

PART B: SELECTED ISSUE

1 Sentencing Statistics

1.1 Summary

The Narcotics Act (Betäubungsmittelgesetz, hereinafter BtMG), the basic legal instrument regulating the institutional response to drug related offences in Germany, foresees a variety of sanctions according to the severity and the type of the act ranging from administrative fines to custodial sentences. Mere consumption of substances, which fall under the narcotics act, is not subject to sanctions following the principle of the German criminal law, which states impunity for self-injury. Moreover, the German law following the principle “treatment instead of punishment” (Therapie statt Strafe) allows for a deferment of the punishment if the (drug addict) offender undergoes treatment instead of imprisonment.

The main data sources regarding drug criminality and the respective responses are the Police Criminal Statistics (Polizeiliche Kriminalstatistik, PKS) and the nationwide data network Drugs Data File (Falldatei Rauschgift, FDR), as well as the Criminal Prosecution Statistics of Justice. All aforementioned data sources refer to federal and federal state (Länder) level. There seems to be a variety of data available referring to the various stages of the justice system, nonetheless there is a lack of connection between the different statistics. The main obstacles in sequencing and comparative analysis are the different procedures of data recording and classification (i.e., different variables), as well as the differentiation in the level of the detail provided (Paoli 2008). By way of illustration, the police statistics provide information also on the substance type, whereas the prosecution statistics do not.¹

1.2 Options available in the country

1.2.1 Legislative framework

Any state interference with individual rights must by statutory law be based on a regulation. This constitutes a fundamental principle of the Federal Basic Law of Germany, and thus, all restrictions on drug use or other drug related offences have to be provided for by federal law (European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) 2002b). The main legislation concerning illegal drug consumption offences is the BtMG. A list of “controlled substances” is provided in three annexes (Anlagen I-III); nonetheless no legal differentiation

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depending on the severity of the danger posed by different drugs is foreseen (for instance, the statute does not differentiate between cannabis and other drugs). Thus, the legislature leaves it to the courts to determine a hierarchy of drugs based on an empirically graded scale of “danger of public health” (EMCDDA 2002b). The BtMG is primarily a regulatory and administrative law with the aim to regulate the trade of listed substances and includes also legal provisions concerning import, export and prescription modalities. Regulatory law breaches of the narcotics act can be sanctioned by administrative fines of up to approximately EUR 25,000. On the other hand, possession of and dealing (especially trafficking) in listed substances are classified as criminal offences according to the sections 29–30a of the BtMG. The interpretation and methodological application of these norms adheres to the system of the German Criminal Code (Strafgesetzbuch, hereinafter StGB) (EMCDDA 2002b).

Other legal provisions concerning drug related offences include the Ordinance on prescription of Narcotic drugs (Betäubungsmittel-Verschreibungsverordnung), the Precursors Control Act (Grundstoffüberwachungsgesetz, GÜG) and the Drug Law (Arzneimittelgesetz, AMG), which also regulates offences related to designer drugs.

Mere consumption of controlled substances is not subject to sanctions. However, the acquisition and possession that normally precede the act of consumption are punishable, since they are associated with the danger of the spread of the drug use phenomenon. Nevertheless, there are various possibilities within the law to abstain from prosecution if only small quantities of narcotic drugs are under possession for personal use. Important criteria for such a decision are the amount and type of drugs, involvement of others, personal history, previous convictions and public interest in prosecution. When a sentence is given, the main principle governing the German legislation towards addicted users is the so-called “treatment instead of punishment”: this allows for a deferment of the enforcement of the final sentences under the condition that the criminal with substance use disorder undergoes treatment (§ 35 BtMG). It is also possible to defer the enforcement of imprisonment up to 2 years to provide drug addicts with a chance to undergo therapy (§56 StGB).

With regard to the outcome of being stopped for drug related offences at the various stages of the justice procedure, it should be noted that the police has no discretionary power and thus all cases of suspected offenders are to be reported to the public prosecutor. Investigations carried out by the police are thus under the public prosecutor’s supervision. The public prosecutor is principally responsible for the proceeding. In the following sub-sections, the various outcomes applied are described with regard to the justice system stage and the three given BtMG offence types; in Table 11.1 an overview is presented.

Table 1.1 Overview of options available for the various offence types

Offence types	Procedural method at ... level		
	Police	Prosecution	Court
Personal possession	<ul style="list-style-type: none"> • Simplified complaint/Referral to the prosecutor • Complaint/Referral to the prosecutor (common practice) 	<ul style="list-style-type: none"> • Case dismissal with/without accordance of the court • Case dismissal with injunctions and directives with/without accordance of the court • Suspension of prosecution (§ 31a BtMG) • Suspension of prosecution following juvenile law (legal regulation on diversion between adolescents and young adults) • Suspension of public accusation with accordance of the court (§37 BtMG) • Application for a penal order at court • Public accusation 	<ul style="list-style-type: none"> • Case dismissal with accordance of the prosecutor • Case dismissal with injunctions and directives with accordance of the prosecutor • Suspension of prosecution (§31a BtMG) in accordance of the prosecutor • Acquittal • Penal order • Monetary fine or imprisonment • Release on license • Referral to detoxification/treatment
Cultivation, production and/or commercial trafficking	<ul style="list-style-type: none"> • Complaint/Referral to the prosecutor • (Temporary) arrest 	<ul style="list-style-type: none"> • Case dismissal with/without accordance of the court • Case dismissal with injunctions and directives with/without accordance of the court • Suspension of public accusation with accordance of the court (§37 BtMG) • Application for arrest warrant • Application for a penal order at court • Public accusation 	<ul style="list-style-type: none"> • Case dismissal with accordance of the prosecutor • Case dismissal with injunctions and directives with accordance of the prosecutor • Order of arrest warrant • Acquittal • Penal order • Monetary fine or imprisonment • Conviction to imprisonment (and monetary fine) • Release on license • Referral to detoxification/treatment

Offence types	Procedural method at ... level		
	Police	Prosecution	Court
Driving after taking drugs	<u>Administrative offences:</u> <ul style="list-style-type: none"> • Caution • Initiation of administrative action (fine) • Fine up to 1,500 Euro • Driving ban from 1 to 3 months <u>Criminal offences:</u> <ul style="list-style-type: none"> • Referral to the prosecutor 	<u>Criminal offences:</u> <ul style="list-style-type: none"> • Case dismissal with/without accordance of the court • Application for a penal order • Public accusation 	<ul style="list-style-type: none"> • Case dismissal with accordance of the prosecutor • Acquittal • Monetary fine or imprisonment • Release on license • Referral to detoxification/treatment • Driving ban • provisional) Withdrawal of driving license (from 6 months to 5 years or lifetime)

1.2.2 Types of response at the police stage

Personal possession or use

Personal possession of illegal substances is subject to punishment regardless of the type and quantity of the substance. Due to the applied legality principle (§§ 152, Para. 2, 160 Para. 1, 163 Criminal Procedure Code, [Strafprozessordnung, StPO]), the police is obliged to investigate any suspicion of a criminal act and to refer it to the respective prosecutor, even in cases of small quantities. This means that the discretionary power of the police when dealing with suspected offenders is limited. There is a considerable degree of heterogeneity in the handling of consumption-related offences (possession of small quantities for personal use - especially of cannabis) across the various federal states (EMCDDA 2002b; Schäfer & Paoli 2006). This is related to the fact that among the federal states there is differentiation in the interpretation of “small amount”. Further details can be found under 11.2.3.

During the last two years there has been a move to greater convergence of the definitions of limit values for “small amount” of cannabis up to which the prosecutor suspends from further prosecution. 14 federal states have already introduced a limit value of 6g (upper/lower limit). Further information on the legal framework can be found in 1.2.2.

Moreover, another aspect of differentiation in the federal states is that below the given maximum amounts, discontinuation of proceedings is obligatory, in some federal states, whereas in others it is subject to a case-by-case approach also taking into account for example repeat offences.

The possession of only a small quantity for personal use is considered a consumption offence and the police actions, in the more “liberal” federal states, are regularly limited to a so called simplified complaint of an offence comprising weighting of the substance, which is also confiscated, administration of drug test and interrogation of the suspect (so called simplified complaint).

In order to disperse open drug scenes, the police and the responsible administrative authorities based on the federal police legislation apply barring and restraining orders to the participants attracted to such scenes.

Production, dealing or trafficking

The usual reaction in the cases of production and/or dealing and trafficking is a (temporary) arrest and the referral of the case to the public prosecutor. Additionally to the drug confiscation, any production facility is also seized, as well as any property assets with the aim of skimming unlawful profits.

Driving after taking drugs

When the police suspect of driving under the influence of illegal drugs, a blood sample test is usually ordered. In this case, the police forward all the information related to the driving aptitude and the drug consumption to the responsible driving license authority (Berr et al. 2007).

It should be mentioned that, unlike alcohol, up to now no minimum threshold quantity for illegal substances is defined, which is judicially accepted. This means that, in principle, even the slightest dosage is subject to a fine (Böllinger & Quensel 2002). But according to a Supreme Court decision, a THC-content of below 1.0 ng/ml in the blood does not constitute an acute impairment of the fitness to drive (Az. BvR 2652/03 dd. 21.12.2004). Moreover, according to a sentence of the Federal Constitutional Court (Bundesverfassungsgericht, 08/07/2002), the Driving License Authorities are allowed to withdraw the offender/suspect's driving license only when there are concrete reasons to suspect that the respective individual cannot/ is not willing to keep cannabis consumption and active participation in road traffic separated (Annex 4, §§ 11, 13 and 14 FeV² – Nr. 9.2.2).

Additionally, the limit value for the THC concentration in the blood in road traffic setting has been the subject of several studies that provide potential approaches to and recommendations for developing per se limits for cannabis (Berghaus & Krüger 1998; Böllinger & Quensel 2002; Grotenhermen et al. 2005). In this vein, experts have worked on a grid to measure intoxication caused by THC analogously to the blood alcohol concentration. By way of illustration, a recently published study based on a comparison of meta-analyses of experimental studies on the impairment of driving-relevant skills by alcohol or cannabis suggests that a suitable numerical limit for THC in serum may fall in the range of 7-10 ng/ml, since these figures may correlate with an impairment comparable to that caused by a blood alcohol concentration (BAC) of 0.005% (Grotenhermen et al. 2007).

The German legislation provides for a dual sanction approach with regard to car driving under the influence of psychoactive substances. If the case is considered an administrative offence, the outcome ranges from caution, initiation of administrative action, fining of an amount up to 1,500 Euro to a driving ban; whereas when the case is classified as a criminal offence, it is referred to the public prosecutor.

² FeV: Fahrerlaubnisverordnung (Driver's License Regulation)

1.2.3 Types of response at the prosecution stage

Personal possession or use

According to the principle of legality which governs the German Criminal Proceedings Law, all cases of infringement of the laws in effect and on the bases of a substantial primary suspicion lead to the public prosecutor, who on the grounds of suspicion opens preliminary proceedings. Nonetheless, under specific conditions, the prosecutor has the discretion to dismiss the case (principle of expediency). When the quantity is insignificant and for personal use only and if there is no public interest for prosecution, the public prosecutor may abstain from referring the case to trial (§ 31 a, Section 1, BtMG) (EMCDDA 2002b).

This provides the public prosecutor with an instrument to stop proceedings for consumption-related offences without court approval. All federal states have regulated details of the application of § 31a BtMG through recommendations or guidelines. The finding of a study conducted by Schäfer and Paoli (2006) indicated that these regulations diverge in crucial points such as for example the definition of “small amount”. For instance, by the time of the study of Schäfer and Paoli (2006), maximum quantities providing for a discontinuation of prosecution varied between 6 and 30 g of cannabis from one federal state to another. Findings of the study illustrating differences in practice are provided in paragraph 11.5. Nonetheless, meanwhile – due to the jurisprudence of the BVerwG - the vast majority of the federal states have aligned their definition regarding “small amount” of cannabis (cf. Chapter 1.2.2 and 11.2.2).

As the substance type is not specified in the respective sections of the BtMG, the aforementioned consumption-related offences refer to all drug types and the proceedings could be closed without accordance of the court. Nonetheless, in practice they are applied mainly for cannabis (EMCDDA 2008).

According to sections of 153-154 StPO the prosecutor has the power to dismiss the case with or without injunctions and directives when the act is considered petty and when there is no public interest in prosecution. This may be done with or without imposing injunctions and directives. In certain cases the dismissal may be provisional as long as injunctions and directives are fulfilled.

A penal order is another possible outcome in cases which in the view of the prosecutor –do not require a hearing by the court. However, the possession of larger quantities usually results to referral to trial as in principle by penal order only fines and accompanying measures (such as asset forfeiture) may be imposed.

Adolescents³ and young adults⁴ may fall under Juvenile Law (Jugendrecht) and in this case diverging diversion provisions of the Juvenile Offenders Act (Jugendgerichtsgesetz, JGG, §§

³ Adolescents refers to individuals who are 14 through 17 years of age at the time of the offence (§ 1 JGG). They are adjudicated under the criminal law relating to adolescent offenders.

⁴ Young adults refers to persons who are aged 18 through 20 years at the time of the offence (§ 1 JGG). They can either be adjudicated according to the general criminal law or the criminal law relating to young offenders.

45 and 47) could be applied. This is often applied in cases having to do with small quantities of cannabis use up to 6 grams.

In some federal states, local prevention programmes are applied to avoid court hearings – for example the widely used programme "Early Intervention with First-Offence Drug Consumers - FreD". They also represent a possibility to intervene without starting criminal proceedings right away. The programme addresses 14- to 18-year-olds, but also young adults up to 25 years who have come to the notice of police for the first time due to their consumption of illegal drugs. The evaluation results of this programme have shown that the content and implementation of the FreD treatment offer in terms of the central features, i.e., participation, participant orientation, character of groups, organisational structure and time scale was "youth orientated" and was perceived by the participants as "effective and helpful" (Landschaftsverband Westfalen-Lippe (Ed.) 2003). Recent data on the implementation of the programme in Chapter 3.3.3.

Production, dealing or trafficking

The trafficking, cultivation and manufacture of illicit drugs are considered serious offences. In this sense, often an order for an arrest warrant is issued and the offender is referred to trial, however several elements are taken into consideration such as the type and quantity of the illegal substance, the level of professionalism of the act and the involvement in (organised) groups or gangs defining the selection of the court of first instance and the following penalty proposal. Under certain conditions, such as cultivation and manufacture of very small quantities only for personal use, prosecutors could dismiss criminal proceedings.

Driving after taking drugs

Under the suspicion that the driver was under the influence of illegal drugs while driving, his driving license may be withdrawn.

Administrative offences are in principle not being handled by the prosecutor but by the respective administrative authorities.

Criminal offences are usually referred to the court for trial. The power of the prosecutor to dismiss proceedings is limited as driving offences always entail a public interest in prosecution. Furthermore a dismissal of the offence would hinder the withdrawal of the driving licence to be imposed.

1.2.4 Types of response at the court stage

Personal possession or use

In general, dismissals at this stage and primarily in the cases of illegal possession are very rare. For consumption-related offences, though, a dismissal of the proceedings can be considered also at the court stage (§§ 31 a para. 2 BtMG). The same suspension is also possible with or without imposing injunctions and directives by Section 153, para 2 and 153 a, para 2 in case of minor guilt and lack of public interest to prosecute. Moreover, according

to § 29, Section 5 of the BtMG the court has the power to refrain from imposing punishment if the quantity is not significant and for personal use.

A repeat offence or illegal possession of a larger quantity is in principal sanctioned according to § 29 of the BtMG with incarceration of up to five years or a fine.

Cases of personal possession of larger illegal drug quantities of a drug with an active substance content exceeding the content defined by the law are considered to be a felony punished with a custodial sentence of one year minimum (§29 a, Section 1, No 2 of the BtMG).

Additionally, the illegal substance and any consumption paraphernalia are subject to confiscation (§33 BtMG) and thus they are seized.

With regards to addicted users who have received an imprisonment conviction of up to 2 years, it is possible to implement a release on license (§ 56 StGB) or to suspend execution of punishment (§ 35 BtMG), when the offender is already attending a therapeutic programme or is prepared to enter treatment shortly (according to the principle of “treatment instead of punishment”).

Production, dealing or trafficking

Production, cultivation and dealing of large quantities (so called not small quantities) of illegal substances as well as professional trafficking or dealing by a criminal organisation are punished with an imprisonment sentence, which cannot be diverted to probation (§§ 29a, 30 BtMG).

The spectrum of punishment in these severe cases consists of imprisonment of up to 5 years or a fine. In particular serious cases, such as for actions on a commercial basis, danger for health of several persons, involvement of minors, trade or import of significant quantities the penalty of imprisonment could vary from one to 15 years. However, in the cases of convicted persons who are addicted and willing to undergo treatment for the addiction problem, the execution of the given sentence could be deferred (principle “treatment instead of punishment”) (EMCDDA 2008).

In many cases, cash is also confiscated and/or profits are skimmed.

Driving after taking drugs

A driver can be punished with a penalty of up to 1 year imprisonment or with a criminal fine for driving under the influence of alcohol or other intoxicating substances and for his consequent inaptitude to drive safely (Section 316 StGB). If the driver has in addition endangered other persons or valuables the sentence of up to 5 years of imprisonment may be imposed (Section 315c StGB). An unfitness to drive exists, if there is proof that documents the inappropriateness of the driving condition. The unfitness could be documented by the presence of physical or mental defects or the detection of driving a vehicle under the influence of drugs. The criminal court can also order a driving ban and temporary withdrawal of the driving license or a complete revocation. After a minimum time lapse for re-acquiring a new driving license, one could be provided, after passing an

exhaustive medical-psychological test, which has to be paid by the traffic offender (Böllinger & Quensel 2002).

Moreover, driving under the influence of drugs could be classified as an administrative offence and thus can be punished with a fine taken into account the breach intensity and the offender's income (§ 24a Sect. 2 of the Road Traffic Law [Strassenverkehrsgesetz, StVG]). Another option is that the offender can receive a driving ban for up to three months.

1.3 Data collection systems

Introduction

The main data sources regarding drug criminality and the respective responses in Germany are the Police Criminal Statistics (Polizeiliche Kriminalstatistik, PKS) and the data network Drugs Data File (Falldatei Rauschgift, FDR) as well as the Criminal Prosecution Statistics of Justice. All aforementioned data sources refer to federal and federal state level.

Mainly the various information sources register data according to different variables and thus different type of data are available for each stage of the justice system. To date no direct link between different databases of the justice system could be identified, since the data are analysed separately and independently. It is assumed that the possibility of establishing a perspective link among the various databases is quite limited, taken that each of the existing data collection systems are well established and the interest to ensure coherence of the recorded data among years would prevail over the introduction of changes with the aim of harmonizing the existing information systems.

Additionally, data protection reasons might be an obstacle in establishing a register following the course of a suspect/accused person during all the stages of the justice system.

Moreover, the comparison among the data deriving from the different information sources would be problematic or even not feasible, as the data of the Criminal Prosecution Statistics refer in most cases to offences committed in the past, whereas the police statistics refer as a rule to law breaches of the reporting year (Regierungspräsidium Karlsruhe 2008). This means that no temporal sequencing is strictly possible; however, given the fact that the German police have no authority to dismiss cases independently and the differences of cases dealt with by the police and opened by the Prosecution services each year is relatively small, an attempt of sequencing could be attempted even if it is not 100 percent methodologically sound. A major limitation is however represented by the fact that prosecution statistics do not provide detail on the type of drugs, whereas police statistics do (Paoli 2008).

1.3.1 Data collection system at the police stage

All federal states run police criminal statistics records. Then they submit their data in a predetermined form as tables (aggregated data) to the Federal Criminal Police Office which compiles them to create the Police Crime Statistics for the Federal Republic of Germany (Bundeskriminalamt 2007a). Basic instrument of the police information system is INPOL, which gathers and connects all data recorded on federal and federal state level.

With regard to Police Criminal Statistics, the following methodological information should be taken into account. The unlawful (criminal) acts dealt with by the police, including attempts subject to punishment, are recorded in the Police Crime Statistics. This also includes the drug offences handled by the customs authorities. Breaches of regulations and road traffic offences are not covered (however, the offences described in Sections 315 and 315b of the German Penal Code as well as Section 22a of the Road Traffic Act - which are not regarded as road traffic offences in the sense of the guidelines - are covered) (Bundeskriminalamt 2007b).

According to the current national framework, the judicial authorities, and not the police, decide the question of guilt. Furthermore, when cases are not cleared up, the age and the criminal responsibility of the perpetrators are usually not known anyway. Collection of statistics is based on a catalogue of criminal offences compiled under both penal and criminological aspects. "Outgoing statistics" have been kept in a uniform manner throughout Germany since 1 January 1971, i.e. the criminal offences that come to light are not recorded until the police investigations have been concluded and the respective files can be handed over to the public prosecutor's office or the court (Bundeskriminalamt 2007b).

The State Criminal Police Offices send the figures to the Federal Criminal Police Office. The extent to which crime goes unreported depends on the type of offence, and this can vary over the course of time in response to a variety of factors (e.g. public willingness to report offences, the intensity of crime detection efforts). Therefore it could not be assumed that there is a fixed ratio between the number of offences committed and the offences recorded in the statistics (Bundeskriminalamt 2007a). Factors, such as the extent to which crime is reported, the crime detection efforts of the police, the collection of data for statistical purposes, amendments to criminal law as well as changes in crime influence statistical developments in the Police Crime Statistics. Thus the Police Crime Statistics do not provide an exact reflection of crime, but rather one that is more or less accurate depending on the specific type of offence. Nevertheless, the available data could provide indicative information about the frequency of the cases recorded as well as about forms of crime and development trends (Bundeskriminalamt 2007b).

For the recording of drug offences in connection with the drug type, in the cases where several types of drugs are involved, the following priority is applied: 1st heroin and cocaine, 2nd amphetamine/methamphetamine and derivatives of these in powder or liquid form, 3rd amphetamine/methamphetamine and derivatives of these in the form of tablets or capsules (ecstasy), 4th LSD, 5th cannabis and 6th other drugs (Bundeskriminalamt 2007b).

Moreover, police statistics distinguish between "soft" and "hard" drug users⁵.

⁵ "Hard" drug users are considered users of substances and preparations listed in Annexes I-III of the Narcotics Act including manufactured pharmaceuticals that are subject to the provisions of narcotics legislation - with the exception of those persons who use only cannabis products (hashish, marijuana, hashish oil) or psilocybin (mushrooms) and of "exempted preparations". To the extent that persons known as "hard" drug users consume alternative substances - "exempted preparations" or other medications or substances not covered by the Narcotics Act - this must also be considered as hard drug use (Bundeskriminalamt 2007b).

The Federal Office of Criminal Investigation differentiates in its statistics on drug-related crimes between punishable acts in terms of violations of the BtMG and cases of direct economic compulsive criminality. The first ones are subdivided into four different groups of offences: a) General offences in terms of §29 BtMG (especially possession, purchase and distribution, so-called consumption-related offences), b) Illegal trafficking and smuggling of narcotic drugs in terms of §29 BtMG, c) Illegal import of narcotic drugs in non negligible quantities in terms of § 30 BtMG and d) other offences against the BtMG. Prosecution of economic compulsive crimes is mainly related to theft and robbery.

The statistical unit in the records is number of offences. Only one case is recorded if the trafficker/s, or groups of traffickers, have sold drugs for a long period of time, or when one person has procured drugs over a long period of time (Bundeskriminalamt 2007b). Multiple offences are counted as one offence and specifically according to the most serious one (in the case of various acts). When different substances and different acts are involved priority is given to the seriousness of the act (Bundeskriminalamt 2007a). With regard to the data of this stage breakdowns by drug are available. Nonetheless, no information on outcomes is available taken that all cases are supposed to be referred to the prosecutor who has the power to decide on the response. Namely the police is considered to be a supporting institution to the public prosecutor.

The special database FDR, which constitutes only a small extract of the PKS, has the main aim to describe the situation as well as to detect trends. Data regarding personal possession and dealing are included in the aforementioned Criminal Police Statistics.

As for the system regarding the road traffic setting, the outcome data regarding driving under the influence of drugs are part of the Justice Statistics (see paragraph 1.3.3). However, since 2003 the Federal Statistics Office in its statistical report on road accidents has been providing information on the question as to whether the operator of a motor vehicle involved in an accident was under the influence of other intoxicating substances than alcohol. These data refer to the police stage however they are limited to the recording of heavy accidents (Statistisches Bundesamt 2008d). It should be taken into account, though, that since alcohol is easier to detect than other intoxicating substances, it is to be assumed that drug-related cases are underrepresented in the road traffic statistics.

1.3.2 Data collection system at the prosecution stage

Prosecution data are routinely collected through an information system which includes information on the outcome of the proceedings as well as on the offender (Verfahrensregister). The data of all closed cases are sent to the Federal Statistics Office, which has the responsibility to produce the respective statistics.

The information system on convictions is updated on annual basis and the statistical unit in the records is the person.

A problem that was identified with regard to the operation of this information system is that until recently there was no link among the Public Prosecution Services across the country. The introduction of the new central public prosecutor procedure register (Zentrales

Staatsanwaltschaftliches Verfahrenregister, ZStV) by the Ministry of Justice on January 1, 2007 aims to solve this problem by connecting the data recorded at the various services and thus facilitating effective criminal prosecution. In this register all data regarding preliminary proceedings are being reported.⁶

1.3.3 Data collection system at the court stage

At the court stage data are recorded regarding all proceedings, which are then submitted to the statistical services of the court statistics (Gerichtsstatistik).

Regarding the judicial process, all final verdicts of the courts are inserted in the Federal Central Register and are also included in the national prosecution statistics. These statistics are published in volumes of annual reports in which the offences are given with their nature and scale. The judgements listed there, are classified according to the main groups of offences, in conformity with the current laws (StGB and associated legislation). Convictions are classified following a distinction between traffic offences, possession of or trafficking drugs prosecution for offences connected with obtaining drugs (EMCDDA 2002a).

In the data collection system, the statistical unit is the offender.

The main sanction with regard to the offence type is recorded, whereas data are also collected on perspective secondary sanctions and measures given additionally to the main sanction according to StGB. From the various options for secondary sanctions the following are only recorded: driving ban, deprivation of civil rights and asset forfeiture. As for the measures, they refer to ordered measures with the aim of improvement and safety and namely withdrawal of driving license, placement in psychiatry, detoxification unit and preventive detention. Data in terms of secondary sanctions are also provided on the persons incapable as well as with reduced capability of crime. The aforementioned data are recorded and published systematically only with regard to the old federal states; as for the new federal states, there is no comprehensive/systematic recording and thus the respective data are not published.

The Federal Motor Transport Authority (Kraftfahrtbundesamt, KBA) publishes an annual report with data from the Central Register of traffic offenders and of driving licences (Verkehrszentralregister, VZR) including entries for alcohol and drug offenders. Moreover, it provides driving licence statistics regarding withdrawals and refusals of driving licences, driving bans broken down by federal state, gender, age and reasons for decisions taken. However, outcomes regarding punishable acts involving alcohol and drugs are recorded together and cannot be distinguished.

⁶http://www.bundesjustizamt.de/cln_049/nn_257944/DE/Themen/Strafrecht/ZStV/ZStV__node.html?__nnn=true

1.4 Data collected

Police stage

Police data are very detailed and include information on the socio-demographic characteristics of the suspect (gender, age, nationality) as well as on the offence type, the drug type and the geographical area. Additionally, the statistics of the Federal Criminal Police Office include data on first-notified offenders, that is users of hard drugs who come to police notice for the first time.

As stated above, the focus of these data is not to provide information on the outcome, since the police cannot dispose of a criminal case.

Prosecutor stage

The data available corresponding to the prosecution stage and providing information on the disposition of the prosecutor include fewer information and breakdowns compared to those available for the previous stage of the justice procedure. Specifically, they present all offences in terms of the BtMG together, providing no breakdowns by specific offence types. Moreover, there is no distinction by drug type, neither is any information given on information on the suspects' characteristics, such as gender, age, nationality, criminal records and drug career is provided (Paoli 2008). Breakdowns are nonetheless available by geographical area and namely by federal states, as well as by old and new states.

Court stage

The data of the court stage are broken down by general offence types, whereas regarding offences of the BtMG the information is broken down also by its various paragraphs. The data are more detailed regarding the distinction between convicted persons (all conviction types together) and total number of persons who were sentenced (all offenders who were prosecuted regardless of the trial's outcome, including acquittals). With regard to this distinction information is recorded on gender and age groups of the offenders, type of the decision, type of the law applied (e.g. general or juvenile), geographical area (federal state), primary and secondary sanctions.

Additionally, for the convictions data information is also provided on the time difference between the offence commitment and the conviction, duration of foreseen incarceration, number of young adults and adults by federal state, amount of monetary fine, nationality of the offender and the criminal records.

Specifically, for the different type of outcomes given, data is provided on gender of the accused persons.

Data regarding outcomes of the public prosecutors with regard to the application of the § 35 of the BtMG, which is related to the principle of "treatment instead of punishment" and specifically the postponement of a sentence execution as well as the revocation of this postponement are not systematically recorded.

1.5 Results available

Police stage

Data regarding the official police crime statistics are accessible at the website of the Federal Criminal Police Office (www.bka.de) as well as of the Federal Ministry of Interior (www.bmi.bund.de). The respective statistics (*PKS*) is produced annually. Additionally, with regard to the drug situation in the Federal Republic of Germany the reports *Narcotic Drugs – Annual Report (Abridged Version) (Rauschgift - Jahreskurzlage)* and *Narcotic Drugs Criminality – Federal Situation Report (Rauschgiftkriminalität - Bundeslagebild)* provide also on annual basis the overall situation in the country. The information presented in these reports is based on analyses of the Drugs Data File, regarding the Federal Situation Report also data of the Criminal Police Statistics is included. Annual reports are produced by the Criminal Police Offices of the federal states as well, and in most cases these documents can be also accessed at the websites of the corresponding services.

The data on drug related crime, that is offences reported at the police level separated by offence type (i.e., the classification applied in German police crime statistics) and by drug type is presented in detail in Chapter 8. In summary, in 2007 a total of 248,355 offences were recorded related to BtMG, out of which 171,496 were general offences under §29 BtMG (that is, possession offences), 64,093 were illegal trafficking and smuggling of narcotics under §29 BtMG and illegal import under § 30 para 1 no. 4 BtMG, and 12,766 were other type of offences (such as illicit cultivation of narcotic drugs, cultivation, production or trafficking of narcotic drugs as a member of a gang, allocation of money or assets, etc.) (Bundesministerium des Innern 2008).

The data on road accidents referring to the police stage are included in a volume compiled by the Federal Statistics Office (series 8, part 7), which can be accessed at its website (<http://www.destatis.de/>). In the year 2007, 336,002 accidents occurred on German roads with 409,641 operators of vehicles being involved. Out of these, 1,354 (0.3%) were under the influence of “other intoxicating substances” (Statistisches Bundesamt 2008d).

Prosecutor stage

Prosecution statistics are published on annual bases and are accessible at the website of the Federal Statistics Office (series 10, part 2.6). The most recent data available are from year 2006. According to Table 11.2, out of a total of 280,877 proceedings related to application of drug law that were disposed of by the public prosecutor, in 174,276 the outcome was dismissal, whereas 50,707 cases were referred to trial and 23,096 were sentenced with a penal order.

Table 1.2 Type of outcomes for drug related offences deriving from prosecutions statistics in year 2006

Type of outcome	N	%
Charges	50,707	18.1
Penal order	23,096	8.2
Conditional dismissals	5,951	2.1
Unconditional dismissals	102,257	36.4
Dismissals due to lack of evidence	66,068	23.5
Other outcome	32,798	11.7
Total	280,877	100.0

(Statistisches Bundesamt 2007c)

Additional data on this stage derive occasionally from respective studies. By way of example, the legal practice of the departments of public prosecution with regard to the application of § 31a of the BtMG, which offers the possibility to discontinue prosecution, was evaluated in the context of other regulations on the discontinuation of prosecution as part of a study comparing laws on the topic “Drug use and practice of criminal prosecution“ (Schäfer & Paoli 2006). A random sample of over 300 proceedings on consumption-related offences in each of six different federal states was taken. Out of these proceedings, files of a total of 2,011 individual cases were analysed and a large number of experts interviewed (policemen, public prosecutors, criminal court judges and counsels at the criminal bar) in eleven selected cities. Furthermore, the study was to find out whether the suspension of prosecution would ease the work load of criminal prosecution authorities, whether it would promote the principle of “treatment instead of punishment“ and whether there was a correlation between prevalence of drug use and practice of criminal prosecution in the individual federal state. The regional differences found in the application of the drug law were substantial. The insufficiently defined term of “occasional consumption“ which is regarded as a criterion for absent “public interest“ in prosecution, was identified as one of the core problems by the authors of the study. Due to the differences regarding maximum cannabis quantity providing for a discontinuation of prosecution from one federal state to the other, the quota of discontinued proceedings ranged between 20% and 80%. Critical was the question whether prosecution should be generally discontinued or only under certain conditions (first offender, occasional or habitual consumption). After the opening of proceedings, charges were filed or summary awards of punishment requested in 4.9% (Schleswig-Holstein) to 40.7% (Bavaria) of the cases. The practice of stopping prosecution concerning § 31a BtMG has led to the intended decrease of workload for the prosecution authorities. Courts by contrast, have seen their workload rising in respect of drug-related offences. According to Schäfer and Paoli, §31a cannot contribute anything substantial to turning the concept “Treatment instead of punishment“ into practice.

Court stage

Data on convictions are also accessed at the website of the Federal Statistics Office (series 10, part 3) and are published on an annual basis.

As in the case of the prosecution statistics, the most recent data available refer to 2006. Specifically, a total of 58,892 persons were tried for offences committed against the Narcotics Act, out of which 47,161 under General Criminal Law and 11,731 under Juvenile Law. A total of 6,727 person received non-conviction decisions (4,098 General Criminal Law and 2,629 Juvenile Law). Table 11.3 presents in detail data on the various decisions also with regard to the various drug related offence types.

With regard to the distinction by offence type, total refers to all offences committed against the Narcotics Act; whereas "Other §29 Abs.1" are general consumption related offences, "Trafficking §29a Abs.1 Nr.2" refer to illegal trafficking and smuggling of narcotic drugs and "Import §30 Abs. 1 Nr.4" refer to import of narcotic drugs in non negligible quantities. The aforementioned division coincides with the classification of the BKA.

Table 1.3 Accused persons for offences against the Narcotics Act subject to a court decision in year 2006¹⁾

Sanctions	Total	Other §29 Abs. 1	Trafficking §29a Abs.1 Nr. 2	Import §30 Abs. 1 Nr.4
Under General Criminal Law				
Convicted (See Table 11.4)	43,063	33,230	4,968	2,326
Other court decisions	4,098	3,544	214	100
<i>Out of which:</i>				
<i>Conditional discharge</i>	4	2	2	0
<i>Acquittal with conditions</i>	0	0	0	0
<i>No punishment</i>	57	52	1	0
<i>Closing of the proceedings</i>	2,958	2,734	72	40
<i>Acquittal</i>	1,079	756	139	60
Total	47,161	36,774	5,182	2,426
Under Juvenile Law				
Convicted (See Table 11.4)	9,102	7,542	873	197
Other court decisions	2,629	2,512	48	9
<i>Out of which:</i>				
<i>Closing of the proceedings</i>	2,420	2,331	33	2
<i>Acquittal</i>	209	181	15	7
Total	11,731	10,054	921	206
Total (General Criminal & Juvenile Law)	58,892	46,828	6,103	2,632

1) The data refer only to the old states. The data on new federal states are not available.

(Statistisches Bundesamt 2007b)

Moreover, 52,165 persons were convicted for offences against the Narcotics Act, out of which 43,063 convictions were rendered under the general criminal law relating to adult

offenders and 9,102 relating to juvenile offenders. Regarding the conviction rendered in respect of the general criminal law, 17,546 custodial sentences (with or without fine) - out of these 10,935 were suspended on probation – and 25,517 fines were imposed (Statistisches Bundesamt 2007b) (Table 11.4).

Table 1.4 Convictions for offences committed against the Narcotics Act in year 2006¹⁾

Sanctions	Total	Other §29 Abs. 1	Trafficking §29a Abs.1 Nr. 2	Import §30 Abs. 1 Nr.4
Under General Criminal Law				
Custodial sentence	17,515	7,940	4,894	2,292
Custodial sentence with fine	31	12	15	0
Fine	25,517	25,278	59	34
Imprisonment and/or fine without injunctions/directives	34,132	28,869	2,528	1,377
Imprisonment and/or fine with injunctions/directives	8,931	4,361	2,440	949
Suspension on probation	10,935	5,541	2,986	993
Total²⁾	43,063	33,230	4,968	2,326
Under Juvenile Law				
Prison sentence	2,120	985	689	168
Corrective measures ³⁾	6,404	6,009	172	29
Educational measures ⁴⁾	578	548	12	0
Total²⁾	9,102	7,542	873	197
Total (General Criminal & Juvenile Law)	52,165	40,772	5,841	2,523

1) The data refer only to the old states. The data on new federal states are not available.

2) Counted according to the most severe sanction.

3) Such as warning, with injunctions/directives, youth custody.

4) Such as community work, obligation to acquire a job or vocational training.

(Statistisches Bundesamt 2007b)

Table 11.5 provides information on the supplementary sanctions given for offences against the Narcotics Act in 2006. It is evident that the sanction of asset forfeiture is widely applied additionally to the main sanction (16,583 persons).

Comparing the figures with the ones referring to the previous stage of the justice procedure - although it should be kept in mind that no temporal sequencing is possible as stated above- it becomes obvious that the total of cases disposed by the prosecutor is high, whereas the figures referring to cases brought before a court tend to be low (Killias et al. 2003).

Table 1.5 Secondary sanctions and measures for offences committed against the Narcotics Act in year 2006¹⁾

	Total	Other §29 Abs. 1	Trafficking §29a Abs.1 Nr. 2	Import §30 Abs. 1 Nr.4
Secondary sanctions				
Deprivation of civil rights	0	0	0	0
Asset forfeiture	16,583	14,184	1,117	808
Driving ban	296	261	23	9
Measures for amelioration and safety				
Withdrawal of driving license	263	171	43	32
Placement in psychiatry	4	1	3	0
Placement in detoxification unit	337	54	141	80
Preventive detention	2	0	1	1
Other measures	17	12	3	0
Incapability of crime				
Without referral	1	0	0	1
Placement in psychiatry	2	1	1	0
Placement in detoxification unit	2	1	1	0
Reduced incapability of crime				
Without referral	570	325	129	38
Placement in psychiatry	2	0	2	0
Placement in detoxification unit	110	20	37	31

1) The data refer only to the old states. The data on new federal states are not available.

(Statistisches Bundesamt 2007b)

As far as the road traffic statistics related to substance consumption are concerned, the data of the Federal Motor Transport Authority can be downloaded free of charge on its website and are supplemented by annual reports. In 2007, a total of 27,600 drug related driving offences (excluding alcohol) were recorded, representing 12.4% of the cases related to substance use (Table 11.6). This relatively low rate though compared to the alcohol related offences might be possibly linked with the difficulty to detect other intoxicating substances.

Table 1.6 Drug related driving offences (including alcohol) 2002 – 2007

		2002	2003	2004	2005	2006	2007
All substance related offences (incl. alcohol) ¹⁾	N	238,100	236,100	243,400	241,900	225,300	222,600
Drug related offences (excl. alcohol) ¹⁾	N	12,800	17,000	24,700	27,900	27,400	27,600
	%	5.4	7.2	10.1	11.5	12.2	12.4

1) Absolute numbers of offences are rounded to 100.

(Krafftahrtbundesamt 2008a)

According to the 2007 data, the most typical driving license sanction related to the consumption of substances (alcohol or drugs) is the withdrawal of the driving license (97,339 cases) and the driving ban with administrative fines (86,016 cases). Less frequently applied sanctions are the ban on granting a driving permit or refusal to grant a driving permit (15,028), the disqualification which is applied on holders of foreign driving licenses, that could not be withdrawn by the German authorities (5,802) and the driving ban in the framework of the criminal procedure (Table 11.7).

Table 1.7 Type of driving license sanctions involving alcohol or drugs in year 2007

Driving license sanction	Total punishable acts	Punishable act involv. alcohol or drugs
Withdrawal of driving license	132,016	97,339
Ban on granting a driving permit or refusal to grant a driving permit	29,370	15,028
Disqualification for holders of foreign driving licenses	7,230	5,802
Driving ban in criminal procedure	33,460	6,203
Driving ban with administrative fines	469,832	86,016

(Kraftfahrtbundesamt 2008b)

All in all, the information and reports presented in this chapter are published regularly and in most cases could be easily accessed. As for their use, by way of illustration, in the section regarding the quality characteristics of the statistics of the Federal Statistics Office it is stated that the target audience of these reports are in principal the bodies of the justice and legislation authorities on national and federal state level. These data are furthermore used in justice practice, scientific research, as well as to a lesser extent by information providers and media (Statistisches Bundesamt 2007b, c, 2008d).