



Penalties in Drug Trafficking Cases

Vestergaard, Jørn

Publication date:
2013

Document version
Early version, also known as pre-print

Citation for published version (APA):
Vestergaard, J. (2013). *Penalties in Drug Trafficking Cases: National Report, Denmark*. European Criminal Law Academic Network, ECLAN.

Country Profile on Penalties in Drug Trafficking Cases

DENMARK

by Jørn Vestergaard, Professor of Criminal Law, University of Copenhagen

A. General questions on penalties in drug trafficking cases

1. Please provide a **full picture** of the **penalties which are provided for by law** for drug trafficking offences in your country. For drug trafficking, we mean here supply, distribution and sale offences. We do not require separate information on production, cultivating, processing offences. We also do not require information on precursor trafficking offences. Please specify the **name and sections of the law** in which the penalties are provided for. In particular, please answer to the following questions:
 - a. Which penalties are provided for by law for different drug trafficking offences in your country? Please tell the penalties for each offence separately.
 - b. What aggravating circumstances which change the penalties foreseen by law are provided for? E.g. large quantities, harm, type of drug, involvement of organized crime, etc. Please state which penalties are foreseen for the different aggravating circumstances.
 - c. What mitigating circumstances which change the penalties foreseen by law are provided for? E.g. small quantities, type of drug, addiction of the offender, etc. Please state which penalties are foreseen for the different mitigating circumstances.

A: In Denmark, drug offences may be charged under the Euphoriant Substances Act¹ or under the Penal Code (PC),² depending mainly on the quantity and type of drug involved. Basically, drug offences are criminalized under the Euphoriant Substances Act. Serious drug offences are dealt with under PC § 191, which adds aggravating circumstances to the substantive prohibition in the Euphoriant Substances Act and provides for significantly enhanced sentencing latitudes.³

According to provisions under the Euphoriant Substances Act, acts involving »import, export, sale, purchase, delivery, receipt, production, processing or possession« of drugs, are defined as criminal offences. The penalty under the Euphoriant Substances Act is a fine or an imprisonment sentence of up to 2 years. In 1996, the Euphoriant Substances Act was amended in order to increase the penalty for professional drug pushers who, until then, had avoided serious sanctions by carrying very small

¹ Da: Lov om euforiserende stoffer. The Act was originally enacted in 1969.

² Da: Straffeloven.

³ For a brief account of the relevant provisions, see Langsted, L.B., P. Garde & V.Greve: *Criminal Law in Denmark*. Kluwer 2011. Translations of the Penal Code are available in Freese Jensen, M. *et al*: *The Principal Danish Criminal Acts*. 3rd edn. DJØF Publishing 2006; Cornils, K. & V.Greve: *Das Dänische Strafgesetz – Straffeloven*. 3rd edn. Edition iuscrim 2009.

quantities of drugs at the time. In 2004, the distribution of drugs in restaurants, discotheques or similar places frequented by children or young people was stipulated to be a significantly aggravating circumstance, that should normally be punished with an unconditional imprisonment sentence.

PC § 191 covers supply of illegal drugs to a considerable number of persons, either in return for a substantial payment, or under other particularly aggravating circumstances. According to recent jurisprudence, the requirement is that the perpetration involves trafficking, or an intention to traffic, at least 25 g of heroin or cocaine, 50 g of amphetamine or 10 kg of cannabis.

Since 2004, the ordinary sentencing maximum under § 191 is imprisonment for up to 10 years. Penalties often reaches or borders with the maximum. An enhanced maximum of imprisonment up to 16 years is authorised if the supply relates to a considerable quantity of a particularly dangerous or harmful drug, or if the trafficking of such substances has otherwise been of a particularly dangerous character. If the perpetrator is found guilty of a multitude of counts, the penalty may exceed the ordinarily prescribes maximum by up to half, however not up to more than imprisonment for 20 years, cf. the generic statute under PC § 88(1).⁴

According to the geric statute under PC § 81(4), it shall be considered an aggravating circumstance in sentencing that the offence was planned or part of extensive criminality.

Under the Penal Code, 692 cases of illicit drug sales and 109 cases of drug smuggling were reported in 2009. In almost all cases, a criminal charge under the Penal Code was initiated (97% and 89%, respectively). Per 100.000 inhabitants, the mentioned figures equivalates 15, respectively 2 cases.⁵ In 2009, the recorded cases summed up to a total of 520 sanctions regarding sales of illicit drugs and 147 sanctions in cases regarding smuggling of drugs.⁶ Per 100.000 inhabitants, the mentioned figures equvalate 13, respectively 4 sanctions.⁷ Of the sanctions regarding sales/smuggling, 372/118 were unconditional imprisonment sentences, 51/6 were conditional sentences/probation, 1/0 was a fine, 3/2 were conditional non-prosecution, and 16/3 were other types of sanctions. In 159/37 cases, defendants were acquitted. The unconditional imprisonment sentences amounted to a number of 96/18 up to 6 months, 107/24 up to 1 year, 84/13 up to 2 years, 72/32 up to 5 years, 22/20 up to 8 years, 1/9 up to 12 years, and 0/2 over 12 years.⁸

Under the Euphoriant Substances Act, 16.970 offences were reported in 2009. The figures for 2008 were slightly higher.⁹ However, the prevalence of such recordings has been rather stable from 2005 onwards and has increased one and a half times since 2000, probably due to a strengthened law enforcement effort.¹⁰ In 2009, the recorded cases summed up to a total of 11.014 sanctions.¹¹ Of

⁴ For a brief account in English of the legislation on drugs, see the website of the National Board of Health: http://www.sst.dk/English/Health_promotion/Drugs/Legislation.aspx.

⁵ See *Kriminalitet 2009*, p. 45. The figures for the previous years were slightly higher. Statistics on recorded offences can also be found in the National Board of Health's 2010 report to EMCDDA.

⁶ See *Kriminalitet 2009*, p. 46. The figures for previous years were slightly higher.

⁷ See *Kriminalitet 2009*, p. 46. The figures for the previous years were slightly higher.

⁸ See *Kriminalitet 2009*, p. 89.

⁹ See *Kriminalitet 2009*, p. 13.

¹⁰ See *Kriminalitet 2009*, p. 14.

¹¹ See *Kriminalitet 2009*, p. 28 and 30; cf. p. 19, where the number 11.474 sanctions is stipulated. The figures for 2008 were slightly lower.

these, 551 were unconditional imprisonment sentences, 561 were conditional sentences/probation, 9.380 were fines, 478 were conditional non-prosecution, and 44 were other types of sanctions. 1 460 cases, the defendants were acquitted. The average imprisonment period was 1,5 months.¹²

2. Are there any police, prosecuting or sentencing guidelines, significant court decisions, or any other regulations on quantities, purity, etc. for drug trafficking cases? Please list them (with date) and briefly describe their content, and how much they are considered binding/compulsory.

A: The Director of Public Prosecutions, Rigsadvokaten, has issued an instruction regarding sentencing pleas in drug cases.¹³ On 34 pages, rather detailed guidelines are communicated to the prosecutors, stipulating criteria regarding the distinction between possession for personal use and sale and delimiting quantities of each specific type of drug.¹⁴ In accordance with the legislative *travaux préparatoires*, is mentioned that organised smuggling or sale of cannabis shall normally only be dealt with under PC § 191 when the amount exceeds 10-15 kg. The parallel criteria regarding khat is 500 kg, raw opium 500 gram, morphine base 100 gram, heroin 50 gram, cocaine 25 gram amphetamine 50 gram, and ecstasy 150-200 tablets.

With regard to the distinction between possession for own use and possession for distribution, the criteria are stipulated to be: cannabis 10 gram, marihuana 50 gram, heroin/cocaine/morphine 0.2 gram, raw opium 1 gram, amphetamine 0.5 gram, morphine pills 5 items, ecstasy pills 1-2 items.

Concerning trafficking and possession with regard to trafficking, it follows from the guidelines that an offence involving more than 50 gram of cannabis or 10 tablets shall be punished by an imprisonment sentence. Trafficking particularly dangerous drugs or distributing drugs at restaurants, discoteques, concerts, festivals, etc., is considered an aggravating factor in sentencing, implying imprisonment for up to 4 months.

The quantity of drugs is also relevant with respect to the distinction between PC § 191 (1) and (2). In the guidelines, the line is normally passed if the quantity exceeds: heroin/cocaine 1.3-2.5 kg, amphetamine 2 kg, ecstasy 2 kg (equivalent of 8.000 pills).

The penalty for selling small quantities of heroin or cocaine for a first-time offence will normally be:¹⁵

- 1–2 deals: 10 days imprisonment
- 3–4 deals: 14–20 days imprisonment
- 5–10 deals: 30–60 days imprisonment
- 11 deals or more: minimum 3 months imprisonment

¹² See *Kriminalitet 2009*, p. 30.

¹³ Rigsadvokatens *Meddelelse 6/2006*, consolidated December 2012. See also *Rigsadvokaten Informerer 4/2011*.

¹⁴ Fines for possession aimed at personal use range from 2.000–3.000 DKK (approximately EUR 270–400) for first-time possession of small quantities (e.g. less than 10 grams of cannabis, less than 1 gram of cocaine or heroin), to 10.–16.000 DKK (approximately EUR 1.300–2.200) for a third offence of possession of larger amounts (e.g. up to 100 grams of cannabis, up to 5 grams of cocaine or heroin).

¹⁵ Amphetamine and ecstasy are considered to be somewhat less dangerous as heroin, implying that sentences will be set within approx. two-thirds of the mentioned ranges.

B. Scenarios

1. Which **penalties are provided for by law and/or prosecutor/sentencing guidelines etc.** in the following scenarios?

The offender (adult) is found guilty of supplying or possessing with the intent to supply:

A: Regarding statutory sentencing latitudes and prosecutor guidelines, please see answers under section B.2 above. In addition, it can be mentioned that a collection of court judgements are accessible at the Public Prosecutor's webpage, regarding verdicts in narcotics cases, see: <http://www.anklagemyndigheden.dk/Sider/Viden.aspx?VidensbaseSearchId=3066101d-77e8-46b5-a327-f46ca1a75137&VidensbaseExtSearchType=TOPIC&VidensbaseExtSearchString=24368d76-7b01-46bb-b5ac-7730ac311be0>

- a. Cannabis resin

A: Sale, smuggling or possession with intent to supply will be indicted under PC § 191 only if the quantum exceeds 10 kg.¹⁶ Supply of more than 50 gram will normally be punished under the Euphoriant Substances Act by an unconditional imprisonment sentence.

- i. 1 kilogram (kg)¹⁷: ...

Case 1 (Copenhagen Municipal Court 24.03.2009): 3 months unconditional imprisonment: possession of 977,2 gram hash with intent to supply approx. 900 gram and to keep the rest for own use. Last prior record for violation of the Euphoriant Substances Act: 2005 (imprisonment for 40 days). Released on conditional parole 17.01.2005 with 226 days remainder of sentence including convictions for other offences.

<http://www.anklagemyndigheden.dk/layouts/Ankl.dk.SP.Vidensbase.Handler/VidensbaseDocumentHandler.ashx?VidensbaseDocumentName=http://www.anklagemyndigheden.dk/sites/vidensbase/Documents/AM20090311B3.pdf>

Case 2 (Odense Municipal Court 01.12.2009): 4 months unconditional imprisonment: possession of approx. 1.500 gram hash with intent to supply. Several prior sentences for property offences. Released on conditional parole 24.07.2009 with 32 days remainder of sentence.

<http://www.anklagemyndigheden.dk/layouts/Ankl.dk.SP.Vidensbase.Handler/VidensbaseDocumentHandler.ashx?VidensbaseDocumentName=http://www.anklagemyndigheden.dk/sites/vidensbase/Documents/AM20091201B4.pdf>

¹⁶ Rigsadvokatens *Meddelelse* 6/2006, consolidated December 2012, pkt. 3.

¹⁷ This amount is the total weight of the seizure. The degree of purity for Cannabis is 10% THC.

- ii. 10 kg¹⁸: ...

Case 3 (Copenhagen Municipal Court 30.05.2012): 8 months unconditional imprisonment: smuggling of 9344 gram hash with intent to supply.

<http://www.anklagemyndigheden.dk/layouts/Ankl.dk.SP.Vidensbase.Handler/VidensbaseDocumentHandler.ashx?VidensbaseDocumentName=http://www.anklagemyndigheden.dk/sites/vidensbase/Documents/AM20120530B.pdf>

Case 4 (Copenhagen Municipal Court 15.01.2013): 9 months unconditional imprisonment: possession of 10007 gram hash with intent to supply.

<http://www.anklagemyndigheden.dk/layouts/Ankl.dk.SP.Vidensbase.Handler/VidensbaseDocumentHandler.ashx?VidensbaseDocumentName=http://www.anklagemyndigheden.dk/sites/vidensbase/Documents/AM20130115B.pdf>

b. Amphetamine

- i. 100 grams (g)¹⁹: ...

- ii. 1 kg²⁰: ...

c. Cocaine

- i. 100 g²¹: ...

- ii. 1 kg²²: ...

In a leading judgement, the Supreme Court sentenced the defendant to 5 years imprisonment for trafficking 947,4 gram cocaine and 226,8 gram heroin, cf. Ugeskrift for Retsvæsen 2006.475 H. In a subsequent judgement, this precedent was maintained with reference to the travaux préparatoires of PC § 191, cf. Ugeskrift for Retsvæsen 2006.810 H.

d. Heroin

- i. 100 g²³: ...

- ii. 1 kg²⁴: ...

¹⁸ See Fn 2.

¹⁹ This amount is the total weight of the seizure. The degree of purity for Amphetamine is 20%.

²⁰ See Fn 4.

²¹ This amount is the total weight of the seizure. The degree of purity for Cocaine is 33%.

²² See Fn 6.

²³ This amount is the total weight of the seizure. The degree of purity for Heroin is 25%.

²⁴ See Fn 8.

2. What are the **likely imposed sentences** by practitioners in the following scenarios? Please state the total range of sentences the interviewees provided for you (e.g. interviewee 1 says one year, interviewee 2 two years, interviewee 3 eighteen months: range of 1 – 2 years).

The offender (adult) is found guilty of supplying or possessing with the intent to supply:

a. Cannabis resin

- i. 1 kg: ...

A: Respondent 1: approx. 3 months; respondent 2: 60 days; respondent 3: 60 days-3 months; respondent 4: 3 months; respondent 5: 60 days-3 months; respondent 6: 60 days-3 months; respondent 7: approx. 60 days

- ii. 10 kg: ...

A: Respondent 1: 8-10 months; respondent 2: 9 months; respondent 3: 8-9 months; respondent 4: 8-10 months; respondent 5: 10 months-1 year; respondent 6: 8-9 months; respondent 7: 10 months-1 year

b. Amphetamine

- i. 100 g: ...

A: Respondent 1: 6 months; respondent 2: 8 months; respondent 3: 6 months; respondent 4: 8 months; respondent 5: 6-8 months; respondent 6: approx. 5 months; respondent 7: 6-8 months

- ii. 1 kg: ...

A: Respondent 1: 2 years and 6 months; respondent 2: 2 years; respondent 3: 2 years; respondent 4: 2½ years; respondent 5: approx. 3 years; respondent 6: 2 years; respondent 7: approx. 3 years

c. Cocaine

- i. 100 g: ...

A: Respondent 1: 1 year; respondent 2: 9 months; respondent 3: 10 months; respondent 4: 10 months; respondent 5: approx. 1 year; respondent 6: 10 months-1 year; respondent 7: approx. 1 year

- ii. 1 kg: ...

A: Respondent 1: 4 years; respondent 2: 4 years; respondent 3: 4-4½ years; respondent 4: 4 years; respondent 5: approx. 5 years; respondent 6: 4-5 years; respondent 7: approx. 5 years

d. Heroin

i. 100 g: ...

A: Respondent 1: 1 year; respondent 2: 1 year; respondent 3: 1 year;
respondent 4: 1 year; respondent 5: approx. 1 year; respondent 6: 10 months-1
year; respondent 7: approx. 1 year

ii. 1 kg: ...

A: Respondent 1: 5 years; respondent 2: 5 years; respondent 3: 5 years;
respondent 4: 5 years; respondent 5: approx. 5 years; respondent 6: 5 years;
respondent 7: approx. 5 years

The answers to question B.2 shall be taken from the results of the Questionnaire for practitioners on likely imposed sentences and are due in January 2014.

C. Early release in drug trafficking cases

1. Are there any rules on early release in your country that theoretically would be applicable to the scenarios mentioned above?

A: Under the Danish Penal Code, release on parole after serving two-thirds time may be granted as an ordinary part of any prison if the sentence if at least two months has elapsed and the remainder of the sentence is no less than thirty days, cf. PC § 38. It is mandatory for the corrections authorities to assess whether or not such a decision on early release shall be granted. However, parole will be denied if deemed inadvisable due to a serious risk of reoffending. In extraordinary instances, a prisoner may be released for humanitarian or rehabilitative reasons after serving at least half the sentence, e.g. in cases of serious illness, old age, youth, etc. Foreign citizens sentenced to deportation after serving a prison term will normally be released after having served seven-twelfths time if they are going to be expelled for a determinate period of time, and after half the sentence if they have been sentenced to deportation for life. Further, early release may be granted under PC § 40 (a) after at least half the sentence and at least two months having been served, if the prisoner has demonstrated a particular effort to be rehabilitated by participating in an educational og vocational programme or in a treatment programme (cognitive skills, anger management, etc.).

It should be noted that more than 25% of all eligible prisoners are denied parole after serving two-thirds time. For prisoners serving longer sentences in closed institutions, more than 50% are actually denied early release, and in some prisons as much as 75% of the inmates are denied parole after two thirds time. It must be assumed that a substantial ratio of prisoners convicted of narcotics offences are among those who are denied early release. An inmate who are denied parole after two thirds time might be released on parole somewhere between two thirds and full time. However, no available statistics allows for a more detailed account of these matters.

2. How likely is it that these rules would be applied to the offender in the scenarios above?

A: Please, see answer above. Parole decisions are made on the merits of the individual case. Naturally, the type and seriousness of the offence, the corresponding length of the sentence and the risk of recidivism are important factors which will be taken into account.

3. Please state how the imposed time in prison will reduce due to these rules. E.g. perpetrator released after 50%, 75%, 90% of sentence served.

A: Please, see answer under C.1. Since decisions regarding early release are made on the merits of the individual case, no practitioner would be able to answer the sub-questions more specifically.

The answers to questions C.2 and C.3 shall be taken from the results of the Questionnaire for practitioners on likely imposed sentences and are due in January 2014.