Legal Limits for the Assessment of Illegal Drug Use with Regard to Driving in the Federal Republic of Germany

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ABSTRACT

In the Federal Republic of Germany a differentiated approach exists in the administrative and criminal code for the assessment of drunken driving according to different levels of BAC. Such an approach does not exist for the evaluation of illegal drug use.

The Federal Highway Research Institute (BASt) has therefore conducted two hearings of experts in the fields of Legal Medicine, Forensic Toxicology and Traffic Medicine. The results with regard to legal limits for Cannabis, Heroin, Cocaine and Amphetamines and their derivates are described in the paper. Also the steps for changing the German law will be outlined.

INTRODUCTION

In the Federal Republic of Germany, it is a criminal offence for a person to drive a vehicle while unfit to drive owing to the intake of alcoholic beverages or other "intoxicants". Rulings by the highest courts on the absolute unfitness to drive have defined an alcohol level of 1.1 ‰ in the blood as the legal limit. This limit applies both to the abstract offence (driving a vehicle while under the influence of alcohol), as set forth in section 316 of Germany's Criminal Code (StGB), and to the concrete operative fact (impairing the safety of road traffic), as set forth in section 315 StGB. Corresponding limits for illegal drugs do not exist at present.

Although drugs are of less significance than alcohol for road safety, there is good reason to examine the problems associated with drug-related unfitness to drive.

SELECTED STUDIES

The Federal Highway Research Institute (BASt) commissioned a study in 1989 (Möller, 1994), among others, on the presence of drugs in drivers displaying conspicuous behaviour in road traffic. Blood samples taken on the occasion of traffic offences and submitted to the Institute of Forensic Medicine at the University of Saarland for determination of the alcohol content were also examined with a view to establishing the presence of narcotic and medicinal drugs. A random sample of 660 cases revealed the presence of one or more narcotic drugs/medicines in addition to alcohol in 65 cases. In 22 further cases, there were one or more drugs/medicines without the presence of alcohol. In this total of 87 cases, 54 involved cannabinoids, 12 opiates and 3 amphetamines.
In an analysis of some 1,300 blood samples from drivers under the age of 40 displaying conspicuous behaviour in road traffic in 1992, the Institute of Forensic Medicine at the University of Munich established that approx. 25 % of the blood samples contained cannabis, while 12.7 % involved opiates and 4.2 % cocaine (Kauert, 1995).

DISCUSSIONS WITH EXPERTS (Friedel, 1994)

It was against this background that Germany’s Federal Minister of Transport asked BASt in 1993 to organize discussions with experts on the theme of drugs and fitness/ability to drive, in order to clarify, inter alia, the following issues:

• Can legal limits or criteria be developed indicating when certain drugs and certain quantities of such drugs can lead to an unfitness to drive?
• Can an operative fact based on an impairment of road safety be created for drugs by analogy with alcohol in Germany’s administrative offence law (section 24a of the Road Traffic Act, StVG)?

In two discussions with experts, specialists, inter alia from the fields of forensic medicine, toxicology and traffic medicine, were asked about the drugs cannabis, heroin, cocaine and amphetamines. It transpired that scientific research does not allow definite limits to be defined for determining absolute unfitness to drive. In the Federal Republic of Germany, it is not feasible, for reasons of medical ethics, to perform experimental tests (say, by analogy with alcohol research). On the other hand, a large majority of experts did advocate a general offence based on driving under the influence and impairment, to the effect that any person who drives a vehicle after consuming one of the above drugs commits an administrative offence. From a scientific point of view, it must be assumed that the influence of such drugs does give rise to certain symptoms that are in general liable to impair a person’s fitness to drive. This being so, consumption of intoxicants gives rise to losses of efficiency in most drivers that raise serious doubts about their ability to drive a motor vehicle safely in traffic.

SYMPOSIUM ON “DRUGS AND ROAD SAFETY” (Berghaus, Friedel, Joó, 1995)

In November 1994, BASt and the Institute of Forensic Medicine at the University of Cologne organized a joint symposium designed to provide information on the present level of developments in research and practice. The themes on the agenda were discussed from legal, epidemiological and experimental standpoints. Options for, and limits to, toxicological analysis were discussed, and the practical police work in detecting drug-influenced drivers described. From the legal point of view, the results of the above discussions with experts were confirmed, although it was pointed out that medical and scientific research is still needed to establish empirical values for the relations between dosage and effects that would allow the judiciary to define limits for absolute unfitness to drive in cases of drug use. Failing agreement on such values, criminal courts require evidence of driving errors or personal symptoms (relative unfitness to drive) in addition to the proved presence of drugs.

At this symposium, Berghaus reported on the first steps taken toward defining limits in the case of cannabis (Berghaus, 1995). Based on an analysis of 60 published studies with a total of 324 experiments involving cannabis, a relation was established between alcohol
and THC concentrations on the basis of a percentage of all psychophysical findings which, relative to the given concentration, were not significantly worse compared with cases of non-consumption.

AMENDMENTS TO THE ROAD TRAFFIC ACT (StVG)

On the basis of the above, the Federal Minister of Transport, in coordination with the other departments involved, commenced work on an amendment to the Road Traffic Act (working draft 1995). It is envisaged that section 24a of the Act will run as follows: "It is an administrative offence to drive a vehicle in traffic while under the influence of an intoxicant (see Schedule). This shall only apply where a substance named in the Schedule is proved to be present in the blood. Sentence 1 shall not apply if the presence of the substance is due to the consumption of medicine prescribed for a specific illness." The Schedule referred to identifies the intoxicants concerned as cannabis, heroin and cocaine and, as corresponding substances THC, morphine and benzoyl ecgonine. The explanatory memorandum to the amendment states, inter alia, that the administrative offence is to be punishable with an administrative fine and a driving ban.

This amendment is considered necessary because no options exist at present for sanctions that would apply, apart from determining individual unfitness to drive, so that driving under the influence of drugs is often not prosecuted if it has no other consequences. A statutory solution based on an operative fact is not considered disproportionate, since there is no milder instrument available at present for dealing with the road-safety problem. Basing an offence on evidence of the presence of specified substances in the blood is said to be appropriate because the presence of such substances is indicative of the acute effect on the person concerned. The drugs named earlier have been selected because adequately assured findings already exist on their effects and on procedures for establishing their presence. When more knowledge becomes available in future, other drugs can be included in the new regulations.

SUMMARY

This paper describes the current legal problems involved in drug-induced fitness to drive in the Federal Republic of Germany. Starting out from studies on the frequency of drug use among drivers with conspicuous behaviour in road traffic, it is pointed out that it is not possible at present, from a scientific point of view, to define limits indicating absolute unfitness to drive. This said, the Federal government has concluded that, with a view to combatting the risks for road safety associated with the use of drugs, a sanction should be created in the form of an administrative offence punishable with an administrative fine and a driving ban. The preliminary work involved in preparing an amendment to the Road Traffic Act has commenced. A resolution by the Bundestag and the approval of the second house of the German parliament (Bundesrat) are awaited.
REFERENCES

Berghaus, Friedel, Joó. Symposium on “Drugs and Road Safety” Reports of the Federal Highway Research Institute (BASt) People and Safety (to be printed).

Berghaus: published in: Berghaus, Friedel, Joó. Symposium on “Drugs and Road Safety”.
Friedel. Reports on Discussions with Experts at BASt on “Drugs and Unfitness to Drive”, 9 November 1993 and 18 January 1994 (BASt internal reports).
Kauert. Establishing the presence of drugs in blood samples taken from drivers with conspicuous behaviour in road traffic (personal communication 1995).