

1 Public Nuisance: Definitions, political Developments, legal Aspects and Intervention Strategies

1.1 'Public Nuisance' and the legal situation in Germany

In Germany, the concept of 'public nuisance' comes closest to the term 'disturbance of the public order'. The term 'public order' means the totality of all unwritten rules for the behavior of the individual in the public insofar as compliance with these rules is generally regarded as an indispensable precondition for a regular communal life. Problems in connection with drugs which represent a crime or an offence in the closer sense are not excluded by this term.

Problematic in this connection is that this definition includes elements which are lacking a legal definition, leaving a broad range of interpretation for regional and local politicians but also for the individual policeman. Opponents criticize especially the lack of a solid legal basis.

Problems related to 'public nuisance' are to be found in the surroundings of

- open drug scenes
- low-threshold facilities

where occupants of adjacent buildings, shop owners and passers-by objectively or subjectively feel affected in their feeling of security or quality of life.

Here, mayors, authorities and city council are called upon the scene. In practice however, the police mainly assume the role of an executive organ. Generally, the municipality may influence the development of a quarter of a town or city by means of town/city planning, issue of licenses for shops or restaurants. With regard to the individual citizen, there are other approaches as how to deal with public security and order. While generally each citizen is free to choose his place of residence, the police may issue an interdiction of stay or a ban order for specific places. This order is only of a temporary nature, but can be repeatedly issued provided that there is a danger of damage to a person. The license to run a restaurant, a bar or shop may also be refused in the case of known drug use (Böllinger 1999).

1.2 Public nuisance and drug use

There are only a few German cities with a large open drug scene causing problems with residents living nearby in everyday life.

In Bavaria, open drug scenes are not tolerated and prevented, as far as possible, by increased police presence and regular controls (Bayerisches Ministerium für Umwelt, Gesundheit und Konsumentenschutz, personal communication).

As for Berlin, it is assumed that there are several small meeting points scattered over the city and frequented by a maximum of 40 drug users each. These places have existed for about 20 years and are located in the city center or at social hot spots. The total figure of drug users frequenting these locations is estimated to range below 800 persons. Drug trafficking too is limited to a few hot zones, so that general nuisance for the population is assumed to

be quite low and locally restricted (Senatsverwaltung für Gesundheit, Soziales und Verbraucherschutz Berlin, personal communication).

In other cities, a visible and open drug scene, if existing, is generally limited to a few small places. Relatively large drugs scenes exist in Hamburg and Frankfurt. However, these have significantly shrunk in the last years due to various measures (creation of consumption rooms, low-threshold offers, high control density). Apart from political guidelines which influence the intensity of police controls in the different areas, the extent of the local drug scene and the local drug market decide on whether or not drug consumption is perceived as a public nuisance.

1.3 Public Nuisance in the surroundings of facilities for prevention, harm reduction or treatment

The formation of an open drug scene around drug consumption rooms at central places has led to frequent complaints of people living nearby. Similar difficulties arise especially when low-threshold services for drug users are to be newly set up. The evaluation of the drug consumption rooms (ZEUS 2002) also describes this as an unsolved problem especially if these facilities are located in residential areas.

For the creation of new consumption rooms in Berlin, a cooperation agreement has been reached ensuring a regular exchange between the organizations running the facilities, police, prosecution and authorities. Such agreements are general standard for drug consumption rooms. Collaboration of these authorities is legally mandatory by §10a BtMG. As part of this agreement, the responsible organization is to establish contact with the neighborhood and provide regular information for examples on measures of public relation work (Senatsverwaltung für Gesundheit, Soziales und Verbraucherschutz Berlin, personal communication).

The creation of a drug consumption room in Saarland has caused similar problems. Part of the problems, which existed at places where especially heroin had been used, shifted to the surroundings of a drug aid center. Frequently mentioned complaints were molestation of neighbors and thrown away used syringes. In order to reduce complaints, forums were created to facilitate the common elaboration of solutions by communities, municipal administration and police (Gesundheitsministerium des Saarlandes, personal communication).

A survey carried out in Hamburg investigates the question whether the extension of the opening time of a drug consumption room into the evening hours helps to reduce the nuisance caused to the neighborhood of the city district of St. Georg. To this purpose, the number of drug users was surveyed in two streets at specific times. The number of drug users on the street during short opening times of the consumption room (until 7 p.m.) was compared to the one during long opening times (until 12p.m.) and during closure. Although the consumption room had a kind of 'pull effect' attracting users who normally did not frequent this area, a 'net relief' of 47.5% could be achieved. The effect was strongest in the early evening around 7 p.m. and significantly weakened after 11 p.m. Decisive, according to the authors, is the attractiveness of the service offered, which, in this case, was enhanced, among others, by the longer opening times (Prinzleve and Martens 2003, 2004).

As part of a European study on the effects of drug consumption rooms, a cooperation was started between experts from Rotterdam, Innsbruck and Hamburg. In Hamburg, three out of the seven existing drug consumption rooms were included into the study. One part of the study deals with the topic 'public nuisance' and the possibilities to reduce this problem by low-threshold initiatives. To this purpose, drug users as well as persons living and working in specific areas of the city including the neighborhood of drug consumption rooms, shop owners, policemen and politicians were surveyed. The instrument used were qualitative, problem-oriented interviews.

In total, positive effects were found which were mainly based on the fact that drug use took less place in the public than it did before. However in one case, police reported about continual conflicts and complaints about a consumption room which was placed in the middle of a residential area.

An important parameter of the visibility of the drug scene and consequently of the negative impressions gained of it, was found to be the number of drug users on the street. Studies showed that especially people who were very close to the scene, usually frequented the scene in the afternoon or early evening. Therefore, consumption rooms should be preferably open around these times. However, parallel to the start of the consumption rooms, cocaine and crack use rose with increasingly aggressive trafficking activities which also had a negative effect (Zurhold et al. 2003).

In total, neither the concept of 'public nuisance' is clearly defined nor are the essential parameters creating a public nuisance clear. Correspondingly, the measures taken in this context are unspecific and rarely target oriented.