory treatment would have the same benefit. Along coalition lines however, support for even quasi-compulsory treatment<sup>12</sup> was mixed within the Chamber of Deputies. MP Petra Buzcová (Social Democrats), objected to the idea of an increase in quasi-compulsory treatment, stating that ‘. . . if volunteering is the only alternative to imprisonment, it is not voluntary, it is de facto voluntary.’ (April 23, 1996). She also mentioned that a similar program had been implemented in France, with the result of overcrowded therapeutic facilities full of people that did not want to be treated but wanted to avoid prison time. It appears from these statements that parties on both sides believed people that used drugs were resisting treatment, but came to opposing conclusions as to how the policy should address that. This demonstrates how one’s core beliefs impact policy beliefs and how different arguments can be used to support contradictory solutions to the same problem.

Deputy Severa (Christian Democrats) also presented a more punitive stance, appealing to a variety of viewpoints to gain support for his bill, basing his argument on the UN treaties that the Czech Republic had signed when it joined in 1993. As he stated, the liberal decriminalisation law did not adhere to the UN guidelines for drug possession:

I believe that unless we face this issue by making drug possession a criminal offence and assessing each individual crime by its circumstances – not necessarily charging each person – we will face an even graver challenge, and that is explaining why we as a republic fail to comply with treaties we have signed and agreed to. (April 23, 1996)

This concern was also raised by MP Josef Janeček (Christian Democrats), a supporter of MP Severa, who questioned the Czech commitment to international obligations. As a newer member of the UN, following the

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<sup>12</sup> Treatment in lieu of punishment.

conventions on drugs was important politically and implying that decriminalisation was a threat to the Czech Republic's position internationally was a strong argument against it. While MP Severa personally seemed to lean towards treatment and harm reduction, the political backers that would make recriminalisation possible were not necessarily sympathetic to drug users. Those that view drug use as a weakness or a reflection of character are not interested in increasing treatment or care, but might be interested in upholding international obligations. This tactic could draw support from those that saw the original bill as too permissive, though it would not attract support from the pro-decriminalisation coalition and high levels of consensus are necessary for policymaking in the Czech Republic. However, Deputy Severa also laid the groundwork here for the 'greater than small' distinction, noting that each crime should be assessed individually, so there were lasting impacts from the presentation of this bill.

Deputy Ivan Langer (Civic Democrats) opposed the bill, but it was because of the possible consequences on drug pricing and crime. MP Janeček (Christian Democrats) argued that recriminalising possession would force drug prices to rise, pricing young people out of the market, but MP Langer did not see this as a benefit. In his statement, he expressed concerns that increasing drug prices would increase both acquisitive crime as well as profits for organised crime. He also agreed with Vice Chairwoman Buzková (Social Democrats) that adding a penalty for personal possession would likely deter people from seeking treatment. Deputy Janeček countered that increased prices would not lead to increased profits for organised crime, but did not have any evidence to support that assertion.

Despite some vocal supporters and a strong coalition, Deputy Severa's 1996 proposal was rejected. However, in 1997, two separate bills were introduced to amend Section 187, one from a Communist MP and one from the Government (Zábranský, 2004). A key external event, an election, occurred around this time that impacted the policy process. In 1996, the government shifted to the left. The Christian Democrats, Civic Democrats, and Civic Democratic Alliance were still governing, but as a minority coalition rather

than a majority. This changed the voting body, and likely changed how the repressive bills were drafted and passed.

The more restrictive of the two bills was introduced by Deputy Dalibor Matulka (Communists), who wished to criminalise drugs in all amounts. Unlike Deputy Severa (Christian Democrats), who initially presented a harm reduction argument for his repressive policy, citing public health as a driving factor, Deputy Matulka took a punitive approach. He also took personal offence to the existence of a second bill addressing the drug problem, as he was a Communist and saw it as an attempt to override his own bill for political reasons. He responded to the introduction of the second bill, implying that it did not go far enough:

I believe that tackling drug trade has been almost ineffective if it strives to tackle drug supply. Every once in a while, someone is captured and sometimes even punished, but the drug trade is a Hydra with a new tentacle growing where the old one has been chopped off, and fighting the drug supply market is not largely successful. (July 1, 1997)

This is a valid point, particularly regarding organised crime. Supply-side drug policies had been ineffective at reducing the drug trade, both drug supply and organised crime were continuing to increase, and removing one supplier did not halt the operations of organised criminal groups. Yet it was not evident that a more repressive policy would reduce demand, so the argument was not well received.

The Government bill took a softer approach, similar to Deputy Severa's, and was introduced by Minister of Justice Vlasta Parkanova (Christian Democrats). It focused on getting treatment for drug users and strengthening penalties for dealers and traffickers rather than users. While still punitive in nature, it focused on drug crime, reducing criminal activity rather than use. It was precisely the type of supply-side policy that MP Matulka suggested would fail. This debate is interesting from an ACF perspective, because it does not fit the coalition structure. Both parties were from the same coalition, presenting similar, but different policies. The impact of the external change in the parliamentary make-up is evident, as the Government adapted and

changed their strategy to gain support and consensus from the pro-decriminalisation coalition. Deputy Matulka, while still in the same coalition, did not approach it from an angle of consensus, instead focusing on his own beliefs, which led to the failure of his bill and the passage of the Government version.

The policy output was the introduction of Section 187a, which added a penalty for personal possession of amounts 'greater than small', seemingly contradictory to the goal of not punishing users. This was the first official criminalisation for personal possession since the communist era. The reasoning for a personal possession penalty was that it would put the Czech Republic more in line with UN conventions and it separated users from dealers, allowing for a lesser penalty. This was not a popular decision amongst stakeholders from either coalition. It was a compromise that was necessary to gain consensus and enough votes to pass. The pro-decriminalisation coalition was opposed to the criminalisation of drugs for personal use, since it might deter people from seeking treatment, and the anti-decriminalisation coalition did not support the vague wording which allowed for judicial discretion. On 2 September 1997, Deputy Severa spoke extensively against the 'greater than small' designation, despite his earlier arguments describing a similar idea, in effect promoting what would become the 2010 policy:

I must say that as we see in foreign, and our country's, law enforcement agencies practice, especially for the police, dealers really always use the excuse that the drug is for personal use, which makes them unpunishable by Czech law.

As follows . . . establishing a legally relevant distinction of drug volume would set up a presumption that possession of a particular amount of a drug would signify a case of drug use. This would be a formally irrefutable presumption of law. Based on international experience, such a solution (usually an average daily dose) would enable to sanction drug dealers – and I stress this, drug dealers, not consumers – more effectively. (September 2, 1997)

While the bill passed and went into effect in 1999, debates about the drug problem, and how widespread it might be, continued. A key feature of all of these debates is the fact that they were centred around the core belief of whether drug use itself was morally wrong. One interview participant suggested that this sort of argument could be mitigated by incorporating users into policy development. This is logical from either side, as users would be able to articulate the harms of drug use more effectively than uninvolved policymakers. However, those that view drug use itself as harmful may not take the opinions of people who use drugs seriously, or have any interest in actually using their insights in policy development. For example, the Christian Democrats, who argued that all drug use was detrimental, would be unlikely to see any benefit to involving drug users in the policy process.

Czech public opinion surveys, albeit carried out in later years, have consistently shown that the general public do not feel like they can have an impact on political processes (Červenka, 2013; Tuček, 2013) or that politicians care what they think (Tuček, 2013). There seems to have been little opportunity for the public in general, or drug users in particular, to be involved in the policymaking process. Including people who use drugs in the policy process was also not mentioned in the government reports or academic literature that were reviewed for this study, though the literature did indicate that public understanding of the drug laws was limited. When the 'greater than small' policy was adopted, drug users that were interviewed did not understand what the policy changes meant, so they either ignored them or lived in fear of what the consequences might be (Miovský et al., 2001b). This suggests that user involvement was not a priority, nor was communication with users in general.

The internal conflict regarding what problem the drug policy was intending to solve was intensified by another change in government in 1998, which put the Social Democrats in control. As the Social Democrats were the most likely party to include pro-decriminalisation actors, the implementation of the new personal possession section was met with resistance based on the belief that drug use was not in itself a harm, and that possession laws infringed on personal freedoms.

## **5.5 Clarifying the laws – development and implementation of the 2010 policy**

As was the case with the previous decriminalisation law, the 1999 changes were placed under scrutiny immediately following implementation. The ACF is particularly oriented towards policy learning, so the process of policy evaluation and evidence gathering is an established aspect of the framework that came into play following each policy change (Sabatier, 1987). As a Ministry interview participant explained, the intent of the 1999 policy change was to prevent drug use by creating penalties for personal possession, but there were concerns it would create negative outcomes. In particular, people were concerned that the policy would lead to ‘exclusion of the drug users and stigmatisation, and it will decrease the accessibility of services, and harm reduction, and treatment services, and so on and so on, and it will be counterproductive’ (Ministry 1). The government commissioned a comprehensive evaluation of the law in 2001 (the PAD study, reviewed in Chapter 3) to examine the effectiveness of the new policy to see if it was decreasing use, causing stigmatisation and/or decreasing access to services. The study determined that the new policy was costlier, with little gain in terms of decreasing drug use or crime. There were limitations to the study, as the report was published only two years after the law was passed, so the impact of the policy would have been minimal. The study authors were also pro-decriminalisation medical professionals and researchers, which may have influenced how the data was collected and presented, as discussed in Chapter 3. In the absence of other evidence, however, the government based their future policy recommendations on the recommendations in the report, which happened to coincide with the pro-decriminalisation viewpoint.

Changing the law to create a penalty for possession of amounts ‘greater than small’ had significant effects for law enforcement. Police had previously allowed possession of any amount of drugs if the person declared they were for personal use (discussed further in Chapter 6). Under the 1999 law they had to gauge whether the amount was small or not, so the Police Presidium issued a guideline with threshold quantities for each drug. Prosecutors, who had a similar predicament, issued their own separate guideline. The law did



not change the role of judges, since they already had a high degree of autonomy to rule on the quantity of drugs that could be considered a crime and were not bound by the guidelines for either police or prosecutors. The addition of Section 187a created another option for prosecution of possession offences, allowing for smaller amounts to be prosecutable, but there was little change in judicial behaviour according to PAD interviews, so despite changes in police and prosecutor behaviours, the outcome in convictions would not be significant.

Since the law was developed through compromise, the 'greater than small' policy introduced relatively minor changes. Everything that had previously been illegal remained so, and the recriminalisation aspect was limited, since judicial behaviour did not change and did not drastically increase convictions. As is typical in coalition negotiations, the policy change was incremental, and the changes to the 2010 criminal code would be similarly minor.

#### **5.5.1 The new penal code – strategies and decisions in the policy subsystem**

After several years of the 'greater than small' policy, a substantial external event occurred: the recodification of the criminal code in 2009. The entire code was rewritten, but for the drug policy sections recommendations from the PAD report were incorporated. These recommendations came from primarily medical researchers, with input from policy experts and NGOs, indicating the strong influence of non-parliamentary actors on public policy. This was described by an interview respondent:

We have quite strong drug experts advocating for more liberal, or decriminalisation, laws and they have a quite strong voice in policymaking. I think they saw a window of opportunity to change laws in terms of making it more liberal after these drug wars with the Christian Democrats, so they just advocated for it and voted for it and it was a combination of coalition in Parliament, and in the government, and strong advocates in terms of drug experts and NGOs, so it was a combination of this expertise. (Researcher 4)

It also helped the pro-decriminalisation coalition that several new political parties had emerged that supported decriminalisation. ANO (Akce Nespokojených Občanů) 2011 and the Czech Pirate Party both support liberal drug laws, including decriminalisation and legalisation of cannabis. TOP 09, a conservative party, also has members that support decriminalisation. While they were not powerful parties during the initial drafting of the criminal code, the involvement of non-political actors was more significant in this time period than in previous years. It was through the strong coalition of both parliamentary and non-political contributors that the focus of the new criminal code, in regard to drugs, became the PAD report. Some of the PAD report recommendations which related to oversight and drug policy planning had been implemented whilst others had been delayed, such as the recommendation that cannabis be separated from other drugs and subject to reduced penalties due to its widespread use and the perception that it was a lower risk substance. This differentiation was incorporated into the new code, which had separate personal possession penalties for cannabis and other drugs. The conflict between the pro- and anti-decriminalisation coalitions surrounding these changes was evidenced in the 2005 annual report of the National Monitoring Centre for Drugs and Addiction:

The Director of the National Drug Squad, Jiří Komorous, expressed his disapproval of the wording of the law. . . . According to the new wording, the possession of marijuana and hashish and growing cannabis for personal use would be punished less strictly than the possession or production of so-called hard drugs. On the other hand, drug professionals from the field of demand reduction who have publicly expressed their opinion on this topic welcomed the proposed arrangement (Mravčík et al., 2006, p. 11).

When asked about the split between 'soft' (cannabis and mushrooms) and 'hard' (heroin, methamphetamine, MDMA, cocaine) drugs, one interviewee, who conducts research with a variety of stakeholders, commented:

I think that the original impulse to decriminalise the so-called soft drugs was because there were so many users that they would have to lock down half the population between 17 and 25. (Researcher 5)

The disproportionate punishment of young experimenters was something frequently considered in the parliamentary discussions. Since the majority of young people were using cannabis rather than 'hard' drugs, reducing penalties for the substance would help prevent the introduction of experimenting youth to the criminal justice system. It would also align with the public view that cannabis possession should not be considered a crime on the same level as 'hard' drugs; however, that was only one component of the code change.

It was also noted in debates that 'greater than small' was not a clear designation, opening opportunities for inconsistent application of the law (though evidence of this was not found in the PAD investigation). While the issue had been continually raised, there was no agreement on what limits should be set. This point complicated the path to consensus. Medical experts and NGOs, which were frequently focused on problematic substance use, wanted a higher threshold level than law enforcement for certain substances. The argument was based on what constituted a daily dose, and how many days of use one should be allowed to carry. The proposed levels were higher than the ones previously decided by the police, and they disagreed with raising the limits higher than what they were using. In the first round of approval, in 2010, the approved threshold levels were set by governmental decree. This also introduced the formal concept of crime to the handling of drug offences, meaning that discretion by law enforcement was no longer allowed. Police, prosecutors, and judges now had harmonised threshold levels that they were obliged to adhere to, so the decisions surrounding heavy users and more lenient treatment of offenders were prohibited. This was overruled in 2013 by the Constitutional Court, stating that the government could not determine criminal liability (Běláčková and Štefanková, 2018).

The Supreme Court then issued new guidelines, which lowered the threshold levels for cannabis and methamphetamine, the two most commonly used substances. This intervention into the subsystem had not occurred in the previous policy periods. The Supreme Court served as a policy broker, a neutral party that guided the policy process, in this case determining the appropriate threshold levels. Only two were decreased from the 2010 law. They also returned to a material concept of crime, which allows for increased discretion by law enforcement and judges, further discussed in Chapter 6. The intervention of the courts has not resolved the issue however, as the coalitions have accepted the law, but, according to interview respondents, are not happy about it. Though all of the interview respondents expressed that the 2010 law was acceptable as it was, and generally better than previous policies, none of them considered it ideal.

## **5.6 Conclusion**

This chapter looked at the history of drug policy development in the Czech Republic, in terms of political parties and advocacy coalitions. Each policy had unique issues and external factors that influenced its development, which has led to small changes in the implementation of decriminalisation over the years. Political differences between the parties as they decided on each policy were discussed, including differences in how the drug problem and the various solutions presented. The first policy, comprehensive decriminalisation, was decided rapidly in order to free people from the oppression of the communist regime. The second policy, the 'greater than small' policy, was set to combat the increasing crime and drug use that were perceived to have been caused by the initial decriminalisation, and was subject to extensive debate. Finally, the current policy, decriminalisation with threshold limits, was set to combine the benefits of each of the prior policies, based on a research model, allowing for individual freedoms while still controlling crime. The current policy is disliked by many stakeholders however, as it is either too restrictive or too permissive for their liking. As discussed, this disagreement is based on deep-seated beliefs on either side, which are unlikely ever to be resolved to the complete satisfaction of both advocacy coalitions. This analysis and discussion provide a foundational

context for the analysis in Chapters 6 and 7, which examine the policy implementations and impacts on drug offences, organised crime offences, and offender characteristics. The next chapter focuses on the effect of the policy changes on drug offences, examining prosecution and conviction rates, as well as the effects on drug prices over time.

## **Chapter 6: Impact of drug decriminalisation policies on drug offences**

This chapter explores the effect of the decriminalisation changes specifically on drug offences. Since the policies in question relate to drug production, distribution, and possession, impacts from the policy changes would be likely to appear in the rates of those offences. While this chapter primarily provides a quantitative analysis of the drug offence rates, using interrupted time series analysis, the analysis is also combined with supporting evidence from the interviews and documentary analysis. Demographic characteristics of the offenders are also discussed, as well as the effect of the policy changes on drug pricing. It concludes with a discussion of the policy implications associated with these findings.

### **6.1 Results of the time series analysis**

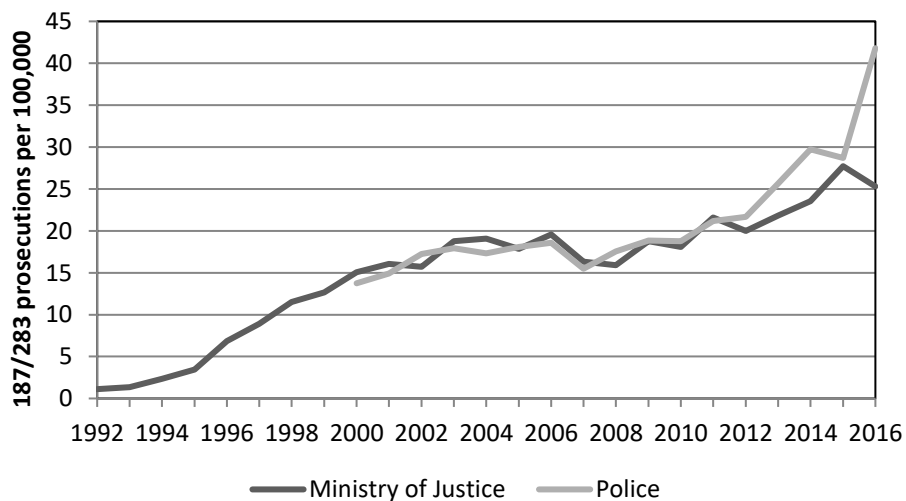
An interrupted time series analysis was conducted for each offence, as described in Chapter 4, as well as a simple time series plot to examine trends. The years analysed differ between criminal code sections due to their implementation dates. For example, Section 187a (personal possession) was added in 1999, so it could only be included from that point and was thus only analysed with one intervention rather than two. Both Section 285 (possession of plants intended for narcotic production) and Section 288 (possession of hormone-containing substances) were included in the figures for total drug offences but were not analysed individually because they were introduced in 2010 and did not have an intervention. The data for the time series analyses were obtained from only the Ministry of Justice Statistical Yearbooks, with police data omitted, since there was a longer time series available and all three phases could be included. Lags for each calculation were asymmetrical and based on the degree of autocorrelation present in each data set, as detailed in Chapter 4.

#### **6.1.1 Sections 187 and 283 – supply related drug offences**

Code Sections 187 and 283 include the majority of drug offences, as well as the crimes that attract the most severe penalties, such as international trafficking or crimes resulting in death. In the Czech Republic 80-90% of drug offences are unrelated to possession, which is a unique characteristic

of Czech drug crime. In most European countries rates of possession-related offences are greater than supply-related offences (Zeman et al., 2017), but the long-term decriminalisation laws have made possession in the Czech Republic a minor offence from a crime perspective. It was hypothesised that the rates of Section 187/283 offences would be affected by the decriminalisation laws due to the general impact on the drug market. If possession in small amounts was decriminalised, traffickers could use that to their advantage by carrying amounts that could be claimed to be for personal use. While this could lead to a decrease in prosecutions and convictions, it could also lead to an increase if trafficking increased through the country and the volume of drugs in the market increased. A decrease was never realised however, and the rates continually increased. Figure 6.1 shows the prosecution rates from 1992-2014 for criminal code Sections 187 and 283.

**Figure 6.1: Prosecuted persons under Section 187/283 per 100,000 population**

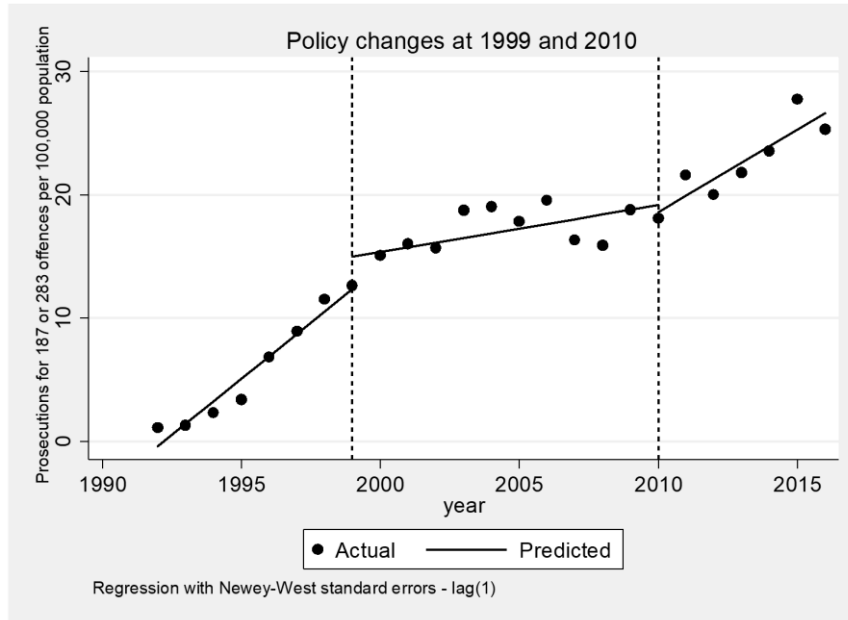


Data from Ministry of Justice Statistical Yearbooks and Czech Police Statistical Surveys of Crime

When the data were plotted over time there was clear evidence of an increasing trend. The Justice and Police data were closely matched until 2016, which strengthens the argument that the data are an accurate representation of the number of drug offences during this period. An interrupted time series analysis was conducted to compare the prosecution rates under each of the three policy phases. Figure 6.2 shows the resulting

interrupted time series, with interventions at 1999 and 2010 from the changes in drug policy.

**Figure 6.2: Interrupted time series analysis plot of Section 187 and 283 prosecution rates**



Data from Ministry of Justice Statistical Yearbooks

As seen in Figure 6.2, there was an initial rise, a slowed rate of increase over the second phase, and a steeper increase in the most recent phase. While there were no significant differences in level (rate of prosecutions) from either change, indicating the continual increase from one phase to the next, there were statistically significant differences between the slopes (the rate of change in prosecution rates). Table 6.1 shows the values for each change, with statistically significant results in bold.

**Table 6.1: Results of interrupted time series analysis for Section 187/283 prosecutions**

| 187/283 Prosecution rates | 1999 policy change |               |               |                  | 2010 policy change |              |              |              |
|---------------------------|--------------------|---------------|---------------|------------------|--------------------|--------------|--------------|--------------|
|                           | Difference         | LCI           | UCI           | p-value          | Difference         | LCI          | UCI          | p-value      |
| Change in Level           | 2.643              | -0.672        | 5.957         | 0.112            | -0.590             | -3.706       | 2.527        | 0.696        |
| Change in Slope           | <b>-1.438</b>      | <b>-1.999</b> | <b>-0.877</b> | <b>&lt;0.001</b> | <b>0.958</b>       | <b>0.378</b> | <b>1.538</b> | <b>0.003</b> |

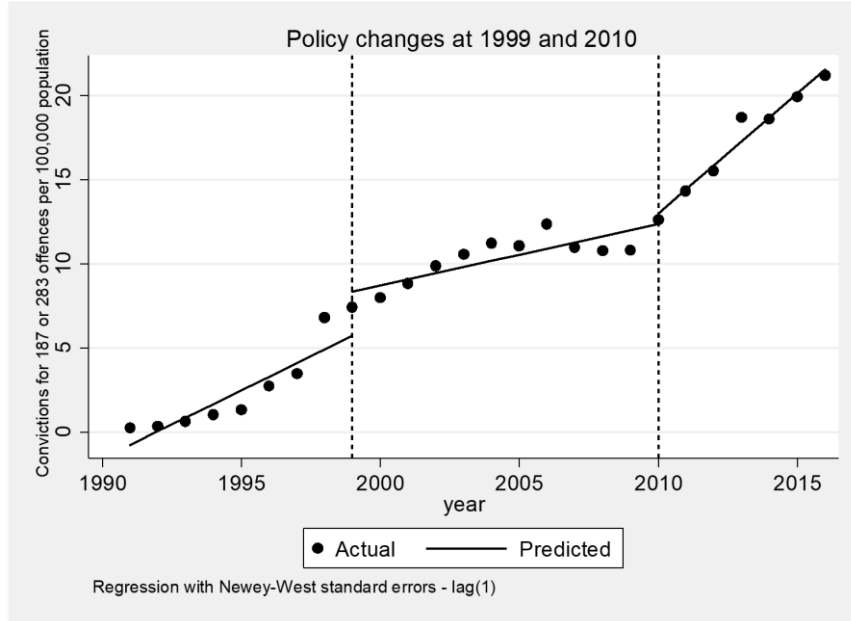
Regression with Newey-West standard errors. LCI= Lower bound of confidence interval. UCI= Upper bound of confidence interval. Bolded are significant to at least  $p < 0.05$ .

The conviction data for Section 187/283 closely follows the trend in prosecutions. This trend is not as directly associated to the policy changes by year due to the lag between prosecutions and convictions (some cases



taking over a year), but it is notable that none of the available policy options led to a decrease in conviction rates. Since there was no police data for convictions, only Ministry of Justice data, there was no comparison figure to be made, so only the interrupted time series plot was created (Figure 6.3).

**Figure 6.3: Convicted persons under Section 187/283 per 100,000 population**



Data from Ministry of Justice Statistical Yearbooks

Like the prosecution data, there were no significant level changes associated with the policy change, just a continual increase. Table 6.2 shows the statistical outputs from this analysis. There were significant differences in the slope values for both policy changes, with a sharper increase after the 2010 change.

**Table 6.2: Results of interrupted time series analysis for Section 187/283 convictions**

| 187/283 Conviction rates | 1999 policy change |               |               |              | 2010 policy change |              |              |              |
|--------------------------|--------------------|---------------|---------------|--------------|--------------------|--------------|--------------|--------------|
|                          | Difference         | LCI           | UCI           | p-value      | Difference         | LCI          | UCI          | p-value      |
| Change in Level          | 2.625              | -0.301        | 5.551         | 0.076        | 0.623              | -1.155       | 2.402        | 0.473        |
| Change in Slope          | <b>-0.447</b>      | <b>-0.888</b> | <b>-0.006</b> | <b>0.047</b> | <b>1.064</b>       | <b>0.758</b> | <b>1.371</b> | <b>0.000</b> |

Regression with Newey-West standard errors. LCI= Lower bound of confidence interval. UCI= Upper bound of confidence interval. Bolded are significant to at least  $p < 0.05$ .

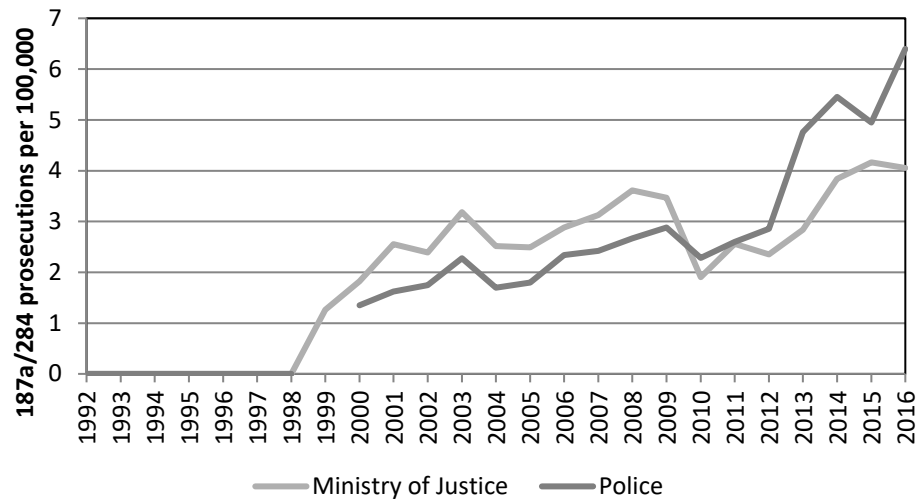
While the general trend appears the same between prosecutions and convictions, the degree of significance differed between the 1999 and 2010 change.

### **6.1.2 Sections 187a and 284 – possession for personal use**

Section 187a was introduced in 1999, so it could only be compared across two policy periods rather than three. The earlier years, when the rates were zero, were included in the graphs for comparison purposes. Unlike Section 187, which had changes primarily in the sentencing of offenders when it became 283, Section 187a underwent more substantial changes to become 284, which can be seen in detail in Appendix C. The introduction of Section 284 represented the first codified difference in sentencing based on substance type in the Czech Republic, requiring a lesser sentence for cannabis than other substances. Differentiation between substances was suggested in the PAD report (discussed in Chapter 3), but as this policy change demonstrates it took nearly a decade to implement the recommendation (Zábranský et al., 2001). Despite the change occurring in 2010, there was no division between cannabis and non-cannabis offences in the aggregate data reporting, so analysing the implementation by drug type was not possible. Instead, all prosecutions and convictions are analysed together.

Personal possession offences were the most directly tied to the criminal code changes, so it was hypothesised that there would be a significant increase in possession offences when they became an official crime, and then a significant decrease when the threshold level was set at a higher level than the unofficial police threshold. As seen in Figure 6.4, this was an accurate prediction of levels, but the slope changes were not anticipated. Section 187a/284 prosecutions increased relatively gradually from 1999-2009, followed by a sharp increase in 2010. Again, statistics from the police and the Ministry of Justice follow the same trends, though they are not as closely aligned as in Section 187/283.

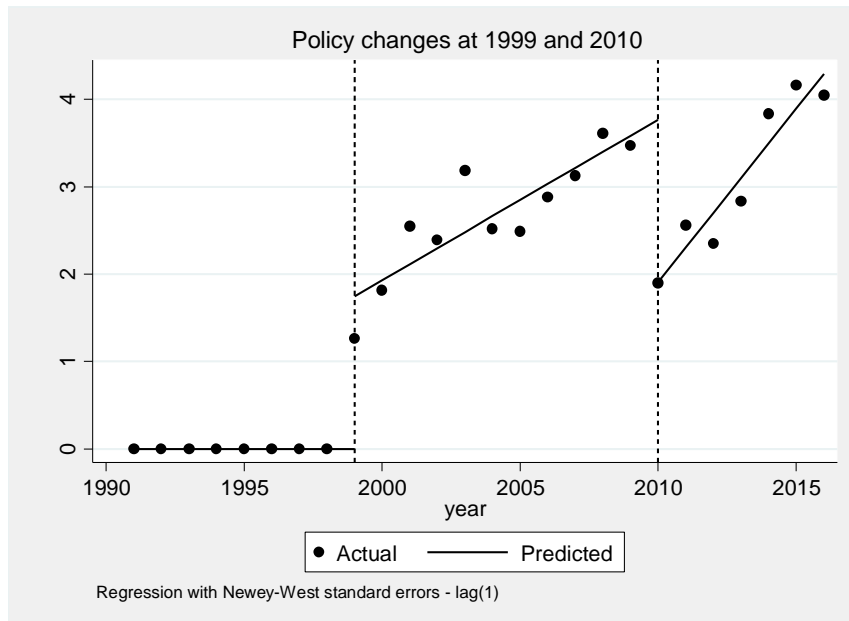
**Figure 6.4: Prosecuted persons under Section 187a/284 per 100,000 population**



Data from Ministry of Justice Statistical Yearbooks and Czech Police Statistical Surveys of Crime

A difference between these statistics and those seen in Figure 6.1 is the switch from more prosecutions recorded in the court system under the previous criminal code, to more prosecutions recorded by the police under the 2010 code. The police figures also showed a steeper increase from 2012-2016, when the interviewees commented that drug crimes had become a higher priority. Police prioritisation will be discussed later in this chapter in section 6.2.3, possibly explaining the surprisingly sharp rise in prosecution rates. Even without the police data, looking only at court prosecuted offences, there is a noticeable difference between the second policy phase and the third in terms of prosecution rates. This is evidenced by the interrupted time series analysis.

**Figure 6.5: Interrupted time series analysis plot of Section 187a and 284 prosecution rates**



Data from Ministry of Justice Statistical Yearbooks

At the 2010 point, when the new criminal code came into effect, there was a statistically significant decrease in the level of prosecutions. Unlike Section 187/283, which had no real change in intercept between policy phases, Section 187a/284 saw a drastic decrease in the year of implementation. There was also a significant difference between the slopes in the two phases, with the rate increasing more rapidly under the 2010 criminal code. The increase happened so quickly that by the end of the reporting period, 2016, the prosecution rate had surpassed pre-intervention levels. Table 6.3 shows the results of the statistical analysis for Section 187a/284, which only includes the second intervention due to the policy not existing until 1999.

**Table 6.3: Results of interrupted time series analysis for Section 187a/284 prosecutions**

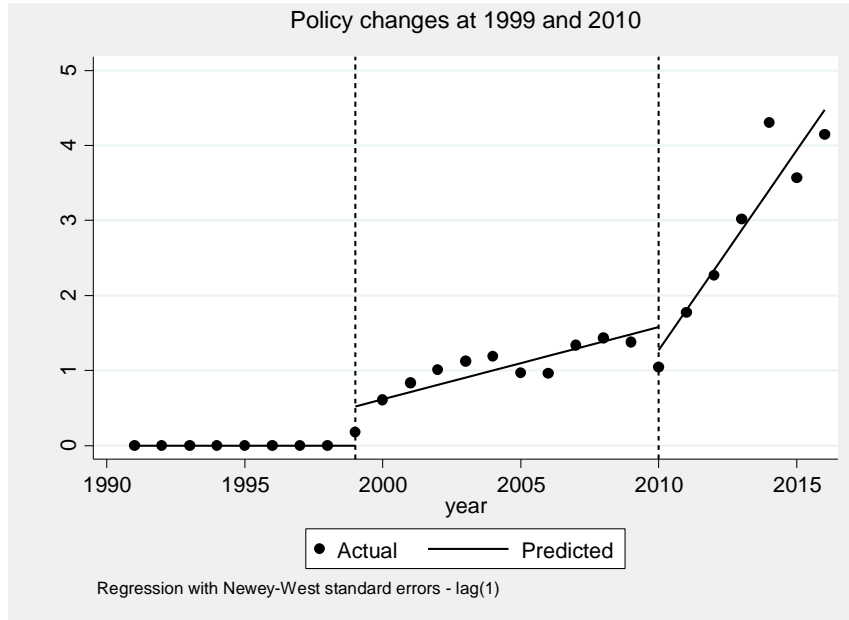
| 187a/284 Prosecution rates | Difference | LCI    | UCI    | p-value |
|----------------------------|------------|--------|--------|---------|
| Change in Level            | -1.861     | -2.300 | -1.423 | <0.001  |
| Change in Slope            | 0.214      | 0.105  | 0.323  | 0.001   |

Regression with Newey-West standard errors. LCI= Lower bound of confidence interval. UCI= Upper bound of confidence interval. Bolded are significant to at least  $p < 0.05$ .

The conviction data had a more dramatic change in slope than the prosecutions. Personal possession cases are rarely complicated enough to warrant long-term investigation, so the convictions in this case are better suited for year-to-year comparisons than the Section 187/283 data, as there

is less of a lag. The data for convictions is strikingly similar to the police prosecution data: a relatively flat early period, followed by a sharp increase after the implementation of the new criminal code

**Figure 6.6: Convicted persons under Section 187a/284 per 100,000 population**



Data from Ministry of Justice Statistical Yearbooks

There was also a statistically significant difference ( $p < 0.001$ ) between the slopes after the 2010 intervention in the conviction data, but not the level. The difference in slope amounted to an increase of 0.533 convictions each year ( $p < 0.001$ ).

**Table 6.4: Results of interrupted time series analysis for Section 187a/284 convictions**

| 187a/284 Conviction rates | Difference   | LCI          | UCI          | p-value          |
|---------------------------|--------------|--------------|--------------|------------------|
| Change in Level           | -0.306       | -0.700       | 0.087        | 0.117            |
| Change in Slope           | <b>0.437</b> | <b>0.280</b> | <b>0.594</b> | <b>&lt;0.001</b> |

Regression with Newey-West standard errors. LCI= Lower bound of confidence interval. UCI= Upper bound of confidence interval. Bolded are significant to at least  $p < 0.05$ .

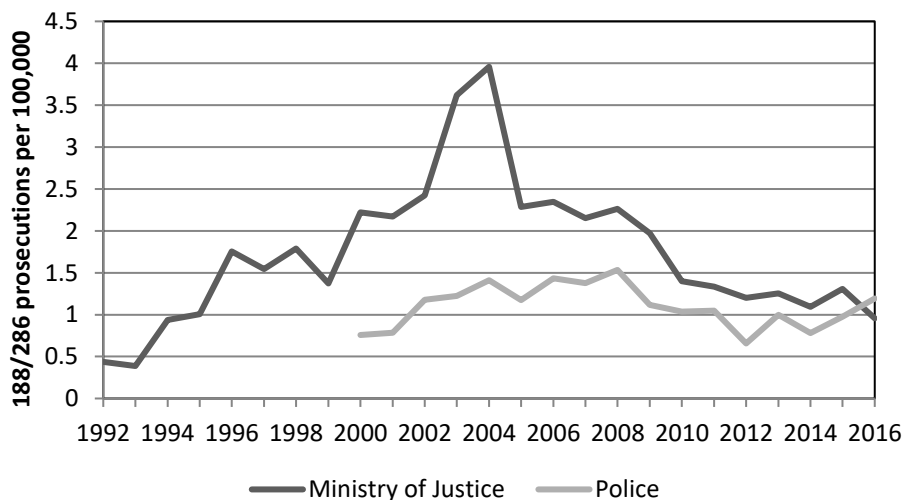
### 6.1.3 Sections 188 and 286 – materials for the production of drugs

Sections 188 and 286 relate to the production of drugs, including materials for production and precursors, and share nearly the same wording in both criminal code versions. The differences between the versions are a change from ‘an article designed for the unauthorised production of a narcotic or psychotropic substance’ to ‘a drug precursor or other article designed for the

unauthorised production of a narcotic or psychotropic substance' to align the legislation with the requirements of the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Zeman et al., 2015), and different options for sentencing (full text in Appendix C). It was hypothesised that the decriminalisation laws would have an affect on this section due to adaptation of the drug market. If the police changed their practices regarding serious crimes, such as drug production and trafficking, rather than possession offences, that could be reflected in the rates of Section 188/286 offences.

This charge has traditionally been used less frequently than Section 187, though it was more common prior to the introduction of Section 187a. Figure 6.7 shows the comparative rates of prosecution for the police and the Ministry of Justice. The predicted increase occurred early in the study, but rapidly declined in the latter half of the time period.

**Figure 6.7: Prosecuted persons under Section 188/286 per 100,000 population**

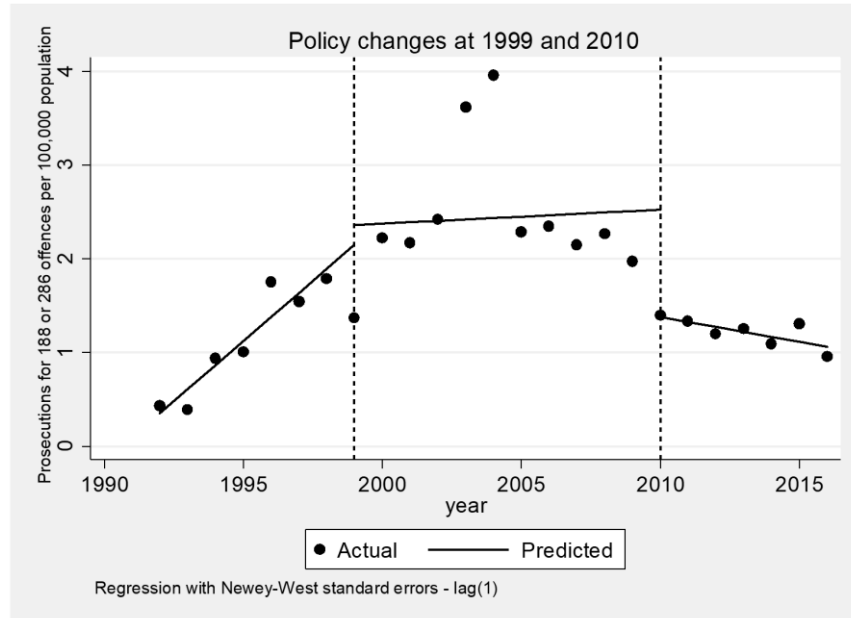


Data from Ministry of Justice Statistical Yearbooks and Czech Police Statistical Surveys of Crime

For Section 188/286 the police and Justice data diverged from each other from 2001-2005. One reason for this might be a greater amount of cases derived from other sources (such as customs officials) that appear in the court system without National Police contact, but there was no clear way to investigate that assumption. At least one organised group was charged under Section 188 in 2004, contributing to the unusually high number of

prosecutions that year (National Drug Headquarters, 2004). Figure 6.8 shows the interrupted time series analysis plot.

**Figure 6.8: Interrupted time series analysis of prosecutions for Section 188/286 per 100,000 population**



Data from Ministry of Justice Statistical Yearbooks

There was a statistically significant difference between the slopes following the 1999 policy change, but not the 2010 change. There was also a significant decrease in the level of prosecutions in 2010, similar to the Section 187a/284 trend, but at that point for Section 188/286, the rate began to decline. However, the trend was not linear in each policy period due to the small number of prosecutions, so successful police operations significantly affected the trend. The small number of observations at each point was also small for this offence, making the results less reliable than those with larger samples, since the interrupted time series is a better representation when there are more observations per point (Zhang et al., 2011). This is the only drug offence that had a declining trend in prosecutions after 2010, but the lack of a linear trend makes the evidence of a difference between policy periods weaker than offences with larger samples. The values for the statistical analysis can be seen in Table 6.5.

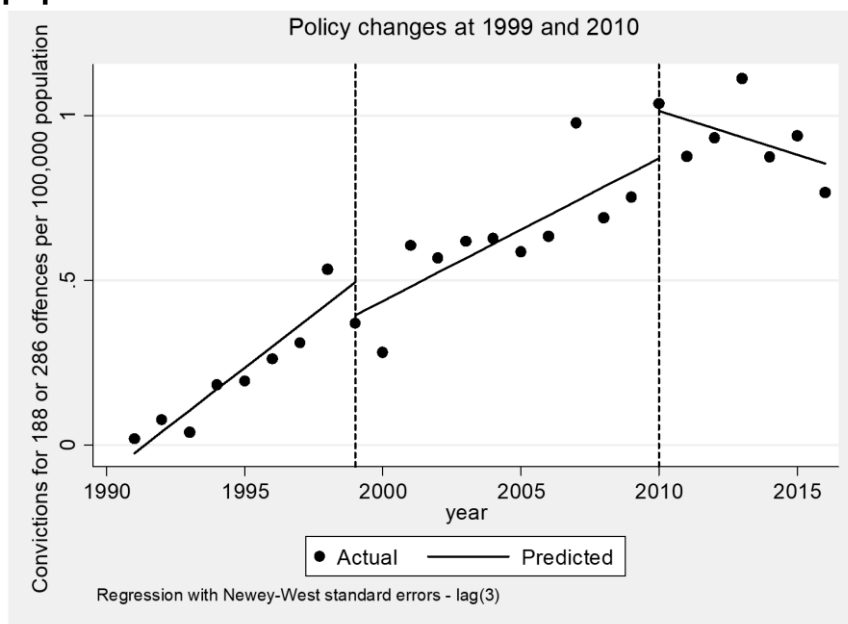
**Table 6.5: Results of interrupted time series analysis for Section 188/286 prosecutions**

| 188/286 Prosecution rates | 1999 policy change |               |               |              | 2010 policy change |               |               |              |
|---------------------------|--------------------|---------------|---------------|--------------|--------------------|---------------|---------------|--------------|
|                           | Difference         | LCI           | UCI           | p-value      | Difference         | LCI           | UCI           | p-value      |
| Change in Level           | 0.212              | -0.834        | 1.258         | 0.676        | <b>-1.145</b>      | <b>-2.032</b> | <b>-0.257</b> | <b>0.014</b> |
| Change in Slope           | <b>-0.242</b>      | <b>-0.403</b> | <b>-0.080</b> | <b>0.006</b> | -0.068             | -0.213        | 0.077         | 0.340        |

Regression with Newey-West standard errors. LCI= Lower bound of confidence interval. UCI= Upper bound of confidence interval. Bolded are significant to at least  $p < 0.05$ .

Conviction rates for Section 188/286, like prosecutions, declined following the 2010 policy change; yet the change in trend was not immediate. Rates of conviction continued to increase until peaking in 2013, then decreased over the next three years, as seen in Figure 6.9. This is the only offence to show a demonstrable change in trend in 2013, when the law changed from formal to material, and might be the only evidence that that change had an impact on rates of conviction.

**Figure 6.9 Convicted persons under Section 188/286 per 100,000 population**



Data from Ministry of Justice Statistical Yearbooks

The slope change was statistically significant in both interventions and the level change was significant in 2010, however, as noted in the prosecutions section, the sample size is so small that these numbers are not as significant as they appear. While there are notable differences, the absolute changes are very small and do not indicate major differences between policy periods. The results of the statistical analysis can be found in Table 6.6.



**Table 6.6: Results of interrupted time series analysis for Section 188/286 convictions**

| 188/286 Conviction rates | 1999 policy change |               |               |              | 2010 policy change |               |               |                  |
|--------------------------|--------------------|---------------|---------------|--------------|--------------------|---------------|---------------|------------------|
|                          | Difference         | LCI           | UCI           | p-value      | Difference         | LCI           | UCI           | p-value          |
| Change in Level          | -0.101             | -0.263        | 0.062         | 0.211        | <b>0.144</b>       | <b>0.046</b>  | <b>0.241</b>  | <b>0.006</b>     |
| Change in Slope          | <b>-0.022</b>      | <b>-0.041</b> | <b>-0.002</b> | <b>0.034</b> | <b>-0.070</b>      | <b>-0.101</b> | <b>-0.039</b> | <b>&lt;0.001</b> |

Regression with Newey-West standard errors. LCI= Lower bound of confidence interval. UCI= Upper bound of confidence interval. Bolded are significant to at least  $p < 0.05$ .

#### 6.1.4 Sections 188a and 287

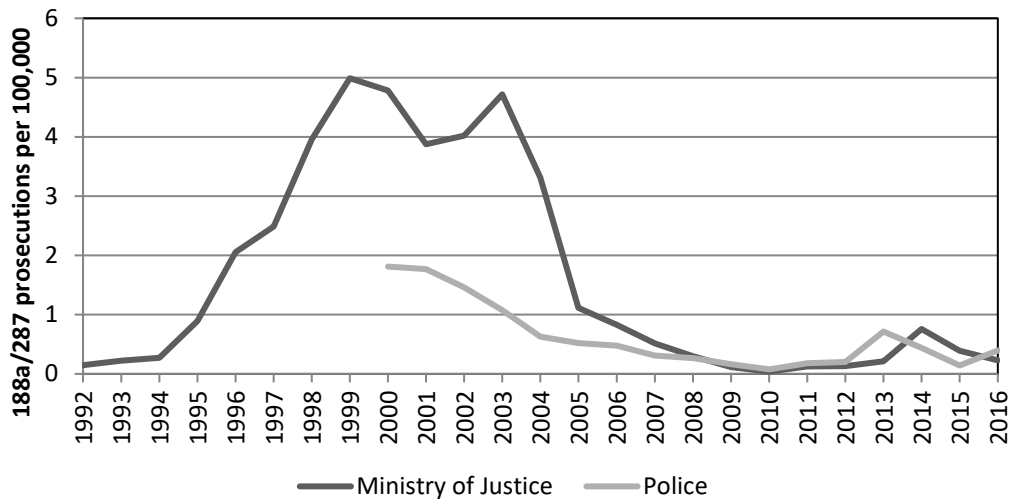
Sections 188a and 287 define the crime of ‘spreading addiction’. This relatively minor charge does not imply the selling of drugs, which would be prosecuted under Section 187/283, but the distribution and encouragement of use. In 2002, the provision was amended to include a subsection regarding promotion of drugs in the media. As stated in the NMCDCA report:

With effect from July 1, 2002, according to the amended provision of Section 188a Article 2 letter b), the criminal offence of the promotion of drug use also takes place when it is committed “in the press, film, radio, television, public computer network, or another similarly efficient manner”; the penalty ranges from one to five years (Mravčik et al., 2003, p. 8).

This change was taken into consideration during analysis post-2002, as it would potentially change the types of crimes recognised under Section 188a/287. It was hypothesised that the decriminalisation law would lead to an increase in the use of this charge, since it relates to the spreading of drug use to others rather than the individual, and the police were expected to be focusing on those areas of enforcement.

Prosecutions for Section 188a/287 offences increased rapidly in the first few years of decriminalisation, like other drug offences, peaking in 1999. They then declined equally rapidly in 2005 and have remained at low levels. Like Section 188/286, the expected trend in law enforcement was not evident in the statistics. Figure 6.10 shows the trend over time.

**Figure 6.10: Prosecuted persons under Section 188a/287 per 100,000 population**

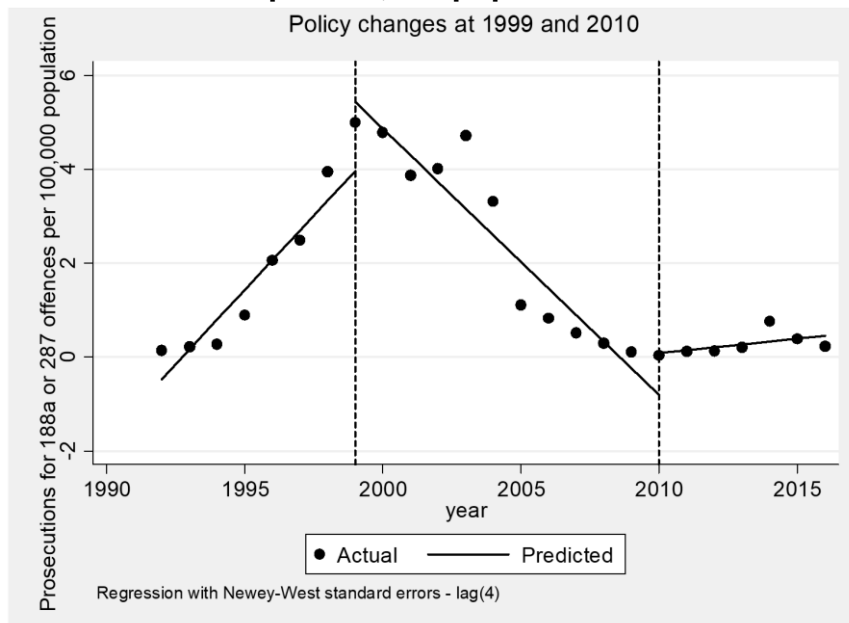


Data from Ministry of Justice Statistical Yearbooks and Czech Police Statistical Surveys of Crime

Prosecutions for Section 188a/287 peaked in 1999, coinciding with the introduction of the personal possession penalty. Levels remained high until 2003, and then declined as rapidly as they had risen. In the later years of the study this provision was almost completely unused, though the slight increase around 2013 coincides with particularly successful police operations involving grow shops (Zeman et al., 2015).

When it was broken down by policy period for the interrupted time series analysis, the differences between the time periods were noticeable (Figure 6.11). There was a statistically significant increase in level after the 1999 change, followed by a statistically significant decrease in rates over the time period of that policy. Unlike every other drug offence, the rates of prosecution for Section 188a/287 plummeted during the 'greater than small' period of 1999-2009, with a particularly large decrease from 2004-2005, similar to the Section 188 rates. There was then another significant slope change in 2010, when the rates rose slightly.

**Figure 6.11: Interrupted time series analysis of prosecutions for Section 188a/287 per 100,000 population**



Data from Ministry of Justice Statistical Yearbooks

The results of the analysis can be seen in Table 6.7. All of the values reached significance at the  $p < 0.05$  level, though the most substantial change was between 2003 and 2005, which does not coincide with a policy change.

**Table 6.7: Results of interrupted time series analysis for Section 188a/287 prosecutions**

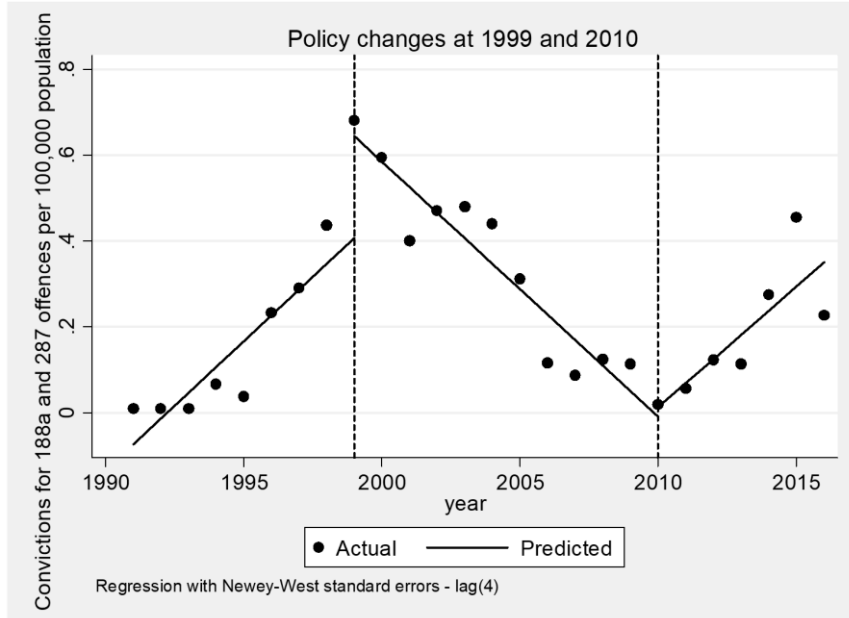
| 188a/287 Prosecution rates | 1999 policy change |               |               |                  | 2010 policy change |              |              |                  |
|----------------------------|--------------------|---------------|---------------|------------------|--------------------|--------------|--------------|------------------|
|                            | Difference         | LCI           | UCI           | p-value          | Difference         | LCI          | UCI          | p-value          |
| Change in Level            | <b>1.466</b>       | <b>0.188</b>  | <b>2.744</b>  | <b>0.027</b>     | <b>0.890</b>       | <b>0.209</b> | <b>1.573</b> | <b>0.013</b>     |
| Change in Slope            | <b>-1.200</b>      | <b>-1.390</b> | <b>-1.011</b> | <b>&lt;0.001</b> | <b>0.629</b>       | <b>0.517</b> | <b>0.740</b> | <b>&lt;0.001</b> |

Regression with Newey-West standard errors. LCI= Lower bound of confidence interval. UCI= Upper bound of confidence interval. Bolded are significant to at least  $p < 0.05$ .

Convictions under Section 188a/287 were more varied than any of the other drug-related crimes but followed the same trend as prosecutions. The rate of convictions increased more sharply than prosecutions after 2010, however the rates were so low ( $< 0.7$  per 100,000) that variations in the trendline do not indicate major changes in the numbers of people convicted. There were statistically significant differences in the trends, but the changes were a decrease in 0.059 convictions per 100,000 in 1999 ( $p < 0.001$ ), and an increase in 0.056 convictions per 100,000 in 2010 ( $p = 0.001$ ), which are

minute and do not signify a notable difference in the number of people convicted.

**Figure 6.12: Interrupted time series analysis of Section 188a/287 convictions per 100,000 population**



Data from Ministry of Justice Statistical Yearbooks

The results of the statistical analysis can be seen in Table 6.8. Only the change in level following the 2010 intervention did not reach significance, though the absolute numbers are so small that the changes are not as significant as they appear.

**Table 6.8: Results of interrupted time series analysis for Section 188a/287 convictions**

| 188a/287 Conviction rates | 1999 policy change |               |               |                  | 2010 policy change |              |              |                  |
|---------------------------|--------------------|---------------|---------------|------------------|--------------------|--------------|--------------|------------------|
|                           | Difference         | LCI           | UCI           | p-value          | Difference         | LCI          | UCI          | p-value          |
| Change in Level           | <b>0.237</b>       | <b>0.102</b>  | <b>0.372</b>  | <b>0.002</b>     | 0.022              | -0.066       | 0.109        | 0.612            |
| Change in Slope           | <b>-0.119</b>      | <b>-0.146</b> | <b>-0.092</b> | <b>&lt;0.001</b> | <b>0.115</b>       | <b>0.093</b> | <b>0.138</b> | <b>&lt;0.001</b> |

Regression with Newey-West standard errors. LCI= Lower bound of confidence interval. UCI= Upper bound of confidence interval. Bolded are significant to at least  $p < 0.05$ .

### 6.1.5 Summary of key findings

The interrupted time series analyses showed statistically significant differences between time periods for all drug offences, though the results for Section 188/286 (materials for production of drugs) and Section 188a/287 (spreading addiction) were more difficult to draw conclusions from due to the small sample sizes. Section 187/283, for supply-related offences, had a continuously increasing trend across all policy periods, but the rate of

increase was significantly different for both prosecutions and convictions. Section 187a/284, for personal possession offences, had a clear decrease in number of prosecutions following the 2010 policy change, but the rate of increase was greater after 2010, so the lower levels were not sustained. The level change for Section 187a/284 was not evident in the conviction data, though the increasing rate of change during the 2010 policy phase was the same as in the prosecutions. These findings suggest that the policy changes did tend to have an effect on the prosecution and conviction rates for drug offences, but initial effects were not necessarily lasting.

## **6.2 Discussion of the time series analysis of drug offences**

This section examines possible reasons for the changing trends in prosecutions and convictions. Not all of these factors were relevant for all drug offences, but multiple offences appear to be influenced by the same issues, so they were grouped by theme for discussion. The following themes emerged primarily from the interview data, as participants explained their views on why certain trends in drug offence rates had occurred, and were supported by documentary analysis and literature review:

- police and judicial discretion, which accounts for the levels of discretion allowed and encouraged under each policy,
- procedural changes, which are external events in the criminal justice system that have impacted how drug offences are prosecuted and convicted,
- police prioritisation, which is external to the drug policy subsystem, depending on governmental changes, but affects how police approach drug offences,
- and drug use and trafficking, which are dependent on trends within the drug-using population as well as organised criminal groups, and are significant external events that impact the drug policy subsystem.

### **6.2.1 Police and judicial discretion**

Discretion of law enforcement is directly related to the drug policy, as the wording changed to encourage more or less discretion of police and judges

over time. The 'greater than small' policy of 1999-2009 specifically provided room for interpretation, as did the original decriminalisation law that allowed possession for personal use. In addition to the intentionally vague wording of the criminal code, the guidelines developed for what constituted 'greater than small' differed by agency. As mentioned in Chapter 5, police had their own guidelines, prosecutors had a separate set of guidelines, and judges had the freedom to decide which, if any, guidelines to use (Běláčková and Štefunková, 2018). This lack of coordination led to greater discretion at all levels of the prosecution process, because the determination of what was 'greater than small' could change as a person moved through the system. Compared to the 2010 policy, it is likely that the complications of determining 'greater than small' under the 1999-2009 policy led to more drug users being overlooked by police rather than prosecuted, particularly for cases of personal possession, because it was more difficult for them to attempt to prosecute someone for a minor offence than to disregard it.

Six of the interviewees, including the law enforcement representatives, discussed the high tolerance of the Czech police for low-level offences. The reasoning for this tolerance, or leniency, varied by participant. For instance, one of the police respondents attributed it to the officers' avoidance of paperwork (Law Enforcement 2), while some of the researchers considered it either an aspect of the general Czech tolerance for drug use (Researcher 2), or a focus on more serious offences that led to them overlooking small ones (Ministry 3). Zeman et al. (2015) had similar responses in their interviews with law enforcement (police, prosecutors, and judges). Participants in their interviews also mentioned that societal tolerance for drug use in general was high, and that law enforcement practised a 'benevolent approach to justice' (Zeman et al., 2015, p. 137). While there were differing opinions as to why, they all concluded that the police had overlooked low-level crime. This was not always an unintended consequence however, as leniency was encouraged under the 1990 policy when possession for personal use was decriminalised regardless of quantity. From their interpretation of the new policy, the police were supposed to treat any amount of drugs as a civil offence if it was stated to be for personal use,

even if they suspected otherwise. In an anecdotal example of this, Researcher 1 explained:

Before [1998], the drug was considered to be private property. . . And if this distribution of drugs wasn't proved by police, the man wasn't sentenced. In fact, there was a situation when police seized half a kilogram of drugs, but the man declared it was for him, for his private use, and they had to return it. (laugh)

This story supports the view that the 1990 policy did not allow the police to effectively prosecute supply-related drug offences, as the policy held an expectation of leniency for claims of personal use. As one researcher noted, police could still use their discretion under this policy, as well as the more defined 2010 policy, just by the nature of policing:

The police always have discretion even if strict guidelines are in place. Police officers on the street still use their discretion to decide when, where, and on whom, to apply those rules. . . The idea of zero tolerance policing is completely unrealistic because there are far too many crimes going on in society for there ever to be zero tolerance and a strict application of every single law. (Researcher 6)

There is considerable literature on police discretion regarding drug cases, as described in the quote above (Belenko, 1999; Mast et al., 2000; Spooner, 2001; Corsianos, 2003; Mastrofski, 2004; Sanford and Arrigo, 2005; Lister et al., 2007), yet there are limited studies specifically on the Czech Republic (Morávek, 2007; Zeman, 2007; Dušek, 2015; Štefunková, 2015; Běláčková et al., 2017). The Czech studies that do exist tend to focus on other aspects of enforcement with police discretion as a side note; however, the post-communist context differentiates Czech police actions from Western police and has not been given adequate consideration in previous studies. During the early years of decriminalisation, the Czech police were still trying to distance themselves from the repressive policing of the communist era, and leniency and discretion would have been a way to assert that difference.

If the police were disregarding all possession cases that claimed to be for personal use prior to 1999, it would explain the low levels of prosecutions for Section 187/283 offences, even if that was not an indicator of low levels of supply-related crime. The degree of discretion allowed to judges would also support leniency for possession cases. During the 'greater than small' period (1999-2009) law enforcement could avoid prosecuting heavy users or reduce charges for cooperative offenders by reporting the quantity of drugs they possessed as 'small'. This behaviour was described by Miovský et al. (2001a) which noted that police used their discretionary power to bargain with informants, much like the UK police in Lister et al., (2007), which would have included Section 187 offenders. Bargaining could have contributed to the levelling off of supply-related offences during this period. When the accused appeared in court during that period, their sentencing was individualised, considering the specific circumstances involved. As described by one Ministry researcher:

[There] is a great difference between one gram of pervitin for a first-time user or for a dependent user, and the previous [1999] legislation [reflected] this. The judge could say okay, it's one gram, but it's a really chronic user and for them it's the dose to survive, it's not [an] amount 'greater than small'. On the other hand, it's a first-time user, well, it could kill him, so it's [an] amount 'greater than small'. It's [an] offence. New legislation [2010] doesn't allow for this discretion. (Ministry 3)

The change in 2010 allowed for the least law enforcement discretion. While the 1990 policy allowed discretion at all levels, and the 1999 policy allowed judicial discretion and unofficial police discretion, the 2010 policy introduced the formal application of the law, making the limits on specific drugs set by the government a hard threshold. In Zeman et al. (2015), two-thirds of the law enforcement respondents disagreed with the change to the formal concept of crime in 2010 because it reduced their ability to assess cases on an individualised basis. Possession cases (Section 187a/284) increased over time during the 'greater than small' policy implementation (1999-2009), but they reached unprecedented levels after the 2010 thresholds were set.



This was primarily evident in convictions, which would be expected if the discretionary power of law enforcement was suddenly limited.

However, when the Supreme Court annulled the government thresholds in 2013, unifying the guidelines to be used by the police, prosecutors, and judiciary and reducing thresholds for cannabis and methamphetamine (Mravčík, 2015), it also returned to the material concept of crime. Law enforcement discretion was allowed at the same level as the 1999-2009 era, but that did not change the sharply increasing trend. Only the crime of 'spreading addiction' (Section 188a/287) showed a discernible change in trend in 2013. One explanation could be that law enforcement was interpreting political intent. The goal of this policy was to create a threshold that defined a crime, so treating it as if it were open to interpretation would go against the will of policymakers, which may explain the continued adherence to the thresholds. Another explanation is the influence of the other factors that have affected crime rates. Law enforcement discretion is one of several influencing changes, which may have been outweighed in 2013 by other factors, such as procedural changes, which will be discussed in the next section.

### **6.2.2 Procedural changes**

This section examines how changes in police operations, capabilities, and efficiency, as well as changes in judicial procedures, have influenced the rates of drug offences. Several interview respondents suggested that the ability of the police to detect crime had improved in recent years, which has contributed to their efficiency and the increase in prosecutions for drug offences. Research into how their detection abilities improved revealed that these changes were part of an overhaul reform of the Czech police that occurred in 2008, taking effect in 2009 (Czech Police Presidium, 2008). This coincides with the change in the drug policy, closely tying police procedures to the changes in the prosecution and conviction rates post-2010.

The goals of the reform included increasing efficiency and 'debureaucratisation', along with an expansion of police powers and a change in structure. The initial phases began with the modernisation of technology and upgrades to police stations and vehicles, including the

purchase of surveillance equipment and a mobile x-ray unit (Czech Police Presidium, 2008). A mid-range level of management was removed in the restructuring, though the overall number of officers remained the same and were reallocated into other areas, so new regional offices were opened and staffed with currently employed officers. Additional officers were also placed in border control positions, which would involve the pursuit of transnational organised crime (Czech Police Presidium, 2008).

While some interview participants perceived the police tendency to overlook minor infractions as tolerance, the interviewed police officers indicated that it was simply a distaste for bureaucratic paperwork. For minor offences, those that would be considered misdemeanours, the levels of bureaucracy and the paperwork required disincentivised officers to pursue low-level offenders, according to one police officer interviewed:

Well, I don't see too [many] changes in police practice during the last [few] years. And that's of course not positive. Especially police patrols in the streets, [they] are not active towards those who commit small offences, and this is caused by the fact that the proceedings linked to the small offences are really lengthy and a bit bureaucratic. Too much paperwork.  
(Law Enforcement 2)

Most studies on decriminalisation imply that it would lead to fewer police interactions with people who use drugs, thus reducing the police workload and allowing them to focus on serious crimes (Moreira et al., 2007; Hughes and Stevens, 2010; Russoniello, 2012; Goulão, 2016). The Czech police appear to have applied that strategy, focusing on higher-level drug offences, but at the expense of administrative offences that would have in fact increased their workloads. Penalties such as fines and forfeitures are lost due to procedural difficulties, so aims to reduce the bureaucratic burden of lower-level offences would likely be beneficial.

Low-level offences can be processed through accelerated proceedings that are not disputed (Dušek, 2015), which in theory would assist with the bureaucracy issue. Cases that require extensive investigation, like large scale trafficking, would not be appropriate, but minor possession cases have

been commonly fast-tracked since drug offences became eligible for this type of proceeding in 2009 (Dušek, 2015; Zeman et al., 2017). According to Zeman et al. (2017), the number of offenders prosecuted in summary proceedings went from zero in 2008 to 792 in 2014 (p. 8). This change also influenced police behaviour, as Dušek (2015) noted, 'The police responded to shorter procedure by pursuing offences that could be prosecuted quickly and at low cost more vigorously' (p. 146). However, Law Enforcement 2 did not find the system to be very effective. Since summary proceedings are required to be closed within one year, large amounts of paperwork and formalities can delay prosecution to the point that conviction is no longer a possibility, and the municipal police that handle those cases are often already overloaded and do not finish them in time (Law Enforcement 2).

Another officer brought up the same issue of bureaucracy, but on the part of the courts. When it comes to the use of non-custodial sentencing options, he thought the judges were not using them to their potential. He stated that the courts had the attitude that 'deciding on the seizure of the proceeds of crime is considered extra work, and the courts see their main role in deciding on the guilt or innocence' (Law Enforcement 1). If sentencing using alternative, non-custodial, sentences is more difficult or complicated, it could hinder their use and lead to increasing incarcerations.

Officers were also reported to find minor offences a waste of their time due to non-compliance by the accused. As one officer noted, those that commit administrative possession offences (misdemeanours) are often not able to afford the fines that are typically used as a penalty (Law Enforcement 2), so they then receive no sanctions. This same issue bleeds into the criminalised drug offences as well. The decriminalisation legislation reduced prison sentences for low-level offenders, replacing them with fines and forfeiture of assets. While this opens up the options for non-custodial sentencing, it is not necessarily a practical change if offenders do not have any assets or the ability to pay fines. This inadvertently increases the inequity of sentencing by placing low-income offenders in prison while high-income offenders pay fines. There are other perspectives on the increasing use of non-custodial sentencing however, as noted by another respondent:

We witnessed many times that having served their sentence, the offenders convicted of drug-related offences return to such activities, and that to re-start their new 'businesses', they use the proceeds of their previous criminal activity for which they had been prosecuted but their illegally obtained property had not been seized. . . It is, therefore, precisely such 'siphoning off' of these proceeds that is emerging as a very effective sanction that also serves as a very strong deterrent, and as such has a preventative effect. (Law Enforcement 1)

These procedural changes are therefore potentially useful in stopping the cycle of crime once offenders are released, but only for those at the level that have assets available. Since many drug offenders will not be from the upper echelons, this benefit may not outweigh the potential increase in custodial punishments for minor offences from those that do not have the assets available for pecuniary penalties. Knowing these outcomes may influence the types of crimes that police choose to pursue, or overlook, and how they prioritise cases. The next section explores how police prioritisation has changed under the different phases of decriminalisation.

### **6.2.3 Police prioritisation**

Three of the interview participants – a police officer and two Ministry employees with direct policy influence – stated that the police were specifically focusing on drug crimes more in the post-2010 era than in the past. This was corroborated by the police reform report (Czech Police Presidium, 2008), which indicated that anti-drug policy would be a priority during the Czech EU Presidency (2009), as well as recent editorials from the Police National Drug Headquarters (Frydrych, 2016; Zeman et al., 2017). It also related to the police priorities of combating transnational crime and terrorism, which will be discussed further in Chapter 7, since both have been linked to drug trafficking activities (Czech Police Presidium, 2008). According to the interview respondents, prioritisation involved a greater emphasis on possession offences and methamphetamine trafficking, which they named as a major problem in the Czech Republic. A participant that was involved in the policy change suggested that this was in response to the 2010 recodification, which the police perceived as overly permissive:

[Police] claim they were afraid of some kind of weakening approach towards drug crime offences, so they even defined drug crime as one of the priorities of the whole police of the Czech Republic. (Ministry 1)

The prioritisation of possession offences contributed to the rapid rise in Section 187a/284 offences; however, when the data for possession versus non-possession offences were compared, there was not a significant difference in rate increase before and after 2010. The levels declined under the 2010 policy, as expected with a higher working threshold, but the rate of increase has remained the same. Police may be targeting possession offences, or arresting increasing numbers of dependent drug users, as suspected by interview participants, but that does not appear to be linked to the 2010 legislation. Using the previous rate of increase as a counterfactual, possession offences would likely have made up an even greater proportion of drug offences without the 2010 legislation that dropped the level significantly. The conviction data supports this hypothesis as well, since the rate of increase was higher following the 2010 policy change.

Methamphetamine production was the other prioritised issue raised by both police and Ministry interview participants. Miovský (2007) noted that there had been a crackdown on pervitin producers in the 1990s, which fundamentally changed the market and increased commercialisation (as discussed in Chapter 2). Local producers also had difficulty finding the precursors to make pervitin, due to increased controls, which led to users having to seek out dealers with more resources (Miovský, 2007). Regulations regarding the production and distribution of pseudoephedrine complicated Czech methamphetamine production for a short time, but were later circumvented by the import of pseudoephedrine from Poland (Ministry 1; Zeman et al., 2015). Changes to the methamphetamine production process may have contributed to the rise and fall of Section 188/286 offences, which includes the possession of precursor materials. It also points to the adaptability of the producers and distributors, who found a way to continue their business in the face of a new legislative obstacle, and a need for the increased prioritisation by law enforcement.

Governmental changes that afforded the police more support in the form of funding and staffing also affected prioritisation. According to one respondent, a Ministry representative, drug crime officially replaced other threats as a national priority in 2012:

Since 2012/2013, drug offences became a clear priority of [the] Czech police and [the] Czech Ministry of Interior. Before it wasn't. It was corruption, terrorism. . . And even the police say, 'Finally we [have] got more people, more officers, more money, so we can do more'. (Ministry 3)

Another Ministry representative, from a different agency, placed the year of prioritisation even earlier, in 2010, which seems likely from the police reform effort. They noted that since 2010 there was a substantial increase in prosecutions and convictions and stated that 'the major reason is simply police put more capacity to discovering those crimes and also documenting those crimes' (Ministry 1). Allocation of resources, as mentioned here, was a recurring theme that arose in the interviews. It was clear that changes in funding were a determining factor in how the drug policy was implemented and how effective it was perceived to be, so data on funding was compiled and analysed to ascertain how accurate participant perceptions of funding were as compared to actual allocations.

#### **6.2.4 Funding for drug policy in the Czech Republic**

Researchers and medical professionals that were interviewed tended to be disheartened by the current state of funding, because funds for drug treatment were being diverted into law enforcement. It was not a point of disagreement among the participants however, as they all agreed that enforcement of the drug laws had become a higher priority and the increased funding for the National Drug Headquarters verified that. There were no exact numbers provided by any interview participants, but one participant was particularly focused on this aspect and estimated the decrease:

There's a much bigger budget for enforcing laws than to actually treat people that have some kind of problem related to drugs. . . I think 3 or 5 years ago it was about 20% of the

budget for services and 80% for law enforcement. (Researcher 4)

The issue raised by this respondent was the imbalance of funding allowed for different services, though they are all purportedly equally important. While there are academic programs devoted to the study of addiction (addictology) and NGO and government-funded treatment programs, the majority of funds are still funnelled into law enforcement.

Drug policy funding comes from both the national budget and regional budgets (Mravcik et al., 2017). Only national budget expenditures are included in this analysis to match the level of the crime rate analyses. Each ministry or department that received funding for drug policy implementation was included in the analysis. The primary data source was the 2016 Annual Report of the National Monitoring Centre for Drugs and Addiction [NMCDCA] (Mravcik et al., 2017), with supplemental information from previous NMCDCA reports.

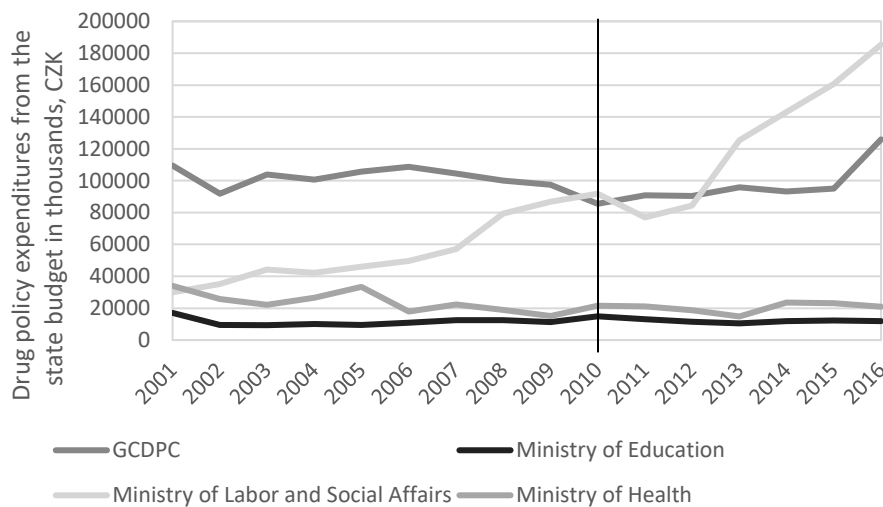
Agencies were grouped by their area of involvement in drug policy. The first category was referred to as social expenditures, the agencies responsible for the social and societal impact areas of drug policy outside the realm of law enforcement. This included the Government Council for Drug Policy Coordination (GCDPC), and the Ministries of Education, Health, and Labour and Social Affairs. Law enforcement expenditures were divided into two groups: Police and Other law enforcement, including the Ministries of Defence and Justice and the Directorate General of Customs. Due to differences in reporting, comparing the numeric values of each agency is not possible. Some agencies report only subsidy payments, such as government subsidised treatment centres operated by NGOs, whilst others report subsidies as well as the cost of operating expenses, wages, or program administration expenses (Mravcik et al., 2017). Since they each have their own reporting methods, the levels for the individual agencies can be analysed over time to examine trends in their funding levels.

#### **6.2.4.1 Social expenditures**

Figure 6.13 shows the expenditures for social agencies over time, with a vertical line to indicate the year the new criminal code was implemented.

Three of the four departments – the GCDPC, the Ministry of Education, and the Ministry of Health – remained relatively stable, with consistent expenditures over time. There was a small rise in 2016 for the GCDPC, possibly in response to increasing drug use, as discussed in Chapter 2, but the increase appeared minimal compared to the significant increase in allocations to the Ministry of Labour and Social Affairs.

**Figure 6.13 : Drug policy expenditures – Social agencies, in thousands of CZK**



Data from NMCDA annual reports

The Ministry of Labour and Social Affairs reports subsidy expenditures to support NGO operated programmes (Mravčík et al., 2014). Funding increased from just under 30 million CZK in 2001 to over 185 million CZK in 2016 (Zábranský et al., 2002; Mravčík et al., 2010; Mravcik et al., 2017). The funded programmes provide counselling services and operate low threshold contact centres, therapeutic communities, and residential facilities for people with substance use challenges. It is notable that the increase in funding for Labour and Social Affairs was continuous across governments. While it increased most sharply from 2012, under Civic Democrats and Social Democrats, support for these programmes has been consistently increasing regardless of political affiliations.

This rise in Labour and Social Affairs subsidies was not mentioned in the interviews, despite concerns regarding the funding of social services. Since none of the participants came from this Ministry, it is possible they were not aware of the increase, which points to the limitations of the interviews as a



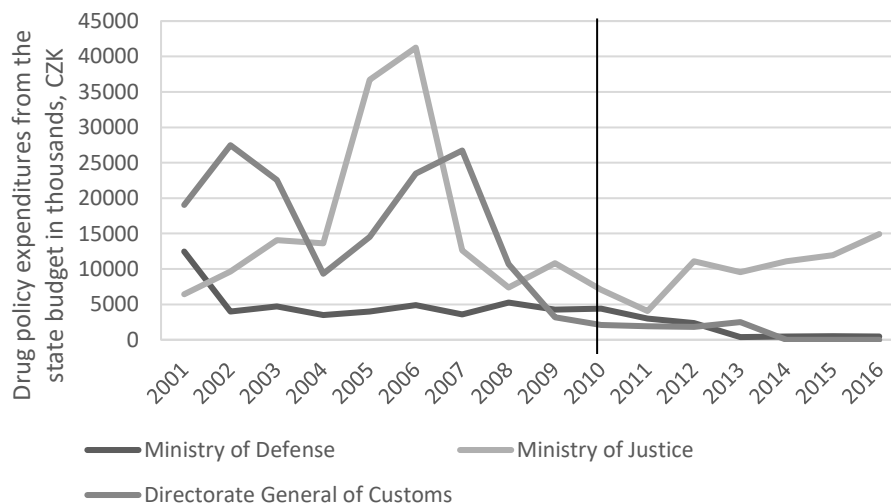
source of data. Participants were aware of their own concerns but were not necessarily informed of intergovernmental issues. For example, Researcher 2 was passionate about the lack of funding for education, stating that increasing budget pressures on universities were leading to cuts to addiction research and support staff, but did not note funding issues outside of their own realm.

Despite the concerns of Researcher 2, the data does not indicate a significant decline in education funding. The Ministry of Health has experienced a slight decline, which may contribute to concerns in the medical community, including medical education, but it was not evident in university funding. It was therefore assumed that the intensity of Researcher 2's arguments stemmed from the low levels of funding granted to Education and Health as compared to the other agencies involved in drug policy, particularly law enforcement.

#### 6.2.4.2 Law enforcement expenditures

Figure 6.14 shows the expenditures for non-police institutions related to law enforcement.

**Figure 6.14: Drug policy expenditures – Non-police law enforcement agencies, in thousands of CZK**



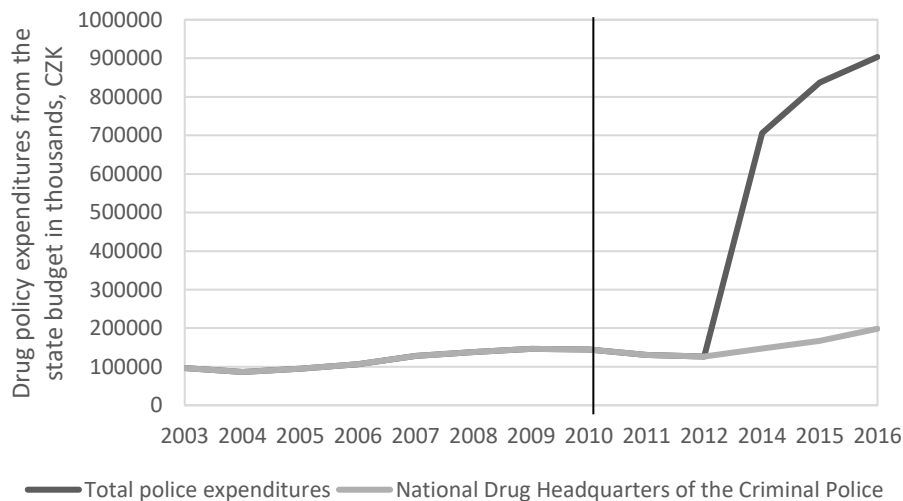
Data from NMCD A annual reports

The Ministry of Defence and the Directorate General of Customs have both seen significant declines since 2001. The Ministry of Justice expenditures spiked in 2005 and 2006, under a Social Democrat government, but then returned to their previous levels following the election of a Civic Democrat

government. Levels of funding for drug policy in the Ministry of Justice were higher in 2016 than 2001, unlike the other agencies in this category, but were nowhere near the peak levels of 2006. There were no methodological changes noted in the NMCDAs report that would have explained this decrease. A possible explanation is the expansion of drug services in prisons during the 2005 and 2006 period that were either established and running on a reduced budget, or were dismantled, in 2007. Most of the Ministry of Justice drug policy expenditures are for prison programmes, so another possibility is a decreasing need for programming due to decreasing prison populations, or a decreasing need among the specific subset of prisoners. There is no documented reason for the decrease in Mravčík et al. (2008), the source of the 2007 data, and none of the interviewees commented on the funding of these agencies.

In stark contrast to the non-police law enforcement data, Figure 6.15 shows the expenditures of the Czech National Police. The police data were recorded as a single entity until 2012, when they were divided into the National Drug Headquarters and Other categories.

**Figure 6.15: Drug policy expenditures – Czech National Police, in thousands of CZK**



Data from NMCDAs annual reports

The trendline for the National Drug Headquarters appears level, but actually indicates an increase of 100 million CZK from 2001 to 2016, which is more than the total expenditures for most other agencies. It appears flat because the Other police expenditures increased by nearly 800 million CZK, far exceeding the levels reported by any other agency. This is not necessarily

an accurate comparison due to the police including more expenses in their reporting, such as employee wages, but even with that caveat the drastic increase compared to previous years is notable. The increase can be attributed to new expenses that were implemented in 2014 based on police prioritisation of drug offences. Substantial funding went towards the regional police directorates, including funding for toxicology teams that accounted for 501.6 million CZK, 408 million of which went to wages (Mravčík et al., 2015). There were also large investments in forensic testing kits for alcohol and drugs, and toxicological costs which were not clearly defined in the reports (Mravčík et al., 2015). This change occurred under a Social Democrat government with primarily pro-decriminalisation representation. More than any other factor, this significant increase in funding for police forces indicates that the police and the government were prioritising drug crime more after the 2010 policy change than before it, which is crucial knowledge in the analysis of the policy impacts on crime.

As demonstrated by this data, the funding for different drug policy programs and involved agencies has fluctuated over time, but there is a clear distinction between law enforcement and all other services. As Researcher 2 postulated, funding for the police is substantially higher than for the Ministries of Health, Education, or any other social services. It also eclipses funding for other Ministries and agencies involved in law enforcement. This indicates a prioritisation of drug offences by not only the police, but the government as a whole, despite changes in leadership along the way. However, the continuous increase in Labour and Social Affairs does indicate that specific services are still being prioritised in the form of treatment support for problem drug users and harm reduction efforts, which also seems to be unconnected to the government of the time.

### **6.2.5 Increased drug use and trafficking**

The final factor that was considered as a possible contributor to the rise in the number of drug offences was an increase in drug use and a corresponding increase in drug-related prosecutions due to the quantity of drugs in circulation. The police were perceived by some interview participants to be arresting known dependent drug users for possession, knowing they would be over the threshold limit and inflating the number of

drug offences prosecuted regardless of actual increases in drug use. This point was made by a Ministry researcher regarding the estimates of problem drug users and the 2010 increase in possession prosecutions:

[The police] have at least 45,000 cases of drug offences, intensive drug users who are using drugs frequently . . . So if we see the growing number of drug offences in police statistics we just have to have it in our minds, and realise that if we doubled capacities of the police, the police could have doubled the statistics. It's just, it's like the sea full of fish. Just catch.  
(Ministry 3)

However, they went on to say that they thought the focus had shifted in the most recent years of data and that the police were no longer looking at the known problem drug users, but focusing instead on methamphetamine trafficking. This sentiment was echoed by a researcher that was interviewed, who thought the police were using their increased manpower to focus on the 'big drug trade' rather than chasing 'daily users' (Researcher 5). The increase in Section 187/283 (supply-related) prosecutions and convictions supports this claim, since the methamphetamine charges would appear under that section, but the problem use statistics in Chapter 2 also point to an increase in heavy drug use. If that statistic is accurate and there has been an increase, the 2010 policy would disproportionately affect heavy users by setting a threshold below their daily usage level. This would skew the crime rate data to make the increase in use appear much larger, particularly if the police wanted to target possession offences. Increasing use is also tied to trafficking, as supply rises to meet demand, so that is another possible explanation for the increases in both Section 187/283 and Section 188/286 (materials for drug production).

Since Section 188/286 refers to precursors, any changes to the laws regarding pharmaceuticals could also affect it, as well as the rates of offences related to trafficking, such as Section 187/283. Changes in the manufacturing of precursors occurred during the time period of this study, including the period where there was a spike in court system prosecutions for Section 188/286 offences. In 2003, the sole manufacturer of ephedrine in

the Czech Republic closed, leading to an increase in ephedrine trafficking from Poland, Slovakia, Ukraine, and Germany (Mravčík et al., 2004). Closing the only production point for ephedrine in the Czech Republic was limiting to large scale methamphetamine producers and likely increased the use of the more freely available pseudoephedrine.

A law limiting the amount of pseudoephedrine that an individual could purchase came into force in 2009 (Medicines and Healthcare products Regulatory Agency, 2009); however, there was no discernible impact on the market. One of the higher-ranking Ministry representatives spoke about this change, and how the limitation of pseudoephedrine did not change the market because of illegal imports from Poland, stating, 'There was even an estimate of the Czech customs service, that every tenth car passing through the border from Poland was transporting illegally medicines containing pseudoephedrine' (Ministry 1). With the amount of illegal imports, the levels of methamphetamine production continued to rise and users had no restrictions to their supply. This view was seconded by an academic researcher, who stated:

Now we regulate [pseudoephedrine] and other countries: zero. And what's the impact? What's the output from this? Nothing. Pseudoephedrine is available. . . In Czech Republic, it doesn't matter that we have strict regulations now and we have the situation under control. Nothing happened. And nothing changed in our Czech drug policy and black market with methamphetamine. (Researcher 2)

As both of those participants suggested, methamphetamine production or consumption has not changed as a result of precursor regulation. This is supported by the problem drug use statistics, which show methamphetamine use to be continually rising. Since that is the case, it is unlikely that the regulations had much impact on the number of people in possession of precursors, yet the use of Section 188/286 by the courts has become almost non-existent. A potential explanation could be that sentencing for Section 188/286 is limited in the severity of penalties compared to Section 187/283, which provides more options for aggravating factors and longer prison

sentences. As precursors are increasingly coming from outside the country, it is reasonable to assume the prosecutors are seeking the broader Section 187/283 charge for trafficking rather than possession of a precursor, leading to the current decline in Section 188/286 prosecutions. This trafficking is also tied to organised crime groups, which will be examined in depth in Chapter 7.

The next section expands on the analysis of drug offences by focusing on individual offenders rather than the aggregated crime rates. The sexes and nationalities of the offenders were compared across policy periods to examine demographic changes over time using individual-level data as well as police records.

### **6.3 Demographic profiles of drug offenders in the Czech Republic**

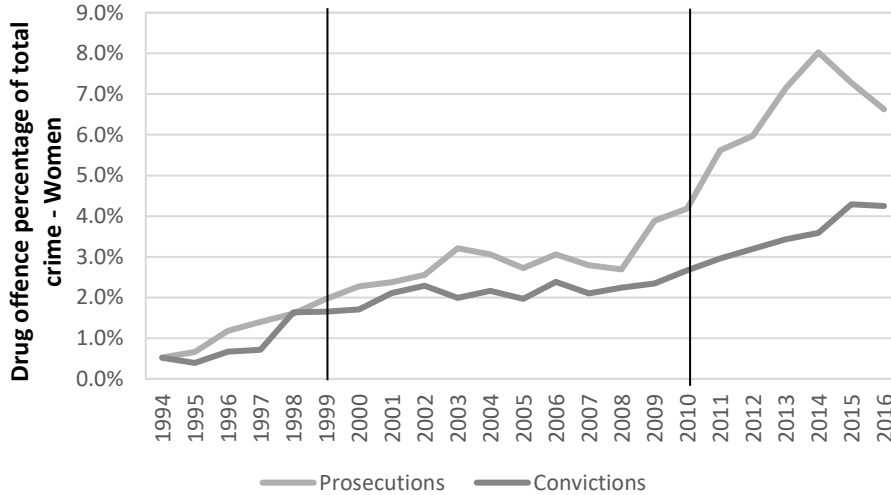
The focus on controlling the drug trade, referred to as the 'war on drugs' in many countries, has had problematic impacts on certain demographic groups (Merolla, 2008; Penal Reform International, 2015). This section investigates if there are ethnic or sex-based discrepancies in those prosecuted for drug offences in the Czech Republic, beginning with an analysis of the sex of drug offenders in the Czech Republic, followed by a discussion of the nationalities of offenders, which will be expanded upon in Chapter 7.

#### **6.3.1 Sex of offenders and drug offences in the Czech Republic**

Use of drugs has increased in the Czech Republic, with both men and women reporting higher rates of usage in 2016 than in the past (Mravčík et al., 2005; Mravčík et al., 2017). In 2004, the first year that comparable data were available, 16.4% of women and 28.3% of men said that they had used an illicit drug in their lifetime. In 2016, those numbers had grown to 21.8% of women and 33.9% of men (Mravčík et al., 2005; Mravčík et al., 2017). These increasing rates would be linked to increasing rates of drug trafficking and distribution, so an increase in drug offences would be expected, and was demonstrated in the aggregate data analyses. The rate of drug offences (defined as Sections 187/283, 187a/284, 188/286, and 188a/287) as a percentage of the total prosecutions and convictions for each sex were

compared to look for differences between the sexes. The results are plotted in Figures 6.16 and 6.17. Vertical lines at 1999 and 2010 indicate the years the drug policies changed.

**Figure 6.16: Percentage of women prosecuted or convicted for drug offences out of total women prosecuted and convicted**



Data from Ministry of Justice Statistical Yearbooks

**Figure 6.17: Percentage of men prosecuted or convicted for drug offences out of total men prosecuted and convicted**



Data from Ministry of Justice Statistical Yearbooks

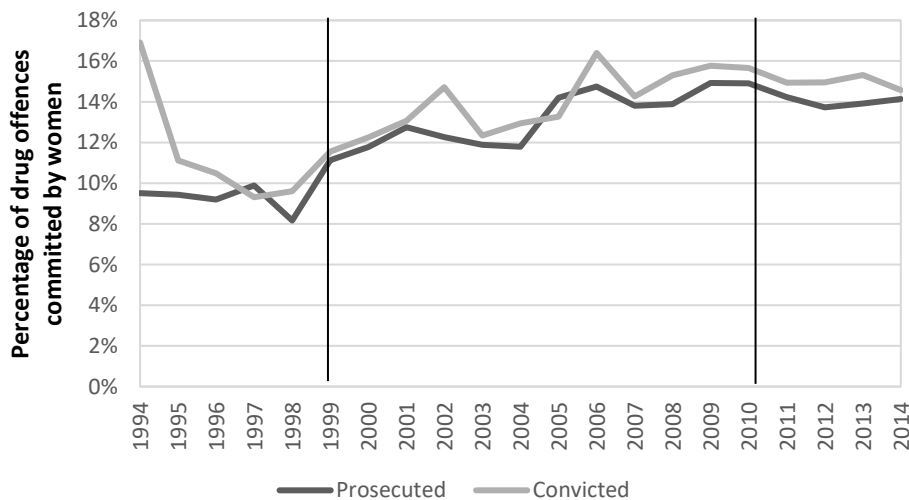
The rate of drug offences as a proportion of total offences follows the same trend as overall drug crime, but the sharpest increase for both men and women began in 2008, which coincides with changes in police procedures, but not the drug policy. Convictions took on an upward trajectory, unlike the relatively flat period from 1999-2009, but not at the same steep rate as prosecutions. One explanation for this is that the police were prioritising drug

crime in the late 2000s, leading to an increase in the proportion of prosecutions, but the increased priority did not follow through to the judiciary until 2010. Even then, the rate of convictions for other crimes took precedence over drug offences.

Notably, the proportion of drug offences for each sex is nearly identical. At the highest point only 8% of women's prosecutions were for drug offences, whilst men's prosecutions have only reached 8.2%. Drug offence convictions have never exceeded 4.3% for women and 4.6% for men, so ultimately they make up a small proportion of offences for both sexes. While women were prosecuted and convicted at lower levels than men, the proportion of drug offences remained the same. This does not compare incarcerations, as the data did not differentiate between the sexes for incarceration, but the low overall numbers and the sentencing data analysed later in this section make it highly unlikely that women are being incarcerated for drug crime at rates significantly higher than men.

Figure 6.18 shows the percentage of women prosecuted and convicted for all drug offences. Unlike Figure 6.16, which only compared the rates of female offenders with total offences by females, Figure 6.18 considers the percentage of women out of the total number of drug offences, including both sexes.

**Figure 6.18: Women prosecuted and convicted for drug crimes as a percentage of total drug crimes**



Data from Ministry of Justice Statistical Yearbooks



The upward trend for both prosecutions and convictions plateaued from 2010-2014. Whether this was related to the policy change or not is unknown, as there had been other relatively flat periods under the previous policy within the overall increasing trend. Both the early decriminalisation and threshold policies led to stable trends in women's involvement, with a gradual increase from 1999-2009. Judges and prosecutors interviewed by Zeman et al. (2015) noted the increased involvement of women in drug crime, but this may have been a reflection of overall increasing drug crime rates for both sexes. In contrast to the Zeman et al. interviews, Law Enforcement 2 stated in their interview that there had not been a noticeable difference in female involvement in drug crime over time, saying: 'Well, generally it's a more male problem, yeah? Than female? And I don't think that there is any increase in the involvement of women into drug trafficking.' However, there was some disagreement among the interview participants.

Depending on their backgrounds, the respondents had different experiences with women and drugs. Most of the drug offence rates increased after 2010, so the consistency of women's involvement could be perceived as an increase if one were to see the absolute number of women that went through the criminal justice system, which would explain the contradictory interview perspectives. Law enforcement representatives that saw more women being prosecuted could perceive that rates of involvement are increasing if they did not consider the equally increasing numbers of men. Those in academia and medicine had experience with women in the realms of use and treatment, which, while still male-dominated, tend to have a stronger female presence. One of the researchers interviewed, a medical doctor, noted the increase in women that they saw for problem drug use. They attributed this to an increase in women's drug usage and therefore drug offences:

We have a lot more women patients, more than traditionally. Originally, we had only a department for men, not for women. [The women's department] was established 30 years [after] establishing the first department for men. And I think that this is the mirror, that you have more and more females as professionals in drug-related crime. (Researcher 2)

Women's drug use has increased, thus increasing the need for women to enter treatment, and the likelihood of women being arrested for drug crimes. That increase was evident in Figure 6.16, but what Figure 6.18 demonstrates is that while the numbers of women prosecuted have risen, they still represent a minority of drug-related offenders and have stabilised in proportion to men since the last policy change. Similar trends are seen in treatment, where women typically hovered around 30% of treatment participants from 2001-2016, with changes in absolute numbers, but no change in proportions according to data from the NMCD A.

Of the 1,228 individual records for Section 187/283 offences sentenced to over 60 months in prison, only 91 (7.4%) were women. From 2005 to 2014, the total number of people convicted for Section 187/283 offences was 14,181, with 2,242 (15.8%) being women, indicating that the proportion of women represented in lower-level drug crimes, those not sentenced to 60 or more months in prison, is greater than the number of women convicted of higher-level crimes. This is similar to what is reported in the literature in other countries (Merolla, 2008; Penal Reform International, 2015), where women have been more frequently convicted for low-level crimes. When the 'greater than small' (1999-2009) and threshold policies (2010-2015) were compared using individual records, women made up 5.9% of the sample for the 1999-2009 policy compared to 8.5% under the 2010-2015 policy. This is an insignificant increase considering the sample size, but does indicate that women make up the minority of serious drug convictions, regardless of drug policy, and their presence in higher-level criminal activity may have slightly increased since the implementation of the 2010 policy.

Sentencing lengths also differ by gender. Under the 1999 policy, women that were sentenced to at least 60 months for Section 187/283 offences received 79-month sentences on average compared to men's 95-month sentences. Under the 2010 policy the gap between male and female sentences was eliminated through both a substantial reduction in average sentence length for men and an increase in women's sentence length. Men were sentenced to an average of 87 months after 2010, while women were sentenced to an average of 85 months. The increasing sentence length would make sense if women were becoming involved in drug crime at a higher level. Since more

women received long prison sentences after 2010, it should follow that their involvement may be more substantial, which could also be associated with increasing female involvement in organised crime, which will be explored further in Chapter 7.

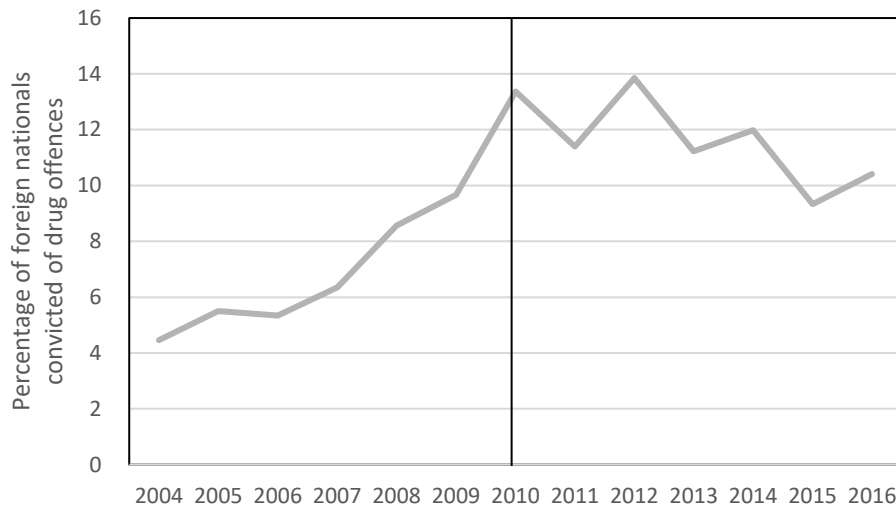
### **6.3.2 Nationality and drug offences in the Czech Republic**

As described in Chapter 4, the aggregate data from the Statistical Yearbooks did not include information about race, ethnic origin, or nationality, so data on offender nationalities were obtained from the annual reports of the Czech National Police and the individual data set. 'Race' was not acknowledged as a term in any of the Czech data sources, though racism is prevalent and is directed at both non-white people, as well the Roma population and other immigrants (see Chapter 2) (Bancroft, 1999).

While most prosecutions for drug offences are Czech citizens, foreign nationals have typically been disproportionately represented in the Czech criminal justice system. The police data from 2004-2016 reported that foreign nationals made up between 4.6% (2004) and 13.9% (2012) of prosecuted drug offenders each year, surpassing the percentage of foreign nationals living in the Czech Republic. The population of foreign nationals has increased over time, from 1.5% non-Czech citizens in 1995 to 4.7% in 2016 (Czech Statistical Office, 2018a). These figures include people that have been in the country longer than 90 days, so the number of permanent residents is lower, at 0.4% in 1995 and 2.6% in 2016 (Czech Statistical Office, 2018a). The police data does not indicate whether the offenders are permanent residents, visitors, or temporary residents, so the degree to which foreign nationals are overrepresented is unknown.

Quantitative data on the ethnic groups was limited, but the Annual Reports of the Czech National Police Drug Headquarters have listed a breakdown of prosecutions by nationality since 2004 (coincidentally also the year that the reports became available in English). This provided some evidence for the prosecution of non-Czech offenders. In total, individuals from 91 different countries are represented in this data. The percentage of prosecutions attributed to non-Czech persons is shown in Figure 6.19, with the vertical line indicating the 2010 policy change.

**Figure 6.19: Percentage of foreign nationals prosecuted for drug offences, by year**



Data from the Czech National Police

While the proportion of foreign nationals prosecuted has declined since 2012, it rapidly increased from 2004 to 2010. Post-2010, under the most recent drug policy, it has fluctuated between 9-14%, never reaching the low levels recorded in 2004. The majority of these offenders came from a small number of countries. All of the interview participants agreed on the ethnic groups known for participation in the drug trafficking industry in the country, which was supported by the quantitative data and also named by the law enforcement respondents in Zeman et al. (2015). These groups – Vietnamese, Russian-speaking, Balkan, West African, and Czech – are also those most closely associated with organised crime. Since the high-level drug crimes included in this analysis are frequently attributed to organised crime, the detailed analysis of offender nationalities is found in Chapter 7.

## 6.4 Drug prices

Whether drug laws have a predictable effect on drug markets is debatable. As discussed in Chapter 3, increasing the price of drugs would rationally lead to decreasing use (Reuter and Kleiman, 1986; MacCoun, 1993; MacCoun and Reuter, 1998), however, particularly for heavy users, price may not be a determining factor in whether or not drugs are purchased (Reuter and Kleiman, 1986; Miron and Zwiebel, 1995). There are also many factors that impact drug prices aside from public policy. In a review of the relationship between drug policy enforcement and prices, Caulkins and

Reuter (1998) examined determinants of drug prices. Proximity to import sites, drug purity, labour costs, and physical risk all influence the price of drugs at the point of retail sale. Enforcement may only be a small factor in the price of drugs depending on the other conditions. On the other hand, certain large-scale enforcement efforts have been shown to have impacts on the market, such as a US effort in Colombia in 1989 that led to increased cocaine prices for the next 18 months (Caulkins and Reuter, 1998). In the Czech Republic, there have been several enforcement interventions that could conceivably have such an impact, such as the strict regulations on pseudoephedrine and targeted raids on high volume cannabis producers.

Since the effect of enforcement on drug prices is variable and difficult to predict, it was unsurprisingly unclear to Czech policymakers. During early parliamentary debates on the state of decriminalisation in the Czech Republic the effect that the policies would have on drug prices was discussed, with no consensus on what could be expected. Deputy Josef Janeček, a Christian Democrat, predicted that increased criminal penalties would lead to an increase in drug prices (April 23, 1996). He then concluded that this would force young people to purchase smaller quantities, thus limiting addiction. Deputy Ivan Langer (Civic Democrats) refuted the idea that higher prices were beneficial, suggesting that increasing drug prices could lead to increased crime by increasing illegal profits and motivation to join the drug trade (July 1, 1997). Deputy Janeček and Deputy Pavel Severa (Christian Democrats) both questioned whether the increase in prices would lead directly to increased profits for organised criminal groups, without resolution. An alternative outcome was predicted by Deputy Dalibor Matulka (Communists), which was that prices would remain the same or decrease in the face of reduced demand (July 1, 1997). In his view, supply-side enforcement was ineffective, and the only way to reduce supply was to reduce demand by creating a surplus, which would reduce prices in a typical market economy. Eventually the supply would adjust to meet the demand if it remained lower, but there would be a risk that periods of low pricing would likely attract new users and would be a challenge to demand-side enforcement policies.

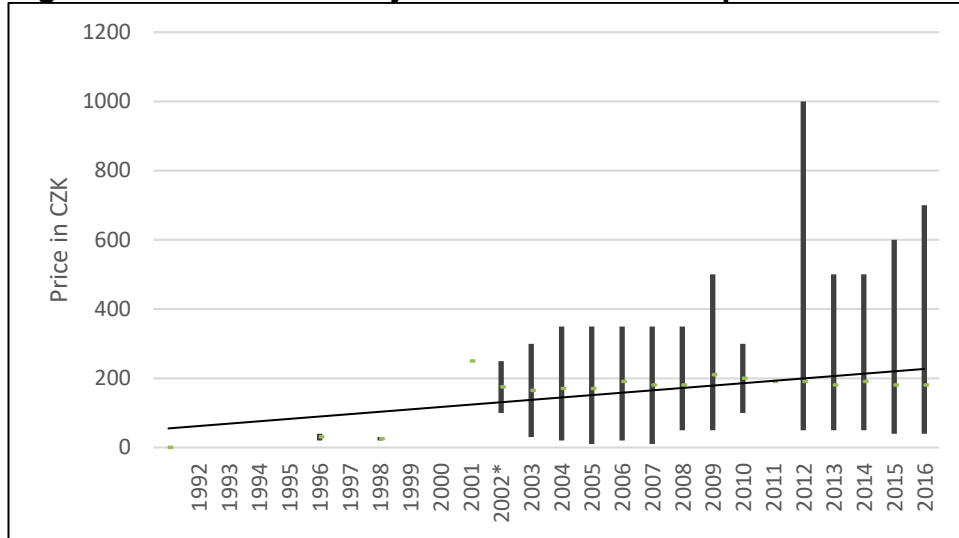
In interviews conducted by Zeman et al. (2015), law enforcement representatives claimed that involvement of the Vietnamese community had reduced the price of methamphetamine, increasing usage, and that cocaine consumption was increasing due to price reductions from the countries of origin. To determine if any of these predicted outcomes actually occurred, drug price data from the National Police Drug Headquarters Annual Reports were analysed over time to see if there were any identifiable trends that could be tied to policy changes.

Data was not available for all drugs over the time period studied, nor for every year, but what was available was compiled and analysed for trends. The drugs with the most available data points were used, with data compiled from the National Police Drug Headquarters Annual Reports and the NMCDAs reports. When there was a disagreement between the data sources, the NMCDAs numbers were used. For most years there was a range of prices, so the range is shown in the vertical lines. The trendline is based on the reported mean price, which is frequently on the lower end of the ranges. When prices were listed regionally, the lowest and highest recorded prices were used to determine the range for the whole country, so the lows and highs are frequently from different regions, explaining the wide variability in some cases. Depending on the drug, all of the policymakers' predictions were accurate. Some drugs had an increase in price, some decreased, and some stayed the same. A discussion of each follows the charts.

#### **6.4.1 Cannabis products**

Cannabis substance prices were split into marijuana and hashish for price comparisons. Typically, hashish is more expensive, however, the range for marijuana was very wide, with some regions reporting up to 600 CZK per gram, while the average remained closer to 200 CZK. Along with an increasingly variable price, the price of marijuana has been rising, likely because of the introduction of hydroponic technology, which increased the availability of high quality, high potency marijuana that could command higher prices. Along with the differences in potency and product type, regional differences also contribute to the variability in pricing, since availability is higher in city centres.

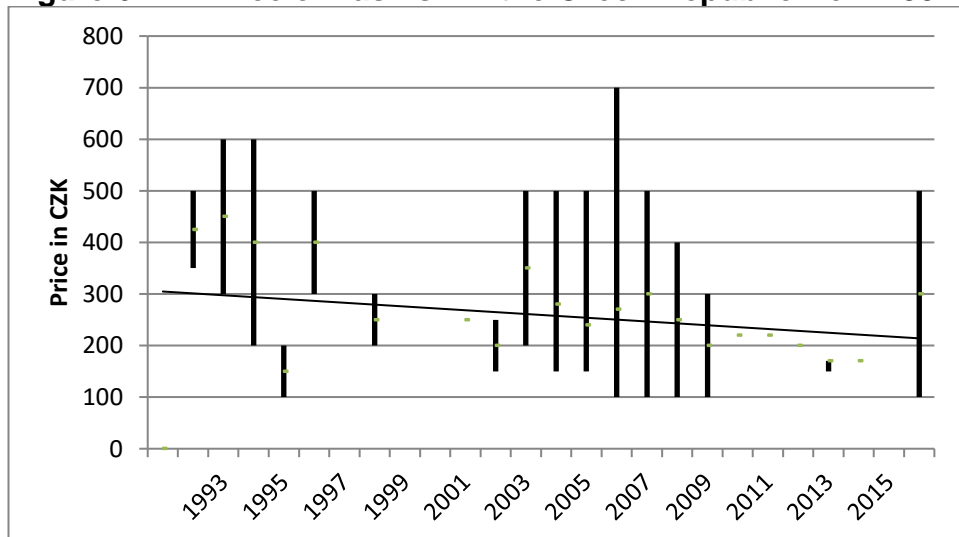
**Figure 6.20: Price of marijuana in the Czech Republic from 1992-2016**



Data from Czech National Police Drug Headquarters and NMCDDA annual reports

The trend for hashish prices, which can be seen in Figure 6.21, has been decreasing to the point that marijuana and hashish had the same average price in 2016. Increased availability and competition, as well as a growing marijuana market with higher quality product has led to price decreases. Similar to marijuana, the hashish market saw increased pricing variability during the 2000s, though this was more difficult to measure in hashish due to limited price reporting for several years.

**Figure 6.21: Price of hashish in the Czech Republic from 1992-2016**

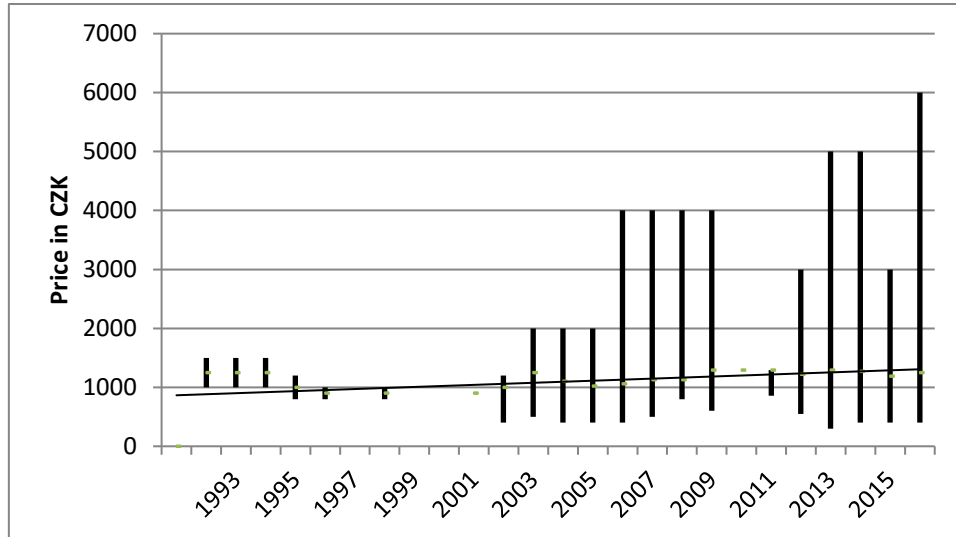


Data from Czech National Police Drug Headquarters and NMCDDA annual reports

### 6.4.2 Methamphetamine

The average price for methamphetamine has increased slightly over time, but like cannabis, variability has drastically increased. Prices vary greatly by region which is evident in the wide price ranges in Figure 6.22.

**Figure 6.22: Price of methamphetamine in the Czech Republic from 1992-2016**



Data from Czech National Police Drug Headquarters and NMCDDA annual report

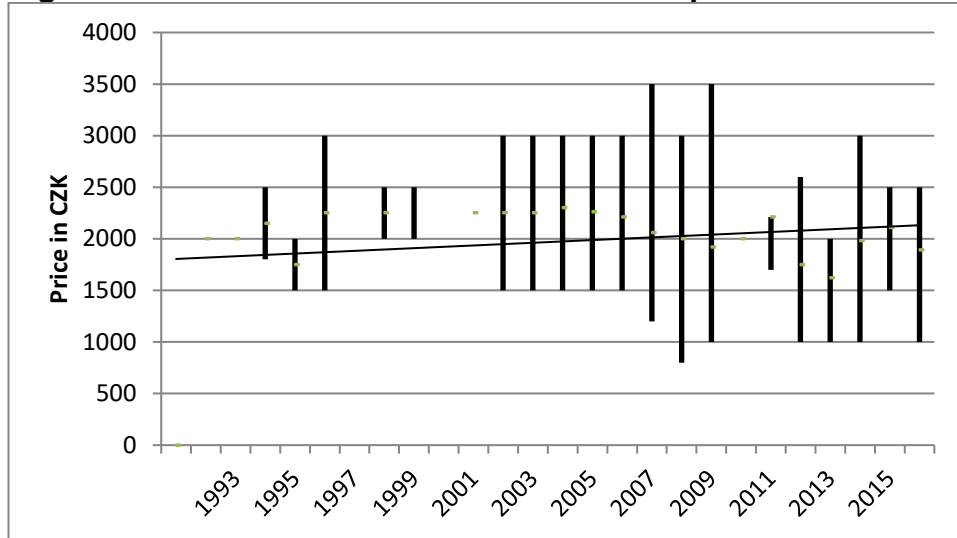
Along with regional differences, and differences in purity, the price of methamphetamine has been impacted by legal changes. The closure of the ephedrine plant and stringent restrictions placed on the possession of ephedrine-based precursors led to price increases that spurred innovation in the production methods for methamphetamine. It also led to increasingly imported precursors, which caused variations in price based on proximity and ease of transit. These factors likely contributed to the variable pricing seen from the late 2000s to 2016 though the mean price has remained relatively stable over time.

### 6.4.3 Cocaine

Cocaine is one of the least popular drugs in the Czech Republic, so there is less pricing data available than for other substances. Since it has to be imported from Latin America, and the Czech Republic is not coastal, transit costs add to the price of cocaine and it is more expensive than the competing stimulant methamphetamine, generally costing around 2000 CZK/gram. While there is variability based on quality and regional differences, the price has remained stable over time.



**Figure 6.23: Price of cocaine in the Czech Republic from 1992-2016**

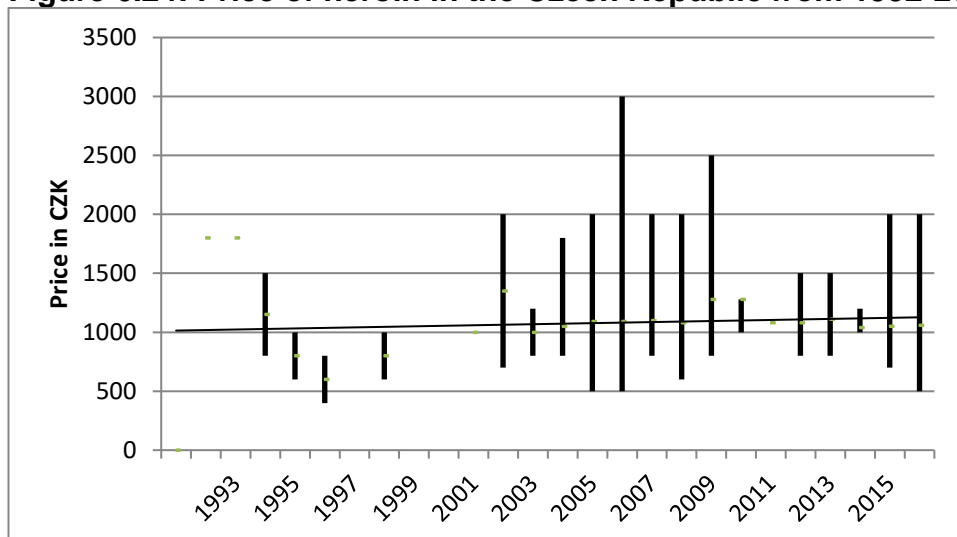


Data from Czech National Police Drug Headquarters and NMCDDA annual reports

#### 6.4.4 Heroin

Heroin has followed almost the same trend as cocaine, a gradual increase, but at a level more comparable to methamphetamine. There was a heroin shortage in Europe from 2010-2011, but it did not appear to affect prices in the Czech Republic. Data were very limited in those years, so the variability of the prices did disappear, but what was reported was consistent with the previous years.

**Figure 6.24: Price of heroin in the Czech Republic from 1992-2016**



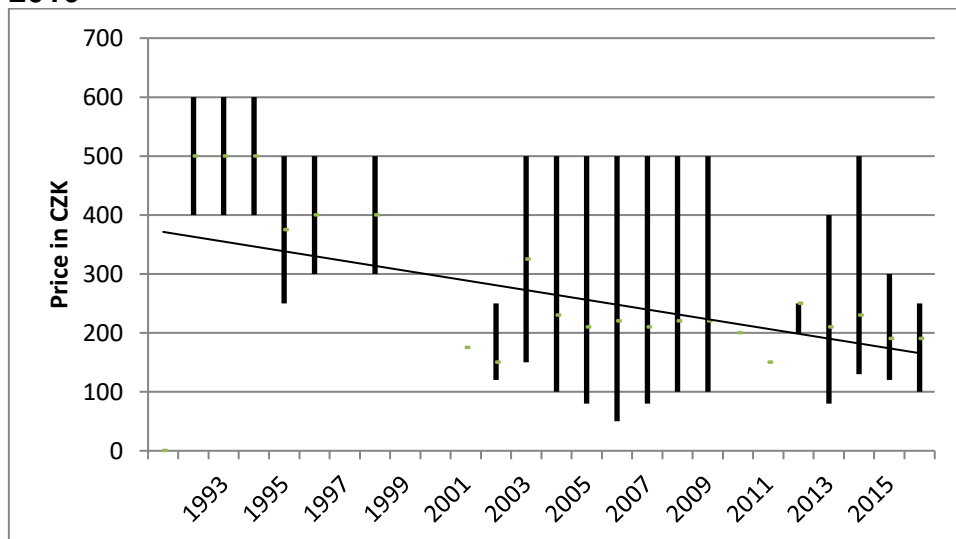
Data from Czech National Police Drug Headquarters and NMCDDA annual reports

Like cocaine, the Czech Republic is far from the origin countries for heroin, so it is costly to import, but the changing national drug policies seem to have had little effect on pricing.

### 6.4.5 Ecstasy and dance drugs

The drug with the most significant change in pricing was ecstasy (MDMA). Though it levelled out in later years, the price decreased substantially from 1992 to 2001. Ecstasy is quite popular in the country and is viewed as a fairly safe substance in public opinion surveys. After the initial introduction in the early 1990s, when it was new and higher prices could be demanded, availability increased and prices dropped. Tolerance for the drug is high, making enforcement risks minimal. Ecstasy is also produced locally and throughout Europe, so the import costs are low, making ecstasy a drug with potential for price to be influenced by policy changes. The pricing trend can be seen in Figure 6.25.

**Figure 6.25: Price of ecstasy (MDMA) in the Czech Republic from 1992-2016**



Data from Czech National Police Drug Headquarters and NMCDDA annual reports

### 6.4.6 Online drug market prices

The modern drug market is not limited to street dealing, which was a consideration in data collection. Previous studies of online drug markets have shown them to be popular in the US (Barratt et al., 2014; Dolliver, 2015), but there is not as much evidence in other countries. In the Czech Republic, many drugs are inexpensive, which reduces the need to shop online. It is also low-risk to buy drugs in the street, as possession of small amounts is not a criminal offence and carrying an amount for personal use would generally fall under the threshold levels, so the necessity of online drug markets is minimal.

In order to investigate whether the online markets were economically viable competitors for the Czech market a Tor browser was used to visit Silk Road 3.1, a publicly known online drug marketplace. The previous iterations of Silk Road have been shut down by law enforcement, but it continues to be recreated, boasting on the front page that is ‘the darknet’s most resilient marketplace’ (as of data collection October 18, 2017). Since cannabis is readily available in the Czech Republic at a low price, it was assumed to be more expensive online and was excluded from price comparisons. Both heroin and cocaine are more difficult to obtain and substantially more expensive and have maintained stable prices in the Czech market, so the top seller listings for each drug were collected. Methamphetamine was also included, despite the ease of access in the country. If the hypothesis that readily available drugs would be cheaper to buy within the Czech Republic was supported, there should be a significant difference in the street price and the online price. Silk Road prices are listed in US dollars and bitcoin, so the prices were converted to Czech koruna at the exchange rate on October 18, 2017, which was 21.77 Czech koruna per dollar.

**Table 6.9: Silk Road 3.1 drug prices per gram versus street prices per gram in CZK**

| Substance              | Silk Road 3.1 Prices |            |               | 2016 average street price |
|------------------------|----------------------|------------|---------------|---------------------------|
|                        | <i>High</i>          | <i>Low</i> | <i>Median</i> |                           |
| <b>Cocaine</b>         | 2177                 | 1089       | 1732          | 1890                      |
| <b>Heroin</b>          | 2221                 | 435        | 1045          | 1060                      |
| <b>Methamphetamine</b> | 6531                 | 529        | 1524          | 1250                      |

Both the street prices and the online prices varied widely, likely by quality/purity of product, but the Czech street prices were very competitive compared to the online pricing. The lower prices on Silk Road tended to be for larger amounts (over 10g), which might deter personal buyers that do not want to take on the risk of importing larger quantities. Bulk pricing within the Czech Republic would also be lower in price than what end users would pay, so those are not very comparable. In any case, the pricing structure of the online marketplace did make it competitive with the local pricing and warrants further consideration in drug market research.

## **6.5 Conclusion**

The evidence provided in this chapter suggests that the policy changes had significantly different outcomes in terms of prosecutions and convictions. While drug offences have increased continuously, the rate of increase was highest under the most recent policy. Many factors have influenced these rates, including law enforcement discretion, procedural changes, police prioritisation and increasing drug use. Despite the variety of influences, the interrupted time series model closely fit the trends for both supply related (Section 187/283) and personal possession related (Section 187a/284) offences, indicating that the trends changed at the same time as the policies. In addition to the difference in prosecution and conviction rates, there were also slight increases in the number of women involved in drug crime, as well as a significant increase in prosecutions of non-Czech offenders. The differences by nationality are closely tied to organised crime, which will be explored in the next chapter. Along with a substantial analysis of the nationality data, Chapter 7 includes the analysis of prosecution and conviction rates for organised crime, and potential explanations for differences across policy periods.

## **Chapter 7: The relationship between Czech drug policies and organised crime**

This chapter examines the relationship between drug policy changes and organised crime. While organised crime is not directly targeted through drug legislation, the drug trade is a major activity of criminal groups, so the two types of offences are often linked (Pace, 1991; Paoli, 2001; Nožina, 2003; De Sousa and Ferreira, 2004; Bagley, 2012). In the Czech Republic, drug trafficking and distribution have been some of the most prominent organised crime activities since 1989 (Cejp and Scheinost, 2012). The chapter begins with a brief summary of the relationship between drug offences and organised crime in the Czech Republic, and then continues to an interrupted time series analysis of the organised crime provision comparing the prosecution and conviction rates over time to examine the effects of the drug policy changes. It concludes with an analysis of the changing characteristics of organised crime offenders over time, with particular focus on nationality.

### **7.1 The connection between drugs and organised crime in the Czech Republic**

As mentioned in Chapter 2, the post-communist transition brought an increase in drug use in the Czech Republic, as well as an increase in transnational crime syndicates that quickly took advantage of the accessibility in the previously untapped territory to traffic drugs (Scheinost, 2001; Hignett, 2004; Nožina, 2004). Though trafficking occurred under the Soviet regime, it was limited in scope, and the drugs did not tend to remain in the country (Bullington, 2007). Underground networks developed due to the lack of resources under the Communist government, and the transition provided those groups with the opportunity to expand and flourish alongside foreign groups that were just entering the region (Hignett, 2004). As a result, in the early 1990s, criminal groups from the surrounding countries began using the Czech Republic as a route for trafficking drugs, counterfeit goods, and people, as well as selling within the borders of the country (Parker Jr, 1993). There were also increases in economic, financial, and sex industry crimes that were likely related to organised crime (Scheinost, 2001;

Bullington, 2007). While groups from the former Soviet states were initially dominant in the region, within a few years organised crime syndicates from every inhabited continent could be found in the Czech Republic forming a 'criminal melting pot' (Hignett, 2004). The Vietnamese diaspora, formed due to the Czech support of Vietnam in wartime, allowed an inroad for Asian criminal groups to develop a prominent presence in the region (Nožina, 2004; 2010), and drug traffickers from South America and Africa also established routes through the country (Scheinost, 2001; Hignett, 2004; Bullington, 2007) introducing cocaine and white heroin. Most of the foreign nationals prosecuted for organised criminal activity in this time period were from the former USSR, former Yugoslavia, Vietnam, and Colombia (Scheinost, 2001). While the changing trends in demographics of organised crime groups will be analysed later in this chapter, the next section provides an interrupted time series analysis of overall organised crime offences in relation to the changes in the drug policy.

## **7.2 Organised crime in the Czech criminal code**

Organised crime rates over time in the Czech Republic are more complicated to measure than drug offence rates, since the law changed substantially with the recodification. For the interrupted time series analysis, two separate criminal code sections were used, one from either side of the 2010 recodification. From 1990-2009, organised crime cases were prosecuted under Section 163a: Criminal Conspiracy, which is worded as follows:

(1) A person who instigates a criminal conspiracy, or who participates in, or supports such conspiracy . . . (Act No. 140/1961)

With 'criminal conspiracy' defined in Section 89 (17) as:

. . . a group of several persons, when such group has its own internal organisational structure with a division of roles (among individual persons) and their activities are aimed at attaining a profit by a systematic involvement in deliberate criminal activity (Act No. 140/1961).

Since organised criminal groups vary in their structure, the requirement that a group have 'its own organisational structure with a division of roles' might be too prescriptive to encompass all criminal groups, so under this version of the criminal code organised crime cases were frequently prosecuted under other code sections so the prosecutors could avoid proving that the group fit the definition of a criminal conspiracy (Ministry 2 interview). For example, drug trafficking could be prosecuted as Section 187 with the addition of Subsection 2a ('as a member of an organised group') or Subsection 4c ('in association with an organised group active in two or more countries') without appearing in the statistics for organised crime. The 2010 criminal code eliminated 'criminal conspiracy' and replaced it with 'participation in an organised criminal group' (Section 361), which reads as follows:

(1) Whoever founds an organised criminal group, who are involved in the activities of organised criminal groups, or who supports the organised criminal group . . . (Act No. 40/2009).

It can be assumed that these statistics only represent a subset of organised crime in the Czech Republic since the provision of the law is applied inconsistently and group structures vary. While some of the cases in these aggregate data sets will be drug-related, increasing the potential for influence by the drug policy changes, they may also reflect other areas of organised crime (money laundering, human trafficking, etc.) that would not be impacted by changes in the prosecution of drug offences, but all of these offences would be affected by the 2010 recodification of Section 163a to Section 361.

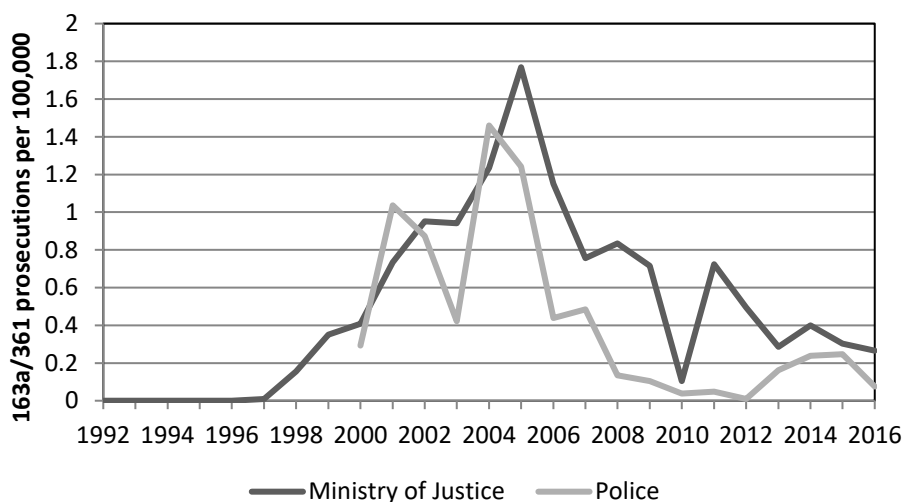
An additional consideration in the analysis was the effect of terrorist offences on the criminal group statistics. In October 2004, terrorism was added under Section 163a as an aggravating factor, as well as being listed as a separate provision (Section 93). When the criminal code was changed in 2010, acts of terror remained under aggravating factors for Section 361 in addition to a separate provision (Section 312). In this analysis, links to terrorism were not examined in the drug offence data, but the possible association between the two was considered. In the Czech Republic the drug trade has not been associated with terrorism, though links have been suspected in the drug

trade in Central Asia (International Monetary Fund, 2004; United Nations Office on Drugs and Crime, 2016), so it is possible. In this particular case, since terrorism being funded through the drug trade was not referenced in any of the available literature, or mentioned in any of the interviews, it was decided that it was likely not a relevant association and would not impact the analysis if terrorism was excluded. Some crimes of terrorism may appear in the aggregate organised crime statistics, but the additional code sections referring to terrorism were not analysed.

### 7.3 Interrupted time series analysis of organised crime offences

The prosecution and conviction rates for organised crime, and criminal conspiracy, have historically been low in the Czech Republic. It was hypothesised in this study that the drug decriminalisation policy would impact organised crime by providing an environment in which drugs could be moved and sold with minimal detection, and in which the only way to obtain the decriminalised substances was still through illegal means. It could also lead to an increase in organised crime prosecutions if the police chose to focus on large scale trafficking and organised groups. Figure 7.1 shows the rates of prosecution for Section 163a/361 over time.

**Figure 7.1: Prosecuted persons under Section 163a/361 per 100,000 population**



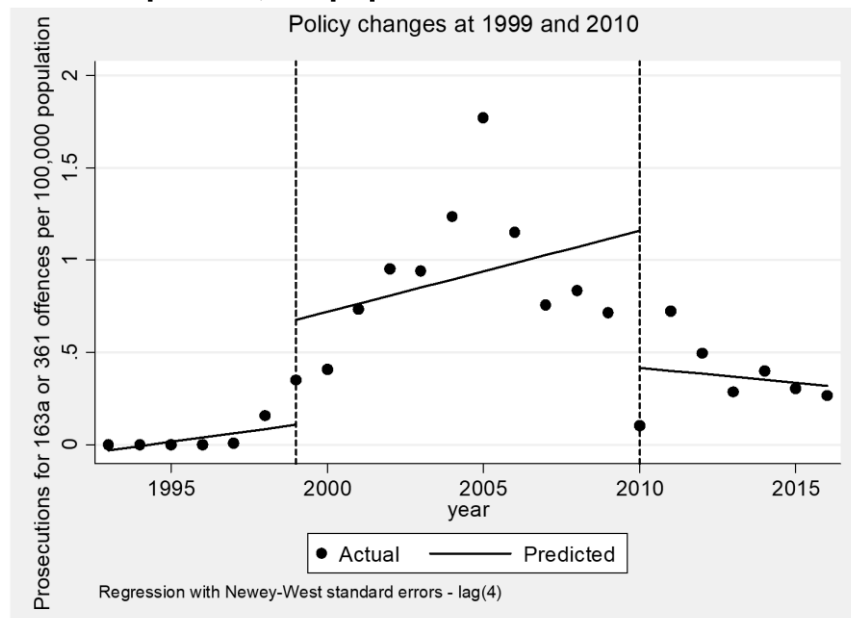
Data from Ministry of Justice Statistical Yearbooks and Czech Police Statistical Surveys of Crime



There was a rapid increase, peaking in 2005, followed by a similarly rapid decrease; however, at its peak the rate of prosecutions was only 1.8 per 100,000 people, which is objectively quite low. Therefore, the spike in organised crime is not as substantial as it appears and likely indicates successful police operations against larger groups in those years, rather than significant increases in organised crime. The 1999 drug policy change was more directly related to drug offences than organised crime, so a change would not necessarily be expected at that point, but the 2010 criminal code change significantly impacted the prosecution of organised crime due to the re-categorisation of 'criminal conspiracy'. When the 2010 code went into effect, there was an initial drop in the prosecution rate for the combined offences of Sections 163a and 361 that did differ from the trend, but it was only evident in the Justice data and returned to previous levels the year after, furthering the already declining trend without a notable difference.

The interrupted time series analysis, like Section 188/286 in Chapter 6, displayed a non-linear pattern of prosecutions from one period to the next. The peak did not fall at a point of policy change.

**Figure 7.2: Interrupted time series analysis of prosecutions for Section 163a/361 per 100,000 population**



Data from Ministry of Justice Statistical Yearbooks

There were significant differences in the levels from one drug policy to the next, as seen in Table 7.1, but this was due to the outliers pulling the trendline up during the second time period, not a change that would likely be

attributable to the policy change. There were no significant differences between the slopes of the three periods, indicating a slight increase in prosecution rates over time, which was minimal compared to the drug offences. Neither of the postintervention trends was statistically significant.

**Table 7.1: Results of interrupted time series analysis for Section 163a/361 prosecutions**

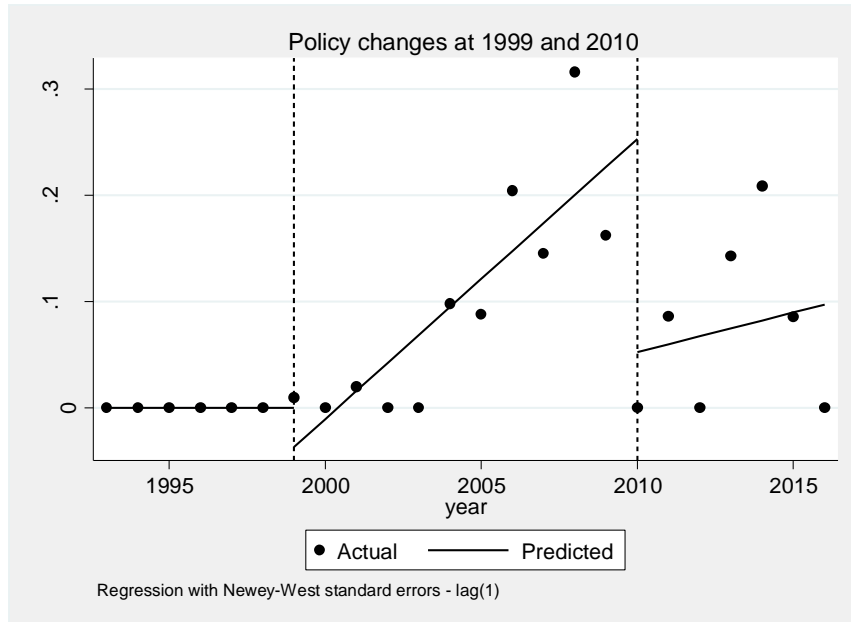
| 163a/361 Prosecution rates | 1999 policy change |              |              |              | 2010 policy change |               |               |              |
|----------------------------|--------------------|--------------|--------------|--------------|--------------------|---------------|---------------|--------------|
|                            | Difference         | LCI          | UCI          | p-value      | Difference         | LCI           | UCI           | p-value      |
| Change in Level            | <b>0.568</b>       | <b>0.019</b> | <b>1.117</b> | <b>0.043</b> | <b>-0.740</b>      | <b>-1.337</b> | <b>-0.144</b> | <b>0.018</b> |
| Change in Slope            | 0.021              | -0.063       | 0.104        | 0.607        | -0.060             | -0.181        | 0.061         | 0.311        |

Regression with Newey-West standard errors. LCI= Lower bound of confidence interval. UCI= Upper bound of confidence interval. Bolded are significant to at least  $p < 0.05$ .

The drop in level in 2010 is possibly explained by the types of crimes that were prosecuted under this section, with more offences qualifying as ‘criminal conspiracies’ (previous code) than ‘organised crime’ (new code), as well as an adjustment period for law enforcement to begin utilising the new code.

The conviction rate for Section 163a was zero until 1999, so attempts to conduct an interrupted time series analysis with two interventions were met with an error message in Stata that the regression could not be completed. Instead, the analysis had to be completed with only one intervention, at 2010, which more accurately fits the data for organised crime offences.

**Figure 7.3: Interrupted time series analysis of convictions for Section 163a/361 per 100,000 population**



Data from Ministry of Justice Statistical Yearbooks

Similar to the prosecution data, there were outliers and the post-2010 trend was non-linear. There was a significant difference in level before and after the intervention, but the absolute numbers were too low to consider this strong evidence for a difference between policy periods and the postintervention trend was not statistically significant. Table 7.2 shows the results of the statistical analysis.

**Table 7.2: Results of interrupted time series analysis for Section 163a/361 convictions**

| 163a/361 Conviction rates | 2010 policy change |               |               |                  |
|---------------------------|--------------------|---------------|---------------|------------------|
|                           | Difference         | LCI           | UCI           | p value          |
| Change in Level           | <b>-0.201</b>      | <b>-0.285</b> | <b>-0.116</b> | <b>&lt;0.001</b> |
| Change in Slope           | -0.019             | -0.053        | 0.015         | 0.247            |

Regression with Newey-West standard errors. LCI= Lower bound of confidence interval. UCI= Upper bound of confidence interval. Bolded are significant to at least  $p < 0.05$ .

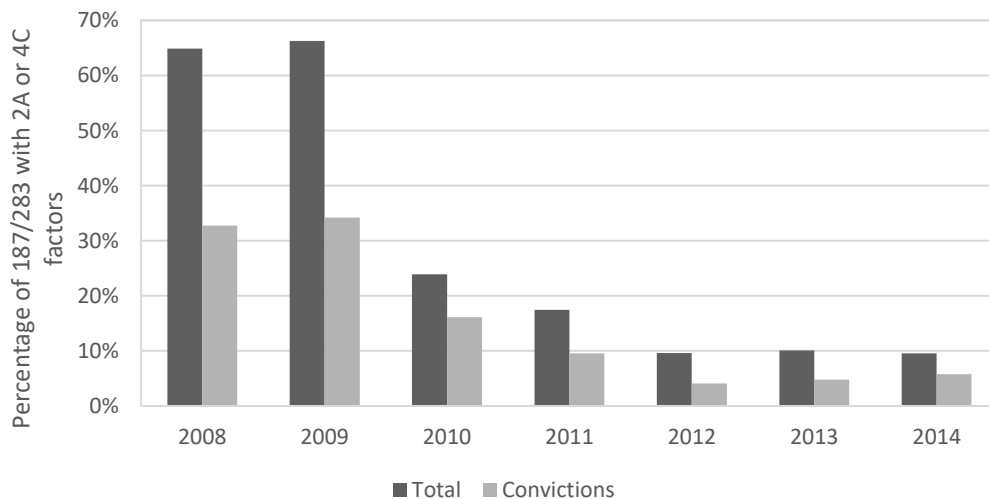
While this analysis explored the differences in policy periods for overall organised crime, it did not specify which types of organised crime were included and was thus not targeted towards drug-related crime. The next section focuses on organised crime that is specifically related to the drug trade.

### 7.3.1 Drug-related organised crime data analysis

The aggregate data for Section 163a/361 could not be sorted to differentiate between drug-related organised crime<sup>13</sup> and other organised crime activities, so additional data were obtained from the Institute for Criminology and Social Prevention (ICSP) identifying the Section 187/283 offences with aggravating factors linked to organised crime, allowing for a limited analysis of drug-related organised crime. The aggravating factors considered were Subsection 2A, 'a crime committed with an organised group', and 4C, 'a crime committed with an organised group operating in two or more countries'. Data were obtained from 2008-2014, because that was all that was available. Offenders that were convicted under either Section 187 with aggravating factors 2A or 4C, or Section 283 with aggravating factors 2A or 4C, were counted. Individual-level data were also obtained for 2005-2015 (through October), as sorted by the date the records were received by the statistical office (typically the end of proceedings).

Aggregated data for organised drug offences displayed a declining trend in the use of these aggravating factors. Figure 7.4 shows the trends in both total offences and convictions.

**Figure 7.4: Percentage of Section 187 and Section 283 offences with organised group charges**



Data from Institute for Criminology and Social Prevention

<sup>13</sup> Defined as a co-occurring prosecution of a drug offence and an organised crime offence, or a drug offence with applied aggravating factors related to organised groups.

In 2008 and 2009, 65% of Section 187 drug offences included an aggravating factor related to involvement in an organised criminal group, but rates dropped dramatically, to 24%, in 2010. After decreasing again the following year, rates remained around 10% of Section 187/283 offences from 2012-2014. While it would appear from the data that fewer cases of organised crime were being detected, the interview participants clarified that what actually happened was a change to the wording of the Subsection. Prior to 2010, Subsection 2A stated 'if they committed the crime under Subsection 1 as a member of an organised group *or on a significant scale*' (emphasis added). In 2010, when the code changed to Section 283, Subsection 2A was reduced to 'as a member of an organised group' only. The additional cases in 2008 and 2009 were likely a result of crimes committed 'on a significant scale', but not necessarily as a member of an organised group. Taking this into account, the rate of drug-related organised crime has still possibly decreased, but probably not at the substantial rate indicated between 2009 and 2010.

Out of a total of 1228 individual records for Section 187/283 offences, 660 (53.7%) included an aggravating factor related to organised group activity. Only 14 offenders were convicted of both an organised crime charge (Section 163a or Section 361) and a drug-related charge, but they were included in the analysis as they met the pre-determined criteria for drug-related organised crime. There were more offences recorded under the pre-2010 code than the post-2010 code in the individual-level data. When the 674 total records were sorted by code, 511 (75.8%) were convicted under the 1999-2009 code and 163 (24.2%) were convicted under the 2010 code. This unequal distribution could be due to a decrease in this type of crime, but it could also be attributed to the length of time that serious cases take in court (average length of proceedings for Section 163a from 2004-2008 was 2.7 years). It is also possible, and probable, that large scale trafficking operations were conducted by organised crime groups, but that their status as a group could not be proven, as suggested by the interview respondents. In that case, the pre-2010 data might actually be a better indicator of organised crime activity, since large scale crimes were incorporated under the same factors.

## **7.4 Discussion of the time series analysis of organised crime offences**

From the analysis of crime rates, it could be concluded that the Czech Republic has very little organised crime, but that assumption was not supported by the literature and interview data. As explained by a researcher with the ICSP:

We have a very small number of cases prosecuted and sentenced as organised crime by the penal code. . . it's [simpler] to prosecute the case as a 'normal crime'. It's not so complicated to prove all features that are needed by the article of law. So, if you look at the statistics data about prosecuting organised crime, similar [to] corruption, you may see that we have no problems with organised crime. But the reality is that the cases are not prosecuted as organised crime, but as a serious but normal crime. (Ministry 2)

This supports the concept that certain crimes, such as organised drug trafficking, are easier to prosecute under their specific code sections rather than under the umbrella of organised crime. It also implies that organised crime is prevalent in the Czech Republic, despite low rates of prosecution and conviction under Section 163a/361.

The interview participants suggested that drug-related organised crime in particular would be significantly underestimated from the official crime rates. Ministry 2 said that the government, police, and judiciary all know that drug trafficking is an activity associated with organised crime, but the cases rarely appear in statistics because it is easier to prosecute them under Section 187/283 than for organised crime. Similarly, adding an 'organised group' factor to another drug offence can also be difficult. According to the Ministry interview participants, the issue with adding organised crime to a charge is proving the existence of a group. To be considered organised crime, the group must have some form of hierarchy, organisation of positions, and an extended duration of existence (Ministry 2 and 3 interviews). As Ministry 3 stated:

It's much easier to prove that we three committed one concrete case and catch us, than that we established an organisation, we somehow distributed our roles in it, and we entered into it [for the] next 10 years, for instance. (Ministry 3)

This explains the low proportion of Section 187/283 cases that include the organised crime provision, despite knowledge of organised groups involved in trafficking.

The number of prosecutions also does not provide much detail on the groups themselves. One of the interview participants, an investigative journalist, explained that police could not know the size or inner workings of the group (unless they infiltrated it), and what they uncover for prosecution could be a small proportion of the group in question, stating:

They are very closed societies. They fully control the information flow and so on. So, I think the police [are] doing their very best to break into these circles and to prosecute those people, but the number of prosecuted people is still not enough. The number could be much smaller than the group that is behind it. (Researcher 5)

If the majority of the group goes undetected, one significantly successful police operation could lead to a spike in organised crime cases over a short period of time, such as that seen from 2004-2005 in Figure 7.1, without making a meaningful difference in the incidence of organised crime. Scheinost and Netík (2010) surveyed police about their experiences with organised crime. Of the 30 participants, when asked about the use of Section 163a in police practice, 8 said it was used insufficiently, 14 said it was only partially used, 4 said it was used sufficiently, and 4 said they did not know (Scheinost and Netík, 2010), so it seems that the police thought the provision could be used more effectively. When asked why organised drug crimes were rarely prosecuted as organised crime, their participants pointed to the professionalism of offenders and the closeness of organisations. Identities of those at the higher levels of drug crime are protected, so it is difficult to detect and prove the existence of these organisations, which was similar to the responses received in the interviews

for this thesis. Scheinost and Netík's (2010) respondents also stated that prosecutors and courts were reluctant to accept evidence of criminal organisations, so it was not worth the effort for police to try to prove that it was an organised crime case and risk a negative outcome, when they could easily close it as an ordinary group crime. Another response that arose was the international connections that many organised groups have, often using their own languages to conduct business to avoid detection (Scheinost and Netík, 2010), which makes it easier to prosecute a single dealer rather than trying to disentangle the whole group. Blažejovský (2016) found the same issue, that methamphetamine manufacturers were often Vietnamese immigrants that only spoke Vietnamese, making it hard for police to break into their insular organisations due to language barriers. The language issue made it hard for police to determine who was in charge (Blažejovský, 2016). This was also discussed in the thesis interviews, particularly around the topic of nationality in organised crime, which will be explored in section 7.5.

What this data indicates is that although drug offence rates have continually increased, the rates of prosecution and conviction for organised drug crime have decreased. One conclusion that can be drawn from this, particularly with the input of the interview participants, is that proving involvement in organised crime is not worth the time or effort necessary in large scale drug crime. It is easier to seek prosecution and conviction for trafficking alone than to try to impart an organised crime component that might be rejected by the courts, so the actual number of cases that are attributed to organised crime is underestimated. To further make sense of the data, the demographic characteristics of offenders, namely nationality and sex, were examined to assess patterns over time.

## **7.5 Nationality and organised crime in the Czech Republic**

Studying the ethnic or national identities of organised crime groups carries inherent risks, as previously discussed in Chapter 3. There is a risk of scapegoating foreign nationals and blaming them for bringing crime into a region. This concept, the 'alien conspiracy' theory, stems from the idea that foreign outsiders import crime into stable societies to corrupt them (Smith Jr, 1976; Nožina, 2004; Antonopoulos, 2009). The complicating factor is that



some organised crime groups do have ethnic or national ties, so increasing arrest rates for specific populations could be justified rather than a sign of systematic discrimination. This section examines the conviction rates and sentencing of various groups in the Czech Republic to look for trends across policy periods to try to interpret the relationship between nationality and organised crime. Interview data was used in two ways for this analysis. The first was to identify if there were specific ethnic or national groups that participants believed to be associated with organised crime, while the second was to help to explain the results of the quantitative analysis.

When asked about ethnic organised crime groups in the Czech Republic, one of the research participants stated that:

When we speak about organised crime groups connected to drug trafficking, ones in the middle level and higher level of organisations, you can see the people from abroad. Not local people. . . [They don't consider] Czech nationals to be reliable because they are more willing to cooperate with police, more willing to speak, etc. (Researcher 1)

In this case, they attributed the higher-level crime to foreign nationals and lower levels to Czech nationals. Other participants expressed similar perspectives, placing Czech citizens on the lower rungs of the hierarchy, as seen from this selection of responses to the question: Are there any groups that you associate with drug trafficking or organised crime?

Without a doubt, citizens of the Czech Republic, the Vietnamese Socialist Republic and then also citizens of the Balkan countries. (Law Enforcement 3)

We have an important involvement of West Africans, mainly of Nigerians, into drug trafficking and they are not just drug dealers, but they are recruiters of Czech nationals as drug couriers. They mainly recruit them for smuggling cocaine from South America to different European destinations. (Law Enforcement 2)

Definitely Czech offenders and Czech groups, but these foreign criminal groups are more consistent, and they are really

groups. The Czech perpetrators, they are let's say, individuals. As for Vietnamese, the problem . . . was a boom of their involvement, so it is very visible, but traditionally we have here criminal groups from Africa, especially Nigeria, that are involved in the trafficking and distribution of marijuana, hashish, and also cocaine. (Researcher 5)

All of the participants agreed that the primary ethnically distinct criminal organisations came from four regions: Vietnamese, Balkan, Russian-speaking, and West African. However, their understanding of the groups and their operations varied, possibly due to both the evolving nature of their criminal activities and the experiences of the participants. The groups adapted over time, shifting their activities to increase profits (Blažejovský, 2016), but most of the participants may not have been fully up-to-date given fast-paced changes in the market and their varied positions. This would potentially explain their differing descriptions of how organised criminal groups operate in the Czech Republic.

Whether or not foreign involvement is more significant than domestic involvement is debatable and also plays into the 'alien conspiracy' theory of blaming 'outsiders' for crime (Nožina, 2004). Assigning blame for higher levels of crime to foreign nationals is not uncommon in alien conspiracies, as it suggests that the masterminds were foreign, taking advantage of locals either by using them in lower levels of organisations, or by corrupting politicians (Antonopoulos, 2009). This explanation was also expressed by another interview respondent, in reference to domestic methamphetamine producers that were trafficking precursors from Poland:

In some of the conversations I've had with law enforcement and policymakers they sort of tend to say, 'well of course the big bosses in the upper ranks of the groups are all from overseas' and 'Czechs and Slovaks, they're only involved a little bit. They tend to do a lot more of the grunt work, the couriering, that type of thing'. And I think there are occasions where that is true, but I think that it's almost too convenient to be able to claim that. (Researcher 7)

This was also supported by Scheinost, et al. (2005), who argued that reporting on organised crime in the Czech Republic frequently focused on crimes committed by foreign nationals, while downplaying the activities of domestic offenders. Their study examined economic crime, and the data showed that the overwhelming majority of prosecuted offenders were Czech nationals, and that additional charges for organised crime were rare; yet when judges and law enforcement officers were interviewed, they thought that there was a significant amount of organised criminal activity and foreign involvement (Scheinost et al., 2005).

### **7.5.1 Analysis of the data on nationality of organised crime offenders**

The literature review and interview data identified four major foreign ethnic groups associated with organised crime in the Czech Republic. Annual reports from the police included a breakdown of convictions by nationality, so the data were compiled from the reports, and members of the identified groups were placed into categories for analysis. Vietnam comprised its own group, but the other classifications, Russian-speaking<sup>14</sup>, Balkan<sup>15</sup> and West African<sup>16</sup>, included multiple countries (see footnotes). Each group was then compared as a percentage of the total number of foreign nationals convicted for major drug offences, as seen in Figure 7.5.

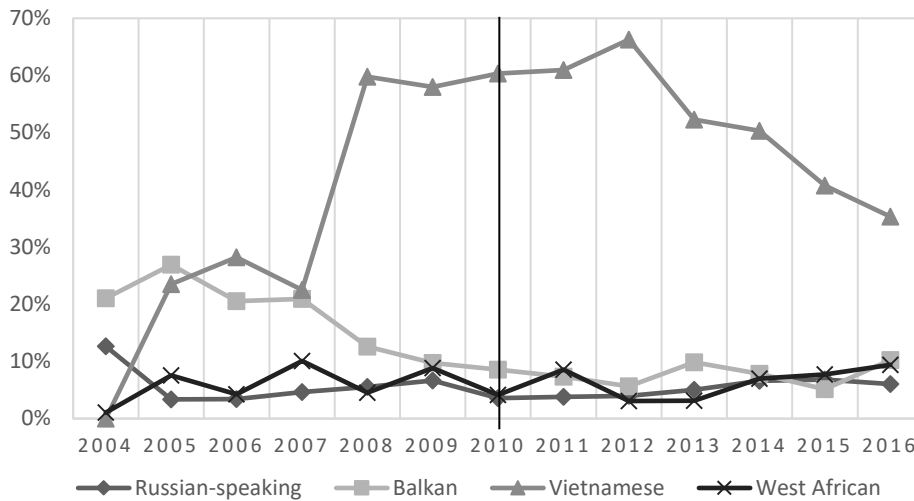
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<sup>14</sup> Russian-speaking groups were defined as nationals of: Russia, Ukraine, Belarus, Kazakhstan, Kyrgyzstan, Uzbekistan, Turkmenistan, and Tajikistan.

<sup>15</sup> The Balkan region included: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Greece, Kosovo, Macedonia, Montenegro, Romania, Serbia, Slovenia, Turkey, and the former Yugoslavia (during the time of its existence).

<sup>16</sup> West Africa included: Benin, Burkina Faso, Cabo Verde, Côte d'Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Morocco, Niger, Nigeria, Senegal, Sierra Leone, and Togo.

**Figure 7.5: Proportion of each major ethnic group as a percentage of foreign nationals prosecuted for drug offences, by year**



Data from Czech National Police Drug Headquarters

As Figure 7.5 demonstrates, Vietnamese groups have dominated the foreign market for drug trafficking since 2008, though foreign nationals have only made up between 4-14% of total drug convictions over time. Several studies (Nožina, 2000; 2010; Scheinost and Netík, 2010; Zeman et al., 2015), along with all of the interview participants, stated that the Vietnamese immigrant population had become increasingly involved in the drug trade in the Czech Republic, as reflected by the data. While all of the primary foreign groups were similarly situated in 2004, the market drastically changed in 2007. This does not coincide with any legal changes to the drug policy, but according to one of the interview participants was linked to technological advances in cannabis production (Researcher 1). The Vietnamese population got into the industry to produce drugs for the use of their own community, but in 2007 or 2008, a Vietnamese cannabis grower imported hydroponic technology from the Netherlands that allowed cannabis farms to grow rapidly (Researcher 1). Vietnamese organisations then began to expand into methamphetamine production, since it is so profitable in the Czech Republic. Researcher 1 now claims that there is a small methamphetamine market organised by local Czech 'cooks' along with a more industrial market, organised by the Vietnamese.

This was agreed upon by other interview participants, one of whom pinned the change directly on the drug policy. When asked directly about how the

changes in drug policy affected crime, an interviewed Czech policy expert stated:

I think that this criminalisation in terms of this 'greater than small' policy led to more criminal activity of mobs, or organised groups . . . So, I think that part of the problem we are dealing with now is Vietnamese communities and other communities or organised groups that grow cannabis as a mass production. Most was done or caused by this 'greater than small' amount in the past, because before that there was a strong community of home growers that were growing marijuana without any, not any, but without much, attention from the police force. Then after this law, it completely changed and they were forced to actually stop growing and buying marijuana from these sellers. (Researcher 4)

This points to the issue discussed in Chapters 3 and 6, that the organised groups commercialised the production of drugs during a period of low enforcement. Home growers could no longer compete, or were arrested easily during crackdowns, and the bulk of the drug market was overtaken by organised crime, which in this case was large scale Vietnamese production. This is one possible explanation for the drastic increase in the Vietnamese proportion of convictions, as both serious crimes attributable to the Vietnamese groups, as well as police prioritisation for apprehending them, would have increased. An interviewed police officer provided the same explanation, without directly linking the change to the drug policy:

It is without a doubt that 2006 roughly marks the mass arrival on the scene of significant numbers of persons of Vietnamese origin, who began to grow illicitly large volumes of cannabis with high content of THC and who later widened the scope of their activities to include also the manufacture and export of methamphetamine. (Law Enforcement 1)

These accounts coincide well with the quantitative data; however, convictions of Vietnamese nationals have significantly declined since 2012, with convictions of citizens from nearby Central European countries (notably

Poland, Slovakia, and Bulgaria – not included in Figure 7.5) taking up a larger proportion. The 2016 Annual Report from the Anti-Drug Unit indicates that the decrease was likely due to declining Vietnamese involvement in cannabis production and recent declines in methamphetamine production (National Drug Headquarters, 2016). Despite the decrease, the Vietnamese still made up the largest proportion of foreign convictions for drug offences in 2016.

The decrease in specificity, defined as the willingness and capacity for groups to produce and distribute multiple substances, as described above in the Vietnamese population, was also noted to have occurred in other groups. The expansion into new drug areas was shared by Albanian, Vietnamese, and Czech suppliers, as explained by a police interviewee who stated that a ‘multi-drug approach’ – heroin, cocaine, and methamphetamine – had become characteristic of Albanian traffickers, whilst Czech nationals were getting involved with indoor cultivation of marijuana for export to Germany (Law Enforcement 2).

From the descriptions of the drug market in the interview data, it would appear that several groups would have an increasing share of the convictions, but the Vietnamese have remained the most significant ethnic group in organised drug crime. This trend was also evident in the sentencing data. For the most serious drug-related infractions, those under Section 187 or Section 283 that resulted in a sentence of 60 or more months of imprisonment, the percentage of foreign nationals again exceeded the proportion of foreign nationals in the population. Table 7.3 shows the rates for Czech, Balkan, Vietnamese nationals sentenced to 60 or more months in prison for Section 187/283 offences, along with a column for other nationalities. Both Russian-speaking and West African offenders made up approximately 1% of the total, so they were excluded to avoid generalisations based on a very small number of people.

**Table 7.3: Offenders sentenced to 60 months or more for Section 187/283 offences, by nationality and policy period**

|                  |                       | Czech | Balkan | Vietnam | Other | Total  |
|------------------|-----------------------|-------|--------|---------|-------|--------|
| <b>1999-2009</b> | <b>Count</b>          | 371   | 44     | 37      | 51    | 503    |
|                  | <b>% within group</b> | 73.8% | 8.7%   | 7.4%    | 10.1% | 100.0% |
| <b>2010-2015</b> | <b>Count</b>          | 409   | 41     | 199     | 65    | 714    |
|                  | <b>% within group</b> | 57.3% | 5.7%   | 27.9%   | 9.1%  | 100.0% |

Data from individual court records

The disproportionate conviction of foreign nationals was less prominent under the 1999 policy, with 73.6% of convictions being Czech nationals. After the 2010 recodification, that decreased to 57.3% Czech nationals. A particularly notable difference is in the Vietnamese diaspora, where serious drug crime convictions were at 7.4% before 2010, but increased to 27.9% after 2010. While this mirrors the percentages of the police data, in those cases the Vietnamese population was only compared to the percentage of foreign prosecutions. In this dataset, the Czech population has not been removed, indicating a high rate of convictions of Vietnamese people. The proportion of offenders from other nationalities, aside from Czech and Vietnamese, decreased from the 1999 policy to the 2010 policy. This could be interpreted as a drastic change in policing from one policy to the next, which is possible since the police reports suggest that internal prioritisation was a more prominent factor than overall policy changes. The convictions of Vietnamese suppliers increased rapidly in 2007, at the beginning of the police restructuring but prior to the drug policy change. The recent decline is not evident from the summary table, as the individual data was only collected through 2015.

While this clearly shows that the Vietnamese population is being convicted at a higher rate than other nationalities, it is important to note that disproportionality does not imply an unfair targeting system (Murji, 2007). The statistics on serious drug-related crimes all point to an increase in the prosecution and conviction of Vietnamese offenders, but do not indicate whether this was due to increased involvement of the Vietnamese groups in the drug trade, or a more focused policing effort, or both. Since all of the interview participants, and the literature on Czech organised drug crime,

pointed to the Vietnamese community as the primary source of both cannabis and methamphetamine, it is likely that the police did increase their targeting of that particular demographic, but not necessarily in a discriminatory way. One of the interview participants, from law enforcement, made this point:

If the current statistics do not record such high numbers of offenders from e.g. the Balkans, it doesn't mean that their criminal activity is diminishing. It only means that the criminal activity of offenders of Vietnamese origin, for example, has become the most serious problem and that greater efforts are expended on solving this situation. This logically leads to statistically higher number of prosecutions of Vietnamese persons and lower number of offenders from other ethnic groups. (Law Enforcement 1)

From this statement it seems that policing efforts may have been focused more on the Vietnamese than other organised traffickers. This same point was reiterated by interview participants from both research and government. All of the participants agreed that the Vietnamese community was the dominant force in drug production and distribution, so their disproportionate presence in criminal justice statistics was not surprising and likely justified, though that is not to say that there was no discrimination involved. The Czech Republic is tolerant of immigrants, but, as noted in Chapter 2, prefers immigrants that fit a certain profile. Illegal immigrants, or those that do not matriculate into society, may not be perceived as well.

Sentencing for organised crime convictions (Section 163a/361) was compared in a similar manner to the drug offence conviction data, but there was limited data available. While the nationality of drug crime offenders was easily accessible in police reports, aggregate data for organised crime was not accessible. Therefore, the analysis was limited to the 187 individual-level records, which included anyone sentenced to unconditional imprisonment, not only 60 months or more. Table 7.4 shows the percentage of offenders with custodial sentences for organised crime infractions, by nationality and policy period.



**Table 7.4: Offenders sentenced to prison for Section 163a/361 offences, by nationality and policy period**

|           |                | Czech | Balkan | Russian-speaking | Vietnam | West African | Other | Total  |
|-----------|----------------|-------|--------|------------------|---------|--------------|-------|--------|
| 1999-2009 | Count          | 69    | 2      | 4                | 6       | 0            | 21    | 102    |
|           | % within group | 67.6% | 2.0%   | 3.9%             | 5.9%    | 0%           | 20.6% | 100.0% |
| 2010-2015 | Count          | 35    | 7      | 6                | 16      | 9            | 12    | 85     |
|           | % within group | 41.2% | 8.2%   | 7.1%             | 18.8%   | 10.6%        | 14.1% | 100.0% |

Data from individual court records

Similar to drug offence convictions, organised crime convictions in the Czech Republic have disproportionately represented foreign nationals, particularly under the most recent criminal code. Czech nationals represented 67.6% of organised crime prison sentences under the 1999 code, and only 41.2% after 2010. The small sample size does impact these proportions; however, making small changes in absolute convictions appear more significant. The Vietnamese population saw a similar increase in organised crime as they did to the drug crime convictions, increasing from 5.9% to 18.8%, Nigerian nationals made up the next largest percentage at 10.6% post-2010, up from zero during the previous policy period, followed by groups from the Balkan region. Since organised crime data tends to spike around successful police operations, this may be due to a specific operation centring on Balkan or Nigerian organisations, which would skew the results. The most notable finding is the increased proportion of Vietnamese nationals, supporting the idea that the Vietnamese groups implicated in drug trafficking were also involved in organised crime. It is also interesting that the rate of Czech nationals decreased, demonstrating that an overall increase was not occurring, but rather a switch between domestic and foreign convictions. A separate cross-tabulation was created around drug-related organised crime specifically to link the findings of these two analyses.

While the analysis of drug offences demonstrated a strong link to organised crime groups, supported by the organised crime data, it was non-specific. Table 7.5 shows the sentencing percentages, by nationality, for drug-related

organised crime, including only those that were convicted concurrently or those that had an organised crime aggravating factor added to their conviction. Like Section 187/283 offences, the percentages of Russian-speaking and West African nationals were too small of a proportion to include separately and were included in the 'other' category.

**Table 7.5: Offenders sentenced to prison for drug-related organised crime, by nationality and policy period**

|                  |                       | Czech | Balkan | Vietnam | Other | Total  |
|------------------|-----------------------|-------|--------|---------|-------|--------|
| <b>1999-2009</b> | <b>Count</b>          | 283   | 42     | 19      | 47    | 391    |
|                  | <b>% within group</b> | 72.4% | 10.7%  | 4.9%    | 12.0% | 100.0% |
| <b>2010-2015</b> | <b>Count</b>          | 108   | 20     | 113     | 32    | 273    |
|                  | <b>% within group</b> | 39.6% | 7.3%   | 41.4%   | 11.7% | 100.0% |

Data from individual court records

The drug-related organised crime data showed vast differences between the time periods for both Czech and Vietnamese nationals. The percentage difference for Czech offenders was close to the organised crime statistics, which is interesting because the majority of the sample was drawn from the drug offence data. Nationals from countries other than the Czech Republic or Vietnam, as well as the Balkans, saw a decrease similar to drug offences. Again, the Vietnamese population had the largest increase. This provides further support for the surge in Vietnamese involvement in drug trafficking, particularly through organised groups, which was evident throughout the analysis of demographic trends. The next section looks at a different demographic characteristic, examining how sex related to convictions and sentencing for organised crime.

## **7.6 Sex differences in organised crime convictions in the Czech Republic**

Sex differences in organised crime were more challenging to analyse than for drug offences, as fewer women were convicted. The trend line for aggregate organised crime data did not show any discernible trends due to the small sample size, so only the individual data were analysed, but it was not possible to draw any definitive conclusions based on the quantitative

data alone. The difference between women convicted under the 1999-2009 code and the 2010-2015 code was only one person, but the number of men convicted dropped substantially from 128 under the 1999 code to 49 under the 2010 code. As Beare (2010) noted, the small number of women involved in organised crime makes any increases appear proportionally more substantial, so this increase does not indicate anything about the trend of women in Czech organised crime.

Interview data were used to supplement the limited quantitative results, to provide possible explanations for any sex differences in organised crime. A Ministry representative familiar with organised crime data estimated that female involvement had slightly increased, from roughly 8% to 10%, primarily in the areas of prostitution and sex trafficking (Ministry 2), which matched trends in other countries discussed in Chapter 3. They also noted that women tended to take on 'supporting' roles, as 'accountants, organisers, and back-up for men', rather than leadership roles or those that would be engaged in violence. Sentencing data was analysed and compared with the drug offence data to examine the relationship between sex and crime beyond the rates of prosecution and conviction,

From 1999-2009, both men and women received relatively short sentences for organised crime. Men received an average of 43 months imprisonment and women received an average of 32 months. After the 2010 criminal code change, sentences for both sexes increased significantly, with men sentenced to an average of 69 months, and women sentenced to an average of 53 months, but there were a few extraordinarily long sentences allocated during this period that affected the averages. While long sentences are rarely used in the Czech Republic, there were instances of 15+ year sentences for organised crime in this subset of offenders, with two life sentences that were excluded from the calculations. These outliers support the assertion that law enforcement handled organised crime differently in the latter time period. For comparison, in the 1999-2009 period, there was only one 10 year sentence for either gender, so the average more accurately depicted the majority of the sentences. Post-2010, three groups – two Czech and one Vietnamese – were convicted, with sentences ranging from 10 years to life, pulling up the average sentence length. The Vietnamese group

involved one woman that was sentenced to 10 years in prison, but the remainder of the long sentences were handed to men, maintaining the gender gap.

Drug-related organised crime also had a small sample of female offenders, but more than general organised crime. The sample was unequally divided, with 400 offender records from 1999-2009 and only 274 from 2010-2015. Women represented 5.5% of convictions from 1999-2009, and 10.2% from 2010-2015. Since this analysis was limited to convictions with aggravating factors, only including drug offences with a Subsection 2A or 4A addition, it supported the finding that women have become more involved in drug-related organised crime over time. However, the number of female offenders was low, so a difference of 5% is not large in absolute terms and may not be significant.

Sentence length differences mirrored the overall drug crime trends. Men had significantly longer sentences under the 1999 policy, but the difference disappeared after 2010. From 1999-2009, women were sentenced to an average of 75 months while men were sentenced to 95 months. From 2010-2015, that gap closed, and women were sentenced to 92 months while men were sentenced to 93 months. The primary difference between organised drug crime and standalone drug offences is that sentences for men did not change in this case; women's sentences were just longer under the new policy. This again supports the assertion that women have become involved in drug trafficking at higher levels than in previous policy periods, though the number of women involved has not substantially changed.

## **7.7 Combined nationality and gender in drug offences and organised crime**

This section analyses the impacts of both nationality and gender by policy period and sentence length. Most of the existing variables could not be divided by both gender and nationality, so sentence length was the only metric available for comparison. While both ethnic and gender factors differed across policy periods, the intersection of both provided a different view of the data. The theory of intersectionality, coined by Kimberle Crenshaw (1990), conceptualizes how the relationship between a person's

gender, race, ethnicity, class, and other intrinsic factors influences their personal experience of societal oppression. In this study, the focus is on the intersection of gender and nationality, touching on class, and how cultural differences regarding the roles of women, and the resulting power dynamics, have impacted their roles in criminal organisations.

Since the dominant organised criminal groups in the Czech Republic are Czech, Vietnamese, Russian-speaking, West African, and Balkan, those were the groups for which analysis was attempted. When a group represented less than 3% of the total population, they were included in the 'other' category rather than being separately analysed. The roles of women in Czech and Vietnamese society may be reflected in the tasks they take on in organised crime, per the gendered markets theory, so the literature on each society was briefly reviewed for context. This is not a comprehensive view of the roles of women in Czech or Vietnamese communities.

Czech society has a complicated history when it comes to the role of women. The Communist government influenced the position of women, encouraging equal employment between the sexes, and the effects of those policies lingered into the post-communist period. Most women worked outside the home in the Czech Republic prior to 1989, as was typical in communist societies, so using employment as a metric of women's progress or empowerment is not as useful as it would be in Western nations. After the Velvet Revolution, the workforce decreased overall when workers of both genders opted for early retirement (True, 2012). At the same time, the government, primarily run by men, began to campaign for a return to traditional roles for women including a reduction in public childcare to encourage women to remain in the home (Pollert, 2003; Saxonberg and Szelewa, 2007). There was a push for women to return to domestic life, which was not necessarily opposed by women, who had viewed family as the one place the regime could not interfere during the communist era (Saxonberg and Szelewa, 2007). However, for financial reasons, it was ultimately unsuccessful with the same number of women remaining the workforce (True, 2012). While they remained employed, women were often placed into lower levels of the labour market, with men dominating the top tiers (similar to many other societies, including Western). If, like China and

the Balkan region, women's roles in the workforce are reflected in criminal organisations per the gendered markets theory (Zhang et al., 2007; Arsovska and Begum, 2014), it would be expected that Czech women would be placed on the lower rungs of the organisation, rather than in leadership positions.

Modern Vietnamese society is also historically patriarchal, with women filling most domestic roles while men worked outside the home. However, like the Czech Republic, communism and war changed the role of women in society. Women had to become more self-sufficient in the absence of men, and that trend continued when the war ended so women now represent over half the workforce (Le, 2009). Also similar to the Czech Republic and other patriarchal societies, women are often placed in lower-level positions with a 'glass ceiling' preventing them from reaching higher levels at the rate of men (Le, 2009; Lam and Laura, 2016). In this thesis, the Vietnamese women that are being studied are also immigrants, which impacts their socioeconomic status. According to Nožina (2000), the first wave of Vietnamese immigrants to the Czech Republic were wealthy and could effortlessly establish themselves, while the second and third waves did not have that advantage and left their home country under more desperate circumstances. Not knowing the language and having little money led to more insular groups, which were drawn into the criminal sphere out of convenience or necessity. This factor may influence how women's roles changed post-immigration. The position of women in society is very similar in both Vietnam and the Czech Republic, but the evolving status of women that emigrated from Vietnam, and their financial needs, could change how they worked in criminal operations as well.

#### **7.7.1 Sentencing of drug offences by sex and nationality**

When sex and nationality are examined concurrently for drug offences, discrepancies appear that were not previously observed. Table 7.6 shows the average sentence lengths, in months, for Section 187/283 offences by sex and nationality.

**Table 7.6: Average sentence length in months of drug offenders by nationality, sex and policy period**

|                  |               | Czech | Balkan | Vietnam | Other | Total |
|------------------|---------------|-------|--------|---------|-------|-------|
| <b>1999-2009</b> | <b>Female</b> | 76    | 72     | 95      | 78    | 79    |
|                  | <b>Male</b>   | 93    | 102    | 95      | 100   | 95    |
| <b>2010-2015</b> | <b>Female</b> | 78    | 72     | 97      | 102   | 85    |
|                  | <b>Male</b>   | 82    | 104    | 92      | 91    | 87    |

Data from individual court records

While women, on average, received shorter sentences under the 1999 policy, Vietnamese women received equal sentences to men, unlike any of the other groups. Men of non-Czech ethnicity also received longer sentences than Czech men, though the Vietnamese men were very close. Under the 2010 policy, sentences for women lengthened for all categories aside from Balkan, which remained the same. The sentence length change for Czech and Vietnamese women was small, but for Czech women it brought them nearly to the same level as men, and Vietnamese women surpassed men for sentence length. Women of other nationalities had significantly longer sentences, and also surpassed men. Shorter sentences in general for Czech nationals also suggests a trend of harsher punishments for foreign nationals.

One possible explanation for the longer sentencing for specific categories is that women of certain nationalities are accessing leadership roles in criminal organisations at a higher rate than Czech women. Since Czech women were sentenced to similar lengths under each policy, it does not appear that the policies themselves have had any significant impact on them, nor have the time periods. Men received shorter sentences under the new policy, aside from a slight increase for Balkan men, which may reflect law enforcement goals of reducing incarceration overall. In the 'other' category, so many ethnicities are represented that it is hard to generalise, but the latter policy period included long sentences for Nigerian women, who come from a matrifocal culture and may have taken on higher-level roles in their organisations.

Roles of Vietnamese women may have reached higher levels in later years due to the increasing involvement of the community in drug production.

Growing organisations could be experiencing labour shortages, forcing them to employ more women. It could also be based on certain skills that women have in the organisation that have become more valuable over time (i.e. language, contacts). If Vietnamese women are achieving leadership roles in their organisations, it would not support the gendered market theory that would have placed them in only traditionally female positions, unless their immigration status allowed them to escape the traditional path. Without insight into the groups it is impossible to know what factors have led to women’s increasing roles, but the sentencing data suggests that women of non-Czech or Balkan descent are being sentenced to longer periods of imprisonment, which is an area for further research.

### 7.7.2 Sentencing of organised crime by sex and nationality

For the organised crime and criminal conspiracy provisions, the data were sparse and some comparisons were impossible. Table 7.7 shows the sentence lengths in months for Section 163a/361 offences by sex and nationality, using the same nationality categories as the previous organised crime analysis.

**Table 7.7: Average sentence length in months of organised crime offenders by nationality, sex, and policy period**

|                  |               | Czech | Balkan | Russian-speaking | Vietnam | West African | Other |
|------------------|---------------|-------|--------|------------------|---------|--------------|-------|
| <b>1999-2009</b> | <b>Female</b> | 28    | 0      | 0                | 0       | 0            | 36    |
|                  | <b>Male</b>   | 40    | 23     | 44               | 55      | 0            | 52    |
| <b>2010-2015</b> | <b>Female</b> | 78    | 60     | 0                | 120     | 29           | 0     |
|                  | <b>Male</b>   | 91    | 38     | 50               | 73      | 30           | 47    |

Data from individual court records

Czech men and women received relatively short sentences under the 1999 policy, with men averaging about a year longer than women. The only other women convicted during that period were in the ‘other’ category, who received similarly short sentences. For men, Vietnamese and ‘other’ had the longest sentences, followed by Russian-speaking groups. In the later policy period, sentence lengths increased in every category except men in the ‘other’ category. Czech men had longer sentences than Czech women, but that trend was reversed for Balkan and Vietnamese women. West African



men and women had nearly the same sentence length, which was shorter than any of the other groups.

This data again reflects the increased involvement of women, mainly Vietnamese and Balkan women, in organised crime; however, there were significant increases in sentence length for nearly every demographic which differentiates this from the drug offence data. This might indicate an increase in policing effectiveness if higher-level members of organisations were apprehended more frequently after 2009. The increasing sentence length of both genders is potentially related to the growth in drug use, production, and trafficking, though that did not appear to drastically change sentence length for drug offences alone. It is also possibly a reaction to increasing organised crime, using longer sentences to deter further involvement. The next section looks specifically at drug-related organised crime offences.

### **7.7.3 Sentencing of drug-related organised crime by sex and nationality**

This section examines the sentencing of Czech, Vietnamese and Balkan offenders for drug-related organised crime. Table 7.8 shows the average sentence in months for drug-related organised crime for each policy period, sorted by nationality and sex.

**Table 7.8: Average sentence length in months of drug-related organised crime offenders by nationality, sex, and policy period**

|                  |               | Czech | Balkan | Vietnam | Other |
|------------------|---------------|-------|--------|---------|-------|
| <b>1999-2009</b> | <b>Female</b> | 73    | 72     | 90      | 78    |
|                  | <b>Male</b>   | 93    | 102    | 92      | 101   |
| <b>2010-2015</b> | <b>Female</b> | 87    | 60     | 97      | 104   |
|                  | <b>Male</b>   | 89    | 115    | 91      | 103   |

Data from individual court records

Drug-related organised crime closely followed the trends of drug crime for the 1999 policy. Women received shorter sentences than men in every category from 1999-2009, with a negligible difference between Vietnamese men and women. Under the 2010 policy however, the gap was closed for Czech and 'Other' women, while Vietnamese women slightly surpassed Vietnamese men. Only Balkan offenders maintained the same gender gap, which actually widened further after 2010. This data does not provide many

conclusions about the intersectional nature of organised crime in the Czech Republic, but it does indicate a need for additional research as the sentences for women have been increasing over time. The trend towards equality of the sexes in sentencing for this particular type of crime suggests that women's involvement is more closely aligned with men than in the past. There are clearly differences in the participation of women in criminal organisations, particularly Czech and Vietnamese women, that have not yet been explored, but this study is too limited in scope to thoroughly examine them.

## **7.8 Conclusion**

This chapter illustrates that while the drug policy did not directly influence the prosecution and conviction of organised crime, changes over time can be detected through the examination of drug offences, aggravating factors such as involvement in an organised group, and offender characteristics. Particularly evident in the breakdown by nationality, the shifts in prosecution and conviction of high-level drug crimes, and the application of related aggravating factors, point to an increase in the apprehension of organised crime. The Vietnamese population appeared to be the most significantly affected. Since Vietnamese organised crime is a known entity in the country, the shift in demographics for high-level drug offences suggests that those convictions are tied to organised crime. Similar trends were not seen for other ethnic groups; however, the police expressly indicated that Vietnamese organised crime was a focus, and that is evident in the data. Sex differences were also explored and suggested that the gender gap in sentencing for organised crime and drug offences was closing, which could indicate a higher level of involvement for women in criminal organisations. The next chapter concludes the thesis, providing an overarching summary of the findings, policy implications, and suggestions for future research directions.

## **Chapter 8: Conclusions and future research directions**

This research explored how three different implementations of drug decriminalisation used in the Czech Republic affected drug offences and organised crime through the application of the Advocacy Coalition Framework (ACF) and the use of a mixed methods approach including elite interviews, documentary analysis, and interrupted time series analysis of official crime rates. What this study ultimately found was that decriminalisation, in any of the forms examined, did not reduce the number of prosecutions or convictions for drug offences in the Czech Republic, and appears to have provided a hospitable environment for the expansion of organised crime. This study demonstrates that many things influence the rates of drug offences and organised crime, and decriminalisation is only a small piece of the puzzle. The cultural landscape of a country – including core cultural beliefs, public tolerance for drug use, policing and law enforcement structures and philosophies, and medical approaches and philosophies – all influence both the feasibility and effectiveness of decriminalisation policy and its effect on crime rates. In this chapter, the findings from the analysis will be brought together in a discussion of the policy goals, implementation, and outcomes for each time period from 1990-2016, followed by a review of the policy implications of this study. Finally, the thesis concludes with suggestions for future research directions exploring the effects of decriminalisation policies in both the Czech Republic and other countries.

### **8.1 Historical shifts and the drivers of drug policy change in the Czech Republic**

Chapter 2 discussed the history of the Czech Republic and how it transitioned from communism to independence in 1989. This history is critical when talking about drug policy because it explains why the people of Czechoslovakia would have been willing to accept the risks of decriminalising drugs when there was no evidence to indicate potential positive outcomes. After experiencing occupation by the Germans during WWII, then Soviet occupation and the ensuing communist era, restrictions on liberty and human rights became intrinsically more important than they

are in countries that have not undergone those transitions. This section synthesises the findings of the thesis to describe how the drug policy changed over time and how the political history and policy outcomes drove the changes that occurred.

The original goal of the decriminalisation effort was to restore human rights and civil liberties to the Czech Republic (Zábranský, 2004). Use of drugs, and possession of small amounts, had not resulted in imprisonment or more than a minor administrative offence since 1989. However, an increasing level of arrests, prosecutions, and convictions did not necessarily instil a sense of freedom, and the crime increase that occurred in the early 1990s was blamed on the newly relaxed political view towards crime (Bullington, 2007; Radimecký, 2007). Democratic nations throughout Europe have typically had higher crime rates than the communist Czech Republic, so as Geis (1997) argued, it might be considered the price of democracy. Speculation by politicians on the impact of decriminalisation also included the risk of increased drug use, which almost certainly occurred (Miovský, 2007; Radimecký, 2007; Zeman, 2007). The lack of data from the communist era makes it unclear how much drug use increased, but the availability of drugs increased substantially, and the use of drugs has continued to rise. The drug offence data also supported this assertion by showing a drastic increase in prosecutions, and price data, which revealed an increasing variety of drugs and decreasing prices as supply increased (see Chapter 6). In addition to increases in the rates of overall crime and drug offences, evidence points to a rise in organised crime over this time as groups from outside of Central Europe began to move into the region (see Chapter 5), but the statistical data for this time period is lacking. The increase in crime was a concern to the government of the time and alliances formed around the topic of decriminalisation, resulting in a penalty for drug possession for personal use being introduced in 1999.

The goal of the 1999 policy change was to curb the increase in crime and drug use, and it did appear to be successful in slowing the upsurge of drug offences, but the use statistics were mixed. While the 2001 evaluation by Zábranský et al. (the PAD report) found little benefit to the 'greater than small' legislation in the short term, over the entire policy period it produced

the slowest increase in the number of prosecutions and convictions for drug offences, most notably serious supply-related offences (Section 187/283). Use did not seem to be affected by the policy change. Problem drug use – in particular, use of heroin, methamphetamine, and buprenorphine (see Chapter 2 for further discussion of the term) – decreased early on, dropping to 35,100 in 2002 and stabilising around 31,000 users until a sudden increase in 2009 (37,400) (Mravčík, et al., 2016). These mixed results do not convincingly support the hypothesis that the policy would reduce drug use, but the stabilisation of problem drug use for most of the policy period could be considered a success, if not for the upturn at the end of the policy period. While the policy appeared to accomplish what it had been established to do, the vagueness of ‘greater than small’ was a political issue. It allowed open interpretation by judges and law enforcement that could be used disproportionately, potentially in a discriminatory way, and the results of the PAD report indicated that there was little impact at all from the policy change (notably only two years into the policy). The PAD report also recommended differentiation between substance types, which was incorporated into the next policy change involving the recodification of the entire criminal code.

The goal for the 2010 policy change could be described as clarification. Setting limits on the amount of drugs someone could possess that would be considered ‘for personal use’ unified the law for police, prosecutors, and judges, and differentiating between substances provided guidance for the perceived seriousness of different types of possession. It also took into account the recommendations made in the PAD report, making it the first ‘evidence-based’ drug policy implemented in the Czech Republic. The recodification in 2010 appeared to be a compromise between the coalitions that were formed in the early 1990s. On the anti-decriminalisation side, Christian Democrats and Communists pushed for stricter laws, which they achieved in 1999 (Zábranský, 2004; Morávek, 2007), and on the pro-decriminalisation side, Civic Democrats, Social Democrats, and the medical/NGO community pushed for more relaxed laws that took into account the needs of heavy users (Mravčík, 2015). The threshold levels established in 2010 incorporated both of those views to some degree.

As seen in this summary, drug policy changes have been government-driven in the Czech Republic, influenced by the socio-political changes over time. The rationale for each change was different but became increasingly evidence-based as the effects of decriminalisation emerged and were evaluated by the government (see Chapter 5). Aside from groups that had been invited to the table, such as NGOs and medical doctors, there has been minimal public input into the Czech drug policy changes which have been primarily driven by the shared beliefs of political organisations that united into advocacy coalitions around this issue.

## **8.2 Lessons learned from the Czech experience of decriminalisation**

There were distinct differences in the rates of prosecution and conviction that coincide with policy changes, so the implementation of the decriminalisation policy does seem to have an effect, but as explained by the analyses in Chapters 5-7 the results cannot be attributed solely to the policy change. In fact, the impact of the decriminalisation policy might be minimal when all other elements are considered. External factors such as governmental changes that put anti-decriminalisation groups into power and an enhanced policing effort to apprehend drug and organised crime offenders may have had a stronger impact than the policies themselves. Chapters 6 and 7 explored how policing practices, criminal justice proceedings, and the trends in drug use in the Czech Republic also influenced crime rates.

Chapter 6 outlined four factors that contributed to the changes in crime rates alongside the drug policy itself:

1. Police and judicial discretion
2. Procedural changes
3. Police prioritisation
4. Changes in drug use trends and patterns

Chronologically, different factors were more influential during different policy periods, but they all worked together to change how drug offences were defined in the criminal code and handled by law enforcement in the Czech

Republic. After the 1989 change, increases in drug use and trafficking were a concern, which changed how politicians viewed the decriminalisation law. It became about more than decommunisation and established the idea that decriminalisation could be a threat to public safety. Politicians speculated that decriminalisation could lead to increased drug use, which almost certainly occurred, but whether that was due to the policy or the end of communism is debatable (Miovský, 2007; Radimecký, 2007; Zeman, 2007). As previously mentioned, the lack of data from the communist era makes it unclear how much drug use increased, but the availability of drugs increased substantially without strict border controls which contributed to the decision to recriminalise personal possession in 1999, leading to changes in other areas.

Judicial discretion was highest during the 'greater than small' period of 1999-2009, allowing for individualised sentencing of offenders based on the judges' perceptions of offences. Police discretion also changed, though it was not formalised in the legislation. Police had previously been instructed to allow any amount of drugs that were said to be for personal use, but changed to an internal guideline approach from 1999-2009 that gave them some parameters to work within. There was still personal discretion at the street-level, but the new policy allowed police to be stricter in their enforcement practices even if the judges did not uphold the prosecutions. After 2010, prosecutions and convictions increased substantially, partially due to changes in law enforcement discretion. The 2010 policy introduced formal thresholds, which pushed judges to prosecute and convict people that they would not have under the previous policy. There were also procedural changes in policing and criminal justice that contributed to the increase.

While the bureaucratic process of handling administrative offences disincentivised police from pursuing minor offences, the introduction of expedited proceedings also led to quicker convictions for drug offences when it was used. Use of expedited proceedings contributed to rapidly increasing rates of conviction, despite the police focusing on more serious drug offences that would not be eligible for them. Police also began to prioritise drug offences in the later years of this study, between 2008-2012 depending on the source (see Chapter 6), which would have contributed to

the increase in prosecution and conviction rates. Funding was also increased for law enforcement, and technological advancements improved the ability of police to detect offenders. The rise in drug use, particularly that deemed problematic, spurred the prioritisation of drug offences that has continued over the 26 years of this study (Mravčík et al., 2017). This increase in consumption is associated with an increase in trafficking, so police have emphasised not only drug offences, but also the organised crime element of drug crime.

Like drug offences, organised crime has been shaped by police priorities and the changing drug scene. The rates of prosecution for organised crime increased quickly in the 1999 policy period but then just as rapidly decreased after 2008. However this does not provide an accurate depiction of organised crime in the Czech Republic. As noted in Chapter 7, an organised crime charge is difficult to prove, and proceedings are lengthy, so it is difficult to accurately gauge organised crime by the prosecution rates. Many crimes that are committed in organised groups are prosecuted under more specific charges, for example drug trafficking or money laundering, so they do not appear in the general organised crime statistics. While the quantitative data did not indicate that organised crime had increased, the interview data suggested that it had, particularly in the early days of decriminalisation. One respondent also claimed that the 'greater than small' law had directly contributed to the growth of organised crime by pushing smaller dealers out of the market, the easier targets, while the larger commercialised dealers survived (Researcher 4).

The communist history of the country influences the attitudes of all Czech people, including law enforcement, which means discretion may lean towards the harm minimisation model of encouraging treatment rather than a punitive model leading to incarceration. Even though law enforcement representatives were anti-decriminalisation in interviews, they approached the situation from a harm reduction approach, speaking about an increased need for treatment rather than punishment and fear that decriminalisation would lead to increasing levels of addiction. This study also indicated that while decriminalisation is generally assumed to decrease crime rates due to



the limitations of what is considered a crime, decreases that occurred as a result of Czech legal changes were not lasting.

When there were lasting impacts on the crime rates they were always in an increasing direction. Whether the policy was intended to be repressive or not, the rates of prosecution and conviction for the primary drug offences continually increased, but each policy was associated with different types or aspects of crime. The initial decriminalisation policy, during which police were directed to take the word of the alleged offender as to whether the drugs were for personal use or not, opened up the country to an increase in trafficking and organised crime. The combination of newly open borders, a liberal policy, and weak law enforcement made Czechoslovakia an ideal location for organised drug crime. When the government tried to control crime by creating the 'greater than small' possession policy, it changed the type of crime rather than eliminating it. The police began to crack down on traffickers but were focusing on the more accessible street dealers and local producers. This shifted the market to the commercialised, large scale producers associated with organised crime. So while one type of drug offence was being reduced, another was expanded by the targeted policing that occurred under the policy. Under the 2010 policy, which was supposed to be a compromise between those that wanted a repressive law and those that wanted a liberal law, the rates of drug offences rose steeply due to factors outside the policy subsystem as well as policy interpretations by law enforcement. The policy implementation after 2010 appears to have disproportionately impacted heavy drug users, who routinely possess amounts over the stated limits. A focused effort to stop large scale producers and prevent trafficking led to the establishment of threshold limits (based on assumed average usage) that inadvertently captured more heavy users that consume above-average quantities of drugs, which led to a sharp increase in personal possession charges. However, this policy also seems to be effective in capturing organised crime, based on the rise in other drug offences and the associated demographic makeup of the offenders.

Foreign nationals were overrepresented in the drug offence rates for both policy periods that statistics were available (1999-2009; 2010-2016), with Russian-speaking, Balkan, and West African groups also represented in

disproportionately high numbers, but no other group approached the numbers of convictions that were handed to Vietnamese nationals. This was due to a concerted effort by law enforcement to target Vietnamese large scale drug producers. Vietnamese organised crime was mentioned in every interview and has been a focus of Czech organised crime literature (Nožina, 2000; 2010). Foreign organised crime groups are often connected to drug trafficking crimes in the Czech Republic, which is typical of 'alien conspiracy' theories in organised crime research (Antonopoulos, 2009). In this case, however, the Vietnamese groups were the first to bring hydroponic technology into the cannabis market, allowing them to grow more copious amounts than competitors. They have also taken on a large share of the methamphetamine market through similar mass production techniques. When the police prioritised drug offences, they specifically opted to focus on Vietnamese organised crime due to their domination of the drug market, which has led to disproportionate arrest and prosecution rates of Vietnamese nationals that are indicative of increasing organised crime activity. Organised crime during this period was not heavily prosecuted, so the same trend could not be drawn from that data, but there was a substantial increase in the number of foreign nationals that were connected to organised crime that were convicted of drug crimes after 2010, demonstrating that organised crime was actually increasing in the Czech Republic.

This research contributes to the discussion of decriminalisation as a policy option by providing an in-depth comparison of the outcomes in the Czech Republic. By demonstrating that the rates of drug use, drug offences and organised crime continually increased in a country that has had active decriminalisation policies for over 25 years, it challenges the position that adverse outcomes are a result of prohibition policies in other countries (see discussion in Chapter 3). This study provides evidence that decriminalisation itself does not appear to impact crime significantly on its own but may lead to changes in policing and the drug scene that affect prosecution, conviction, and incarceration rates. As stated previously, many things influence the rates of drug offences and organised crime and decriminalisation is not a silver bullet that resolves the problems attributed to prohibition. The

philosophies around drug use, socio-political climate of the country, and the overall system of criminal justice must be considered when implementing a decriminalisation policy, as that will ultimately determine how the policy affects crime and offenders.

### **8.3 Suggestions for future research**

This research explored how decriminalisation was implemented in a post-communist context and how that history affected the drug policy. Conducting similar studies in other countries, that focus on the societal and cultural influences on policy implementation, would help to enhance knowledge of decriminalisation and which contexts might find the same policies to be beneficial. Much of the evidence base around decriminalisation comes from a few unique cases, such as Portugal, so there are not that many examples from which to draw data. While a post-communist context differs from studies in Western European societies, there are many countries that have decriminalised drugs that receive little academic or media attention in Western markets. This thesis focused primarily on Europe, but there are several countries with similar policies in the Global South that could be studied more extensively, for example, Costa Rica, Ecuador, Colombia, Peru, and Uruguay. The lack of media coverage could be due to the continued drug problems in some of those nations, specifically Colombia and Costa Rica, which would make the decriminalisation option appear less effective, but their location is also probably a factor. Expanding studies of decriminalisation in different areas of the world would help to elucidate the other factors that influence the effects of drug policy, which would provide for more nuanced discussions around the implementation of decriminalisation and prohibition. Studying drug policy without considering the socio-political and cultural context of the country provides an incomplete view of the policy's effectiveness and reduces the usefulness of the research.

More research on the effects of decriminalisation on organised crime would also be useful because that aspect is not often covered in drug policy studies. Different forms of decriminalisation have been implemented in many countries, and the impacts on crime are usually not considered beyond the possession offences. Some of these countries have extensive organised

crime networks that could reveal much about how drug policy and organised crime relate, including Portugal, which has traditionally been a transit country for cocaine, and Colombia, which is known for the production of cocaine. Expanding the research on drug decriminalisation beyond health and drug use outcomes would form a more fulsome picture of how these policies affect the population and would help to prepare countries that are considering the implementation of decriminalisation for possible adverse outcomes and unintended consequences.

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## Appendix A

### Sample of data from the 1995 Statistical Yearbook, translated to English

|   |      |
|---|------|
| Report_yr   | 1995 |
| Data_yr   | 1994 |
| Region  | ČR   |
| Settled against persons                                     | 247  |
| Number of crimes  | NA   |
| Postponed according to 159 tr.r.<br>(Inadmissible in court) | 19   |
| Prosecuted persons  | 243  |
| Women   | 22   |
| minors/adolescents/15-17                                    | 40   |
| Defendant persons Total                                     | 186  |
| Women   | 15   |
| Recidivists   | 84   |
| Age 15-17   | 28   |
| Girls   | 0    |
| Age 18-19   | 13   |
| 20-24   | 45   |
| 25-29   | 59   |
| 30-39   | 31   |
| 40-49   | 7    |
| 50 and more   | 3    |
| TR. Prosecution stopped (172 tr.r.)                         | 34   |
| TR. Prosecution stopped (173 tr.r.)                         | 22   |
|   |      |
| Crimes - Total  | 122  |
| Under the influence of alcohol                              | 2    |
| Convicted persons Total                                     | 110  |
| Women   | 21   |
| Under the influence of alcohol                              | 2    |
| Other addictive substances                                  | 32   |
| Recidivists   | 20   |
| Age 15-17   | 16   |
| Girls   | 2    |
| Age 18-19   | 9    |
| 20-24   | 23   |
| 25-29   | 35   |
| 30-39   | 23   |
| 40-49   | 3    |
| 50 and more   | 1    |
| Unconditional imprisonment - total                          | 37   |
| Up to 1 year  | 15   |

|   |    |
|---|----|
| 1 to 5 years                                  | 21 |
| 5 to 15 years                                 | 1  |
| 15 years                                      | 0  |
| Life  | 0  |
| Conditionally suspended imprisonment          | 59 |
| Ineligibility                                 | 0  |
| Fined   | 4  |
| Public work (Community service)               | NA |
| Other punishment                              | 2  |
| Remission of sentence                         | 8  |
| Penalties in conjunction with major sanctions | 16 |
| Protective treatment- Total                   | 17 |
| Alcoholism                                    | 0  |
| Drug addiction                                | 17 |
| other   | 0  |
| Protective custody                            | 0  |
| Absolution                                    | 9  |
| stopped                                       | 2  |
| From the amnesty                              | 0  |
| Referral                                      | 1  |

## **Appendix B Interview Materials**

### **Sample email to participants**

Hello [NAME],

I am a PhD student at the University of Leeds, studying the implementation of drug decriminalisation in the Czech Republic and how this has impacted drug-related and organised crime in the country. I have read some of your work on drug policy and drug use in the Czech Republic and I think that your views would be a valuable addition to my research. Would you be willing to participate in an interview?

I would like to ask you about the impacts of the drug policy changes, and what you have seen occurring professionally during this time. I will be in Prague 15-20 February to conduct interviews and would love to meet with you if you are available. If you are not available for an in-person interview, I would also be happy to conduct an interview via Skype or email at another time. I have attached an information sheet about the project for your review.

Please let me know if you need any more information and if you would be willing to participate.

Thank you for your time,

Kathryn Gudmunson

## Information sheet for participants



**UNIVERSITY OF LEEDS**

**You are invited to take part in the following PhD research, entitled:**

### **Comparative Effects of Drug Decriminalisation Policies on Drug-related and Organised Crime in the Czech Republic**

My name is Kathryn Gudmunson and I am conducting this research for my PhD in Social Policy at the University of Leeds. Before you decide to participate, please take time to read the following information carefully and discuss it with others if you wish.

**What is the purpose of the project?** This research will examine how drug decriminalisation has been implemented in the Czech Republic, and how that has affected the rates of drug-related and organised crime.

**Why have I been invited to participate?** You have been selected based on your expertise in the field of [drug policy, organised crime, criminal law, etc.]. Your opinions and interpretations of the relationship between drug policy and crime will contribute to the formation of a theory on how drug decriminalisation affects crime rates and policing.

**What do I have to do?** If you choose to participate, you will be asked to participate in a voluntary 30-60 minute interview. Questions will be open-ended, based on the results of the first phase of the study which analysed official statistical data.

If you are not available for a face-to-face interview, but would still be willing to participate, interviews can be conducted via Skype, telephone, or in writing. If you would prefer that an interpreter be present for the interview one can be arranged. Translators are also available for written responses. Interviews will be audio-recorded with your consent, and transcribed upon my return to the university.

**Will my interview be kept confidential?** After the interview the results will be transcribed and you will have the opportunity to review your transcript before it is incorporated into the report. Transcripts will be anonymised, with all identifying information removed. Complete anonymity cannot be guaranteed in some cases, as participants in elite positions or with expertise in unique subjects may be identifiable by their responses. If confidentiality is an important aspect for you, it is



recommended that you review your transcript for any quotes that you think might identify you. Only anonymised data will be viewed by anyone aside from me and my research supervisors.

**Who is supervising this project?** This project is supervised by Dr. Mark Monaghan and Dr. Tracy Shildrick at the University of Leeds. If you have concerns and would like to contact my supervisor, email Dr. Monaghan at [m.p.monaghan@leeds.ac.uk](mailto:m.p.monaghan@leeds.ac.uk). Approval for this research has been acquired from the relevant Czech agencies and can be provided upon request.

**What will happen to the results of the research project?** The primary purpose of this research is for my PhD thesis. Results from the research will be presented at academic conferences, published in peer-reviewed journals, and will possibly be included in a book based on my PhD thesis.

**What if I change my mind?** If you decide that you would like to withdraw your interview from the project, you are welcome to do so up to 3 months following your review of the transcript, so I have time to remove all references to your interview prior to thesis submission.

**Who do I contact to take part?** If you are interested in taking part in this research, or just want more information, please contact Kathryn Gudmunson at [sskag@leeds.ac.uk](mailto:sskag@leeds.ac.uk) or +44 7842 850205.

## Informed consent form

### Consent to take part in Comparative Effects of Drug Decriminalisation Policies on Drug-related and Organised Crime in the Czech Republic

Add your initials next to the statement if you agree

|  |  |
|--|--|
| <p>I confirm that I have read and understand the information sheet dated 13 July 2015 explaining the above research project and I have had the opportunity to ask questions about the project.</p>   |  |
| <p>I understand that my participation is voluntary and that I am free to withdraw without giving any reason and without there being any negative consequences. In addition, should I not wish to answer any particular question or questions, I am free to decline.</p> <p>To withdraw consent, contact Kathryn Gudmunson at sskag@leeds.ac.uk or +44 7842 850205. If consent is withdrawn, all references to the interview data will be removed from the thesis and the data will be permanently destroyed. Withdrawal request must be received within 3 months after the interview transcript is reviewed.</p> |  |
| <p>I give permission for members of the research team to have access to my anonymised responses. I understand that my name will not be linked with the research materials, and I will not be identified in the report or reports that result from the research. I understand that my responses will be kept strictly confidential.</p>   |  |
| <p>I agree for the data collected from me to be stored and used in relevant future research in an anonymised form.</p>   |  |
| <p>I understand that relevant sections of the data collected during the study, may be looked at by individuals from the University of Leeds or from regulatory authorities where it is relevant to my taking part in this research. I give permission for these individuals to have access to my records.</p>  |  |
| <p>I agree to take part in the above research project and will inform the lead researcher should my contact details change.</p>  |  |

|                                |  |
|--------------------------------|--|
| <p>Name of participant</p>     |  |
| <p>Participant's signature</p> |  |
| <p>Date</p>                    |  |

|                         |                   |
|-------------------------|-------------------|
| Name of lead researcher | Kathryn Gudmunson |
| Signature               |                   |
| Date*                   |                   |

\*To be signed and dated in the presence of the participant.

Once this has been signed by all parties the participant should receive a copy of the signed and dated participant consent form, the letter/ pre-written script/ information sheet and any other written information provided to the participants. A copy of the signed and dated consent form should be kept with the project's main documents which must be kept in a secure location.

## Sample interview schedule

The questions will vary depending on who is being interviewed. Above the question blocks is the intended audience. The reasoning behind the question is provided in parentheses.

### Sample interview questions:

All

1. How would you define drug decriminalisation?

Potential follow-up: Do you differentiate between decriminalisation and depenalisation? Why or why not?

(Asking this question to ensure that everyone is thinking of decriminalisation in the same way, so later questions are not affected by misinterpretation of terms. The same line of questioning will be used when discussing 'organised crime'.)

2. How do you determine whether a drug policy was successful or not?

Potential follow-up: How would you determine success from a public health perspective? From a criminal justice perspective? Do you think there are other factors aside from those that could be used to evaluate success?

(Asking to gather the opinions of the interviewee on what the goals of drug policy should be, to get a feeling for their priorities in the formulation of policy and how they might view the current Czech policy.)

3. Why did the Czech Republic implement decriminalisation policies in your understanding?

Potential follow-up: Why do you think the implementation has been changed over time?

(Asking to see if the responses reflect what has been reported in the literature and in parliamentary debates.)

4. Of the three policies that have been used in the Czech Republic (provide summary if needed), which policy implementation would you expect to have the most impact on crime rates? Why?

(I would like to compare across the three policies to see which was 'best' in terms of crime, so this would be to gather opinions on what impacts the interviewees would think each policy should have.)

5. Do the results of the quantitative study support your perceptions of the relationship between drug policy and crime rates?

6. How do the quantitative data differ from what you would have expected?

Potential follow-up: Do you have a hypothesis for why this difference occurred?

For those familiar with the Czech Republic specifically:

Why do you think drug crime has continued to rise while overall crime has declined?

Why have the rates of juvenile prosecution dropped?

Why do you think female involvement has been rising?

Which ethnic groups do you associate with Czech drug trafficking and organised crime? Does the data for nationality of offenders reflect your expectations?

(Asking questions 5 and 6 so I can compare the quantitative and qualitative data to see if what was expected was actually appearing in the recorded data, or if there were differences. The follow-up questions are derived from trends found in the quantitative data, which will be provided for interviewees.)

7. Under which policy implementation do you think law enforcement has been most effective? Why?

(This question is aimed at gathering information about policing under each policy, and whether there were perceived or actual differences in approach across policies.)

8. What do you think will happen with Czech drug policy in the future?

Follow up: What changes do you think should be made to the current policy?

(This question will help to determine opinions on the current policy and what changes the interviewees think are looming, or what they think should occur.)

9. What can be learned from the Czech experience with decriminalisation?

Potential follow-up: How generalizable do you think these results are?

(Asking to determine what points the interviewees think are most important about the Czech experience, to help determine generalizability and whether the same policy would translate well into different cultures.)

Non-policy interviewees

10. Please describe Czech drug policy as you understand it.

Potential follow-up: Probe to gauge awareness of different phases.

(Asking before further questioning about the policy, to make sure the interviewee knows what the current policy is. If they do not, a summary can be provided and questions can be adapted.)

## Appendix C

**Table comparing the text of criminal code sections over time**

| 1962-1989  | 1990-1998  | 1999-2009   | 2010-Present  |
|--|--|---|---|
| 187  | 187  | 187   | 283   |
| (1) Whoever produces, transports, exports, supplies or stores drugs or poisons without permission shall be punished by imprisonment for up to two years or by corrective measures or by a pecuniary penalty. | (1) Whoever manufactures, imports, exports, carries out to another, or supplies a narcotic or psychotropic substance or poison to another, shall be punished by imprisonment for up to three years or a pecuniary penalty. | (1) A person who, without authorisation, produces, imports, exports, transports through the country, offers, traffics in, sells, or otherwise procures or holds in their possession for another person a narcotic or psychotropic substance, a preparation containing a narcotic or psychotropic substance, a drug precursor, or a poison shall be punished by imprisonment for a term of between one and five years. | (1) A person who, without authorisation, produces, imports, exports, transports through the country, offers, traffics in, sells, or otherwise procures or holds in their possession for another person a narcotic or psychotropic substance, a preparation containing a narcotic or psychotropic substance, a drug precursor, or a poison shall be punished by imprisonment for a term of between one and five years, or by a fine. |
|  |  | 187a  | 284   |
| No separate personal possession offence  | No personal possession offence   | (1) A person who, without authorisation, possesses a narcotic or psychotropic substance or poison in a quantity greater than small shall be   | (1) A person who, without authorisation, possesses for their personal use in a quantity greater than small the narcotic substance cannabis, cannabis resin (hashish), or a psychotropic substance containing any form of  |

|   |  |   |  |
|---|--|---|--|
|   |  | punished by imprisonment for a term of up to two years or a fine.   | tetrahydrocannabinol, or an isomer or a stereochemical variant thereof (THC), shall be punished by imprisonment for a term of up to one year, by prohibition on undertaking a specific activity, or by forfeiture of an item of property or another asset.   |
| No differentiation between substances   | No differentiation between substances  | No differentiation between substances   | (2) A person who, without authorisation, possesses for their personal use a narcotic or psychotropic substance other than that stated in Subsection 1 or a poison in a quantity greater than small shall be punished by imprisonment for a term of up to two years, by prohibition on undertaking a specific activity, or by forfeiture of an item of property or another asset.   |
| 188   | 188  | 188   | 286  |
| (1) Whoever manufactures himself or another caregiver, or holds an item eligible for illicit narcotics or poison, shall be punished by imprisonment for up to two years or by corrective action or by a pecuniary penalty or forfeiture of the thing. | (1) Whoever manufactures or keeps on himself or another the object intended for the illicit manufacture of a narcotic or psychotropic substance or venom shall be punished by imprisonment for up to three years or by a pecuniary penalty or forfeiture of the thing. | (1) A person who produces, procures for themselves or another person, or holds in their possession an article designed for the unauthorised production of a narcotic or psychotropic substance, a preparation containing a narcotic or psychotropic | (1) A person who produces, procures for themselves or another person, or holds in their possession a drug precursor or other article designed for the unauthorised production of a narcotic or psychotropic substance, a preparation containing a narcotic or psychotropic substance, or a poison, shall be punished by imprisonment for a term of up to five years, by a fine, by prohibition on undertaking a specific |



|                                |   |   |   |
|--------------------------------|---|---|---|
|                                |   | substance, or a poison, shall be punished by imprisonment for a term of between one and five years or prohibition on undertaking a specific activity or a fine or forfeiture of an item of property or another asset.   | activity, or by forfeiture of an item of property or another asset.   |
|                                | 188a  | 188a  | 287   |
| No spreading addiction offence | (1) Any person who persecutes or otherwise promotes the abuse of a substance other than alcohol, or who otherwise encourages or spreads the abuse of such a substance, shall be punished by imprisonment of up to one year or by prohibition of activity or by a pecuniary penalty. | (1) A person who induces another person to abuse an addictive substance other than alcohol, or abets another in so doing, or who otherwise instigates or spreads the abuse of such a substance shall be punished by imprisonment for a term of up to three years, or by prohibition on undertaking a specific activity or a fine. | (1) A person who induces another person to abuse an addictive substance other than alcohol, or abets another in so doing, or who otherwise instigates or spreads the abuse of such a substance shall be punished by imprisonment for a term of up to three years, or by prohibition on undertaking a specific activity. |