

Summary of the legal paper “Safer Injecting Facilities in a legal perspective”

Through more than a decade claims of alleged legal obstacles preventing the establishment of Safer Injecting Facilities (SIF) have closed down the discussion of the establishment of this harm reduction health measure in Denmark. Despite the often used argument that SIF's are illegal the discussion has not contained any serious legal debate.

In the newly released legal paper “Safer Injecting Facilities in a legal perspective”, The Danish Street Lawyers present a legal analysis regarding possible legal obstacles in both domestic and international law preventing the establishment of SIF's. The conclusion is clear: There are no legal obstacles preventing SIF's – only political.

The Danish Street Lawyers examine international law concerning state obligations in relation to controlled substances and conclude that international law – including the UN drug conventions – do not prevent the establishment of SIF.

It is concluded that under international law SIF's could be regarded as a part of both the state obligation to offer treatment as well as being a part of the drug demand reduction efforts to reduce the human suffering evolving from drug use. Furthermore SIF's could be a part of the state obligations to secure IDU's the right to the highest attainable standard of health. As such SIF's do not contravene with state obligation under international law and could be established concurrently with the state fulfilling its obligations regarding criminalization.

In terms of Danish national law it is concluded that the actual consumption of controlled substances is not in itself criminalized where as the possession of controlled substances for personal use is unquestionably a criminalized act.

The Narcotic Drugs Act contains a description of a target group of the most vulnerable IDU's and determines that violations regarding possession for personal consumption despite repeated violations should be sanctioned with the least harsh punishment of the Danish criminal system - a “warning”. It is further concluded that the police are subject to a principle of legality which means that they are obliged to investigate crimes when they have a reasonable presumption that a crime has taken place. However it is reversely concluded that the police are also subject to a “principle of opportunity” which means that in terms of petty crimes they can choose not to investigate the suspected crime or pursue further persecution.

It is concluded that the police have the opportunity not to start an investigation when they suspect that an IDU fitting the description in the Narcotic Drugs Act possesses a small quantity of drugs for personal consumption – particularly in view of the penalty claim in these instances is the least harsh punishment (warning) as well as in addition to this possession of drugs for personal consumption is a victimless crime. These cases are at the same time often “initiative cases” - the result of an initiative from the police with no prior report from the public.

The Street Lawyers give an account of the principles of accessory to a crime according to Danish criminal law and conclude that members of staff occupying tasks in relation to SIF’s as well as the people behind an NGO running the SIF will not be liable for criminal persecution. This conclusion is drawn due to the fact that no one involved in the SIF engage by aiding or abetting in maintaining the illegal possession of the controlled substances. The purpose of the aid offered by members of staff is directed towards protecting the life and health of the IDU’s and as such protecting the same stated interest as the criminalization of possession for personal consumption. Even if one may draw the conclusion that SIF personal involve in the accessory to the consumption of controlled substances this would not be a criminal offence since the actual consumption is not criminalized.

In the wake of several police actions against the obvious trading of cannabis in the free town of Christiania so called “Hash clubs” appeared around Copenhagen residential areas. In these clubs people could come by and purchase and smoke cannabis. This led to Parliament passing a bill which gave the police authority to close the clubs and fine visitors who nevertheless visited the cannabis clubs.

It has been suggested that SIF’s could also be closed down with authority in this new act. However The Street Lawyers do not find that the conditions of the law are fulfilled in the case of SIF’s. The conditions prescribe that systematic criminal actions contained to the activities taking place in the residential area disturb public order and cause insecurity among neighbors. The Street Lawyers conclude that the IDU’s possession of controlled substances prior to the consumption in the SIF cannot be classified as systematic criminal actions contained in the activities of a Safer Injecting Facility and hence the law is not applicable.

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