

# Preventing Alcohol and Cannabis Addiction of Young People

European Legal and Human Rights Contexts

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- A Short Introduction: Drugs, Policies, Values
- Alcohol and Cannabis: Approaches to Regulation
- The Legal Contexts
- Cannabis Policies
- Human Rights Contexts

- Drug policies are
  - part of the political economy
  - loaded with values and driven by values
- Conflicts on drugs and drug policies represent value conflicts and
  - generate more problems than other types of (interest) conflicts (less room for negotiation)
  - are associated strongly with deeply entrenched beliefs concerning social order and healthy communities
  - influence also the decision whether drug use and drug users should be considered
    - a health problem
    - or a criminal law problem because of demand triggering supply of drugs (migrant smuggling and child pornography)

- EMCDDA, ESPAD, WHO
- 14 million young adults are estimated to have used cannabis in Europe during the last year
- In the ESPAD surveys (15 – 16 years old) an average of 13 % of students in the EU reported having been intoxicated during the last 30 days (2015)
- Prevalence of general and problem use of alcohol as well as rates of early onset of drinking (before 13) decrease in the new millennium
- Cannabis use displays stable trends (in all indicators: early onset, last 30 days use, lifetime prevalence)
- Alcohol is a significant cause of death for young people, in particular in Eastern Europe

- Youth protection
  - Limitation of access (wide variation as regards age and type of alcoholic beverages)
  - Penalization of supplying alcohol to youth
- Protection of (public) health
  - General laws on food safety
  - Restrictions on advertizing alcoholic products
  - Counseling and treatment
- Enforcement of road traffic safety
  - Penalization of drunken driving (a limit of 0,05% or less applies in European Union countries)
- Taxation

- Regulation of cannabis took a different path
- Regulation of cannabis is (strictly) guided by international law
- While alcohol (and tobacco) and alcohol production and trafficking is considered a legitimate and legal business
  - Cannabis is banned by penal law (and almost completely confined to a black market)

- 1961 Single Convention
  - Use of cannabis shall be restricted to medical and scientific purposes
  - Main goal: Strict control of trafficking
  - Criminal offence statutes to be established, including cultivation, production, distribution of cannabis
    - Possession for personal use not mentioned
- 1988 Vienna Convention
  - Goal: Reinforcement of the Single Convention
    - “directed specifically against illicit traffic”
    - Particular concern for links between drugs and organized crime as well as to crime and instability caused by the illicit drug trade
  - Art. 3 §2: Possession, purchase, cultivation for personal use must establish a criminal offence (subject to constitutional limitations and basic legal concepts)
  - Art. 3 §6. Discretion to be exercised to maximize law enforcement

- European Union
  - EU Framework Decision on Drugs 2004 (restricted to trafficking in illicit drugs, offence definitions and minimum (maximum) penalties)
  - European Drugs Strategy 2013 – 2020
    - Focus on illicit drugs and general issues of demand and supply reduction (including control of money laundering, confiscation of drug trafficking proceeds and organized crime)
- Council of Europe
  - Pompidou Group
    - Development of effective and evidence based drug policies
- International law (UN Conventions) does not leave much room for specific European (legal) approaches to illicit drugs



- Demand reduction through
  - Information campaigns (informing target (vulnerable) groups on risks associated with drug use)
  - Treatment
  - Law enforcement (policing and punishment)
  
- Supply reduction through
  - Law enforcement (punishment)
  - Interception of drugs (customs)
  - Disruption of drug markets (policing)
  - International cooperation (law enforcement)
  - International state and security building

# Cannabis Control Today (Europe)

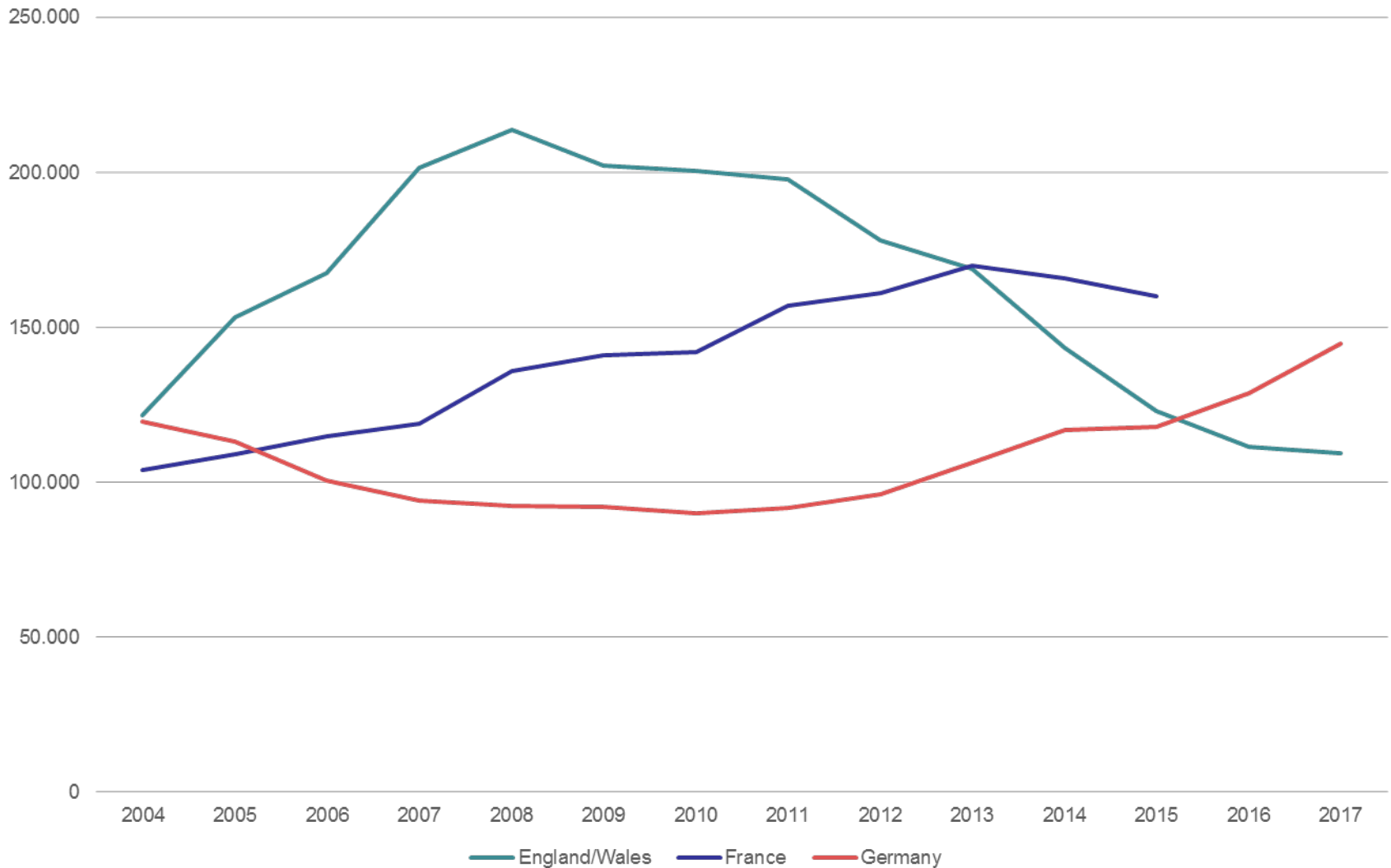
- Growing approval of medical cannabis
- Significant variation in decriminalization policies
  - Toleration Coffee Shop Model
  - Toleration of Cannabis Social Clubs
  - Mandatory decriminalization of possession, purchase etc. for personal use (Austria, Spain, Switzerland, Italy)
  - Discretionary decriminalization (Diversion through (discretionary) non-prosecution)
  - Strict prohibition (Sweden)
- Despite ongoing lobbying for legalization, no serious attempt at introducing full legalization of recreational use (and related commercial activities)

- Non-profit, state operated production and retail
  - Uruguay
    - Strict state regulation: content of THC, retail, pricing etc.
    - Top down legalization (despite public opinion not in favor of legalization)
    - Registration and monitoring of users
    - Protection of youth, ban on advertizing, of use in public, DUI
- Commercial, profit driven production and retail markets
  - Colorado, Washington, California etc.
    - Legalization following public votes in favor of recreational cannabis
    - Regular taxation (taxes devoted to prevention and treatment) of licensed business
    - Monitoring and standards for production, content of THC
    - Protection of youth, restrictions on advertizing, of use in public, DUI

# What Drives Cannabis Policies?

- Saving law enforcement resources and emphasizing control of serious crime
  - **Graph**
- Improving public health through separating cannabis and heroin markets and containing the risk of addiction to hard drugs (coffee shops)
- Protecting young people (in particular young minority people) from the stigma of crime (and punishment) and discrimination
- Containing organized crime and taxing proceeds of cannabis sales (making more resources available for prevention and treatment)
- Compliance with human (fundamental) rights

# Police Recorded Possession/Use



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- Equal treatment (discrimination)
  - Individuals using addictive substances such as alcohol, cannabis and tobacco should be treated alike and substances should be judged on the basis of the risks they pose for public (or individual) health
- Privacy (Art. 8 ECHR)
  - (Adult) individuals should be left alone by the state, when they are in their homes (core of privacy)
- Right to liberty/freedom
  - All interference with individual freedom is subject to a test of proportionality which bans disproportional intrusion

- Argument intensively discussed in a judgment of the German Federal Constitutional Court (1994)
- The Court argued that the government is not obliged to treat alcohol and cannabis alike
  - (1) Alcohol is deeply entrenched in European societies and cultures and its risks are contained by informal (and formal) norms and tradition
  - (2) The legislator – when deciding on penalization of substances – has a margin of appreciation with respect to the risks associated with particular substances



- Constitutional Court of South Africa (judgement as of September 18, 2018, Supreme Court Alaska, *Ravin v State of Alaska* 1975)
- Interference with privacy must be necessary in a democratic society
- If governmental restrictions interfere with the individual's right to privacy, it is required that the relationship between means and ends be not merely reasonable but close and substantial
- Test of proportionality (core of privacy v risks of cannabis use in private)
- As long as the use or possession or cultivation of cannabis is in private and not in public and the use or possession of cannabis is for the personal consumption of an adult, it is protected by the right to privacy

- Federal Constitutional Court Germany 1994
- Constitutional Court Georgia, July 2018
  
- Penalization of drug use (possession and purchase) violates the general right to liberty and is justifiable only if others would be put at risk
  
- Federal Constitutional Court Germany
  - Legislator has a margin of appreciation whether to decriminalize possession of small amounts for personal use through adjusting substantive criminal law or through procedural law (non-prosecution)
  
- Constitutional Court Georgia
  - Purchase, possession and use must be decriminalized

- Opioids/opiates (heroin legislation)
  - Harm minimization
  
- Cannabis
  - Tolerance and proportionality
  - Legalization (in various forms) will prevail
  - Ignoring international law (deviance as a vehicle of social/legal change)
  
- Amphetamines and cocaine
  - Conventional (repressive) approaches