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# Application of the policy constellations framework to the Polish drug policy over the past twenty-five years

## Aplikacja ramy teoretycznej „policy constellations” do polskiego prawa i polityki narkotykowej na przestrzeni ostatnich 25 lat

**Abstract:** *Background:* The aim of this paper is to explain change and continuity in the Polish drug policy over the past 25 years using the policy constellations framework (Stevens, Zampini 2018). *Method:* The policy constellations framework is applied to explain Poland's adoption of solutions based on prohibition in the year 2000, and later from 2008 to 2016, in the context of novel psychoactive substances. The data comes from in-depth interviews with stakeholders (N = 18), including NGO workers, former ministers, government officials, journalists, a former police superintendent and a criminologist. *Conclusion:* The Polish drug policy is not a natural outcome of events, but it rather reflects moral preferences and material interests (e.g., the desire to reproduce political capital) of the dominant groups involved in shaping the drug policy.

**Keywords:** drug policy, Poland, ACF, policy constellations, pluralism, NPS

**Abstrakt:** *Wstęp:* Celem niniejszego artykułu jest wyjaśnienie zmian i ciągłości w polskiej polityce narkotykowej na przestrzeni ostatnich 25 lat za pomocą ramy teoretycznej „policy constellations” (Stevens, Zampini 2018). *Metoda:* Model „policy constellations” zostanie wykorzystany do wyjaśnienia wprowadzenia przez Polskę zakazu posiadania narkotyków w 2000 roku i później, w latach 2008–2016, w kontekście nowych substancji psychoaktywnych (NPS). Dane pochodzą z wywiadów z zainteresowanymi stronami (N = 18), w tym z pracownikami organizacji pozarządowych, byłymi ministrami, urzędnikami państwowymi, dziennikarzami, byłym nadinspektorem policji i kryminologiem. *Wniosek:* Polska polityka i prawo narkotykowe nie są naturalnymi konsekwencjami wydarzeń, ale odzwierciedlają raczej preferencje moralne oraz interesy materialne (np. chęć pozyskiwania kapitału politycznego) dominujących grup zaangażowanych w ich kształtowanie.

**Słowa kluczowe:** polityka narkotykowa, Polska, policy constellations, pluralizm, NPS

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## Introduction

In recent years, more researchers have been diverting their attention from looking at the outcomes of implemented policy (e.g., Reuband 1998; MacCoun, Reuter 2001; Reinerman, Cohen, Kaal 2004; Hughes, Stevens 2010; Krajewski 2013) towards trying to explain what political and social mechanisms lead to policy stability and change (e.g., Kübler 2001; Lancaster et al. 2017; Ritter et al. 2018). The existing frameworks for explaining policy decisions lie within the field of public policy and can be roughly split into a broad school of popular pluralist positions (e.g., Kingdon 1984; Sabatier, Jenkins-Smith 1993) and critical theories that have been applied less often to explain policy (e.g., Stevens, Zampini 2018).

One of the most influential public policy theories – the Advocacy Coalition Framework (hereinafter ACF) – is based on the idea that people use politics to translate their beliefs into action (Sabatier, Jenkins-Smith 1993). In the ACF, advocacy coalitions form out of members from a variety of institutions, such as legislators, researchers, journalists and unionists. The coalitions then compete in the policy setting to achieve their preferred policy options.

Beliefs are the glue that hold coalitions together. The two types of beliefs outlined by Paul Sabatier and Hank Jenkins-Smith (1993) are the deep core beliefs and the policy core beliefs. Deep core beliefs refer to actor's personal philosophy, commonly expressed on a left-wing/right-wing spectrum. Examples of deep core beliefs include values such as security and freedom or opinions on whether people are born evil or their evil is socially learnt. Coalitions and beliefs represented by actors operate in policy subsystems, such as legislative committees, administrative agencies and interest groups (Jenkins-Smith, Sabatier 1993: 179). The power of coalitions depends on status ("in a position of legal authority"), money, and the ability to "garner public support" to spin information and to mobilise troops (i.e. members who are willing to fundraise and harness public support) (Sabatier, Weible 2007: 201–203). The critical perspectives can advance the understanding of power in policy-making.

Alex Stevens and Giulia Zampini (2018) have recently presented a critical angle to explain drug policy developments using Habermasian assumptions. The focus of their approach lies in looking at social asymmetries of power which put certain groups at a structural advantage in institutionalising their moral preferences and material interests. In their analysis of English drug policy, they illustrate, similarly to the ACF, how actors with similar moral values group together in what they refer to as "policy constellations" (hereinafter PC). Constellations are not stable but fluid; they can be imagined as groups and actors gravitating towards each other based on their shared interests. In the English drug policy, some of the key actors in these constellations include, but are not limited to, various politicians, public health officials, Home Office, the police, the media, official advisory bodies and liberal as well as conservative NGOs. Constellations are different to ACF coalitions since the actions of constellations are not necessarily coordinated rationally. Actors and groups in PCs act predominantly independently. In addition, they are

usually aligned based on mutual support for countering the interests of opposing constellations. In relation to policy processes, the authors argue that actors do not reach a consensus solely based on rational debate and evidence, as more dominant forces influence policy processes.

Jurgen Habermas (1981) uses his theory of communicative action as a framework for analysing “shortcomings and blockages of extant practices, discourse and institutions” (as cited in Goode 2005: 67). He discusses this in relation to two types of action: communicative and strategic (Habermas 1987). The aim of communicative action is to secure understanding and consensus, where actors exchange views to reach a common understanding of the world. In communicative action, actors judge their arguments based on how true, right and authentic the arguments are. An ideal speech situation is a concept that closely follows the idea of communicative action. Habermas argues that ideal speech occurs when communication follows four rules: the participants should be able to discuss any subject; everyone should be allowed to question or introduce any assertion they wish; everyone should be able to express their desires and attitudes without interruption; and no-one in the public sphere should be prevented from exercising these rules.

Strategic actions, on the other hand, aim to achieve practical success by influencing the decisions of another actor. Jurgen Habermas (1981: 266) defines them as “actions orientated to success.” They contrast with communicative action, as here at least one party does not wish to establish a shared understanding of the world with the other person (Edgard 2006: 140). Instead, they aim to achieve agreement through techniques such as bribery, blackmail or violence. In more sophisticated settings, strategic action also includes manipulation, control over information and the use of emotive language to conceal the weakness of arguments.

One’s position to deploy strategic communication and strategic actions is subject to their status, connections and other systemic advantages. Those who enjoy a strong media profile, for example, can pressurise their political opponents and manipulate social opinion in a way that favours their stance (Herman, Chomsky 1988). Political parties and politicians are the most important suppliers of information to the media. They can negotiate their access, which is also subject to their normative preferences, social status and cultural background (Verba, Schlozman, Bradey 1995; Carpini 2004). The use of power nevertheless can be even more hidden. Some can create problems out of conditions, generate evidence, block inconvenient evidence or use their position to allow or block groups or actors from the policy setting. The power of these actors is not only based on the political context, but numerous systemic advantages which are ignored in pluralist frameworks. Power in this context may also be increased by forces independent of individuals, such as structure, dominant ideology and rules within the government which limit certain types of actions (Edgard 2006).

## Drug policy in Poland

The story of drug policy in Poland, including under communism, has already been described elsewhere (e.g., Krajewski 2004), so the following is only a brief summary. Arguably some of the most notable drug policy developments in Polish law can be seen in the criminalisation of drug possession in the year 2000 and the subsequent responses to novel psychoactive substances (NPS). The first Polish attempt at regulating the drug market was the Prevention of Drug Addiction Act of 1985. This law, however, was arguably very liberal and did not comment on drug possession until 1997, when the Drug Abuse Counteraction Act of 1997 came into force. Section 48(8) of that act specified that possession of small amounts of narcotics was not a crime if it was for personal consumption. This law only survived until 2000, when section 48(8) was replaced with amendment 62, which criminalised all possession of controlled substances. These policy shifts have been described previously (Krajewski 2004; Malinowska-Sempruch 2016), but research that would describe these changes with the theoretical perspectives found in public policy seems to be lacking.

Meanwhile, NPSs started to be legally distributed in Poland around 2007 (Bujalski, Dąbrowska, Wieczorek 2017). Defining an NPS is problematic. It is officially defined under the Act of Countering Drug Addiction 2005 as “a substance of natural or synthetic origin in any physical condition that affects the central nervous system.” For the purpose of this article, however, NPSs can be understood as various substances which attracted the attention of the media between 2008 and 2016, being labelled by them as NPSs or “*dopalacze*” (afterburners). As argued in previous research (Stevens et al. 2015), it is difficult to determine whether all of them were particularly new, and impossible to know whether some of them are indeed psychoactive, as many of them were not tested.

These substances were initially sold predominantly through online shops, with only 40 bricks-and-mortar vendors operating in 2008. In the same year, a website called *www.dopalacze.com* was launched, offering an entire catalogue of substances, from powders and pills, through herbal mixtures to crystals (Bujalski, Dąbrowska, Wieczorek 2017). The presence of NPSs and shops selling them resulted in amendments that added the new substances to existing legislation and changed the definition of an NPS to try and cover as many of them as possible (Krajewski 2015). All of the policy responses were situated in the realm of prohibition, attempting to completely prevent individuals from accessing NPSs and giving no significant consideration to alternative policy options, such as regulated sales (with customer protection) or restricted marketing and sales with or without medical supervision (Hughes, Winstock 2012; Krajewski 2015). Another option could have been to adopt a more liberal approach to traditional drugs like cannabis, which some have argued would have decreased the demand for NPSs. Overall, using the PC framework, the sections below explain the impetus behind the initial changes to Polish drug policy in 2000 and the reasons why prohibition continued to dominate afterwards, as reflected in the responses to NPSs.

## Methodology

Eighteen in-depth interviews were conducted in Polish with relevant stakeholders in Poland, including NGO workers, former ministers, government officials, journalists, a police officer and a criminologist. A set of 38 questions was prepared, focussing on potential reasons for the policy change. It was informed by the theoretical framework and split into themes which focused on potential socioeconomic factors, legal factors, geopolitical factors, power factors, morality and structuralism. On top of the interviews, I also did some supplementary analysis of media reports (predominantly interviews from various outlets with senior politicians such as Donald Tusk) and reports from sessions of the Polish Parliament (Sejm 2000; Sejm 2016).

This research used two sampling approaches. Purposeful stratified sampling was firstly used in order to identify and select respondents who would be particularly rich in information (Patton 2002). The key aim of the stratified purposeful sampling strategy is to identify as much variation as possible (Patton 2002: 240 in Palinkas et al. 2015). The process firstly involved identifying individuals and groups who would be particularly experienced in (Bernard 2002) and knowledgeable about (Cresswell, Plano Clark 2011) drug policy in Poland. The stratification then refers to the way participants were predominantly selected if they belonged to a specific group of interest. These groups included politicians, officials, senior police officers, academics, NGO workers and journalists.

As this investigation generated data from human participants, a number of ethical considerations had to be addressed before it could take place. The interviewees were predominantly established officials and stakeholders. If controversial information was obtained, then any data leak had the potential to damage their careers. The participants were therefore asked if they wished to remain anonymous before the interviews took place. In the study, only their professional titles are used. The method and questions received ethical approval from the ethics department of the University of Kent.

The interviews were firstly transcribed using Microsoft Word and then translated into English. The data were then coded using NVivo 12. The codes came from the PC theoretical framework, where key elements were used as nodes. The data were then divided depending on whether they better fit the context from 2000 or the NPS context.

**Table 1:** Interviewees and their descriptions (N = 18)

<b>Respondent Type</b>	<b>Description</b>
Police Officer	Former police superintendent who established the first specialised units for countering drug-related organised crime in Poland
NGO worker	Head of a liberal Polish NGO with the aim of reforming Polish drug policy
NGO worker	Drug policy consultant for the Open Society Foundation in Poland
NGO worker	Senior MONAR worker
NGO worker	Senior MONAR worker
NGO worker	Member of the 'Return from A' group and an expert in addiction
NGO worker	Senior member of the board at the Helsinki Foundation for Human Rights, a liberal organisation set up to promote respect for freedom and human rights
NGO worker	MONAR junior recovery worker
Govt. official	Employee at the National Bureau for Drug Prevention (NBDP)
Politician	Former Minister in the Chancellery of the President
Politician	Former Minister of Health
Govt. official	Head of a department dealing with NPSs in Poland
Govt. official	Senior member of the NBDP
Researcher	Researcher at the Institute of Psychiatry and Neurology in Poland and an ESPAD researcher for Poland
Journalist (1)	Journalist for a left-wing quarterly with an interest in drug policy
Journalist (2)	Former journalist for a major newspaper with an interest in drug policy
Journalist (3)	Publicist and vocal critic of the current Polish drug policy
Academic	Professor of Law and Criminology, involved in trying to reform Polish drug policy



## **Explaining the criminalisation of drug possession in Poland in 2000**

The aim of this section will be firstly to describe the actors and groups involved in the Polish drug policy when the decision to criminalise drug possession was made in the year 2000. The analysis at this point focusses on demonstrating the normative alignments of these actors and groups and their strategic objectives (e.g., obtaining political capital). Throughout the whole section, the emphasis will also be placed on the degree to which some of the actors enjoyed advantages that would allow them to directly or indirectly intervene in the policy processes in support of their preferred policy option.

### **The conservative constellation of actors in the Polish drug policy setting**

The Polish drug policy context in the 1990s can be characterised with a split between two major PCs. Firstly, what can be observed is the emergence of a conservative group whose core values are congruent with abstinence, social control, purity and respect for authority. Some of the most notable members of this group include NGOs, the police and conservative politicians.

Many of these members emerged in the 1990s as, for example, groups of parents of children who use drugs or the newly established police structures for countering organised crime groups. Police officers at the time allegedly explained how they wanted to create informants out of those caught with small amounts of drugs and to use them to apprehend the dealers. Their voices were important, strong evidence of which is how the police were mentioned by MP Zbigniew Wawak in the parliamentary debate prior to the amendment:

Representatives of the police confirmed that they support removing the 'side door' for organised crime [amendment 48(8) from 1997], following the footsteps of Western European countries such as Austria, Belgium, France and Sweden and introducing a total ban on drug possession. (Sejm 2000)

The 1990s were also described by a Polish criminologist as a period when many radical NGOs appeared in support of amendment 62. Some of these groups were linked to the Catholic Church and called for full abstinence from narcotics. This included associations of parents of children addicted to drugs. One government official describes how the parent organisations "had an important voice in shaping drug policy." Their importance is a result of two factors. Firstly, during the early stages of Polish drug policy in the 1990s, many of the NGOs dealing with drug use and addiction were not professional movements. According to one of the respondents, "they were very bottom-up." Powrot z U is an example of an association of parents of children with drug problems, and according to one official it was very supportive of the amendment. Their stance is likewise reflected in the letter sent to MP Jerzy Hausner, who cited it in the Sejm (2000):

I received this letter from Powrot z U. The letter states that ‘the previous law [1997] proved to be harmful from the point of view of entities dealing with reducing the phenomenon of drug addiction. The proposed changes [amendment 62] may significantly reduce drug use among children and adolescents.’

A former superintendent of the police described a general sense of friendship between himself and other members of the conservative constellation:

When I was the police boss and when Piotr Jablonski was their director [NBDP] or Olaf Maier ... we were friends and this cooperation was going really well ... as the police back then we were putting a great emphasis on prevention ... Basia Labuda was helping us when she was the minister.

Police officers, for example, were active in numerous prevention campaigns. They were visiting schools and conducting training sessions for teachers and school rectors. He specifically recalled one campaign called “You use ... you lose,” which was executed with help from the Minister Barbara Labuda. Drugs were beginning to be treated ‘in a complex way’ and the elements of prevention and countering were closely interlinked.

### **The liberal constellation of actors in the Polish drug policy and their loss of power**

On the other side sat a small liberal constellation whose normative values were congruent with individual freedom. This group exerted a significant degree of influence until 1997, and then began to lose their power because of the changes in the political tide.

A former Minister of Health explained how those who resisted the criminalisation of drug possession and some liberal political actors dealt with specific areas of harm reduction in 2000. He went on to describe how there were two political camps in the 1990s with distinctive opinions on the topic. The first group is the liberal camp, which had greater opportunities until 1997. The government during that period was a coalition between two left-wing parties: the Democratic Left Alliance (SLD) and the Polish People’s Party. The Democratic Union, which later merged into the Freedom Union, was likewise active at the time. It was described as consisting of liberal people with voices which “had a good degree of influence in many areas.” The Marshal of the Sejm, Mikołaj Kozakiewicz, for example, shared a more liberal outlook on the drug issue. Such flexibility – according to the former minister – is unimaginable in current day and age since “one is now forced to vote along the parliamentary club lines.”

In 1997, the conservative party Solidarity Electoral Action (AWS) won the elections, but in order to obtain a parliamentary majority was forced into a coalition with Freedom Union. The normative preferences of AWS are reflected in the statement by a former police superintendent, who claimed that AWS were “traditionalists and treated narcotics as an absolute evil which had to be fought against.” In addition, he added that the “problem of narcotics [was] very clearly



... negative to them.” This is likewise reflected in statements of some of their MPs.

In the name of recreating social awareness, and in the name of recreating the awareness that drugs are evil, I want to yet again express my faith that this amendment [62] will become law. (Sejm 2000)

The normative preferences of the AWS MPs thus matched the normative preferences of other members of the conservative PC, such as the police and parent groups. In describing the political context, it is nevertheless important to remember that amendment 62 was not a governmental initiative. A Polish academic who was active in research at the time expressed the belief that the government was not particularly focussed on the whole matter. Furthermore, he claims that the government “didn’t have an unequivocal stance, but most likely decided to not go against it.” The amendment was in fact introduced by a group of AWS MPs who came from the Christian National Union, a right-wing group with values “based on the pre-war National Democratic” party (Polish Academic).

Over the course of the decade, members of the conservative constellation managed to accumulate numerous advantages, which can then be seen in how they defused inconvenient views and dominated consultations with the public. The head of a Polish NGO described how the amendment from 2000 was introduced after consultations, in which different groups were given an opportunity to speak out via subcommittees. This is indicative of different voices being collected before a policy decision is taken. The former Minister in the Chancellery of the President also described how there were numerous discussions on what should be done about the problem of narcotics. She explains how “politicians, community workers, doctors and therapists with different views” were present. Some were allegedly supportive of total legalisation, while she was personally supportive of “soft repression” and “not putting people into prisons.” Her narrative therefore creates an impression of a pluralist setting, or Habermasian communicative action in which different voices were collected, no-one was prevented from participating and amendment 62 was to some degree the outcome of a rational deliberation amongst these groups and actors.

To other respondents this reflection of communicative action seemed to be a façade. The former Minister of Health recalled that liberal “opinions were exceptional in that team.” In addition, discussions and debates, although present, were “emotionally charged,” according to him. Other respondents claimed that parental organisations dominated the meetings with radical views. They were not considered experts, but their voices had a great deal of influence. The status of these groups allowed them to defuse counterarguments that favoured the continuity of the liberal law from 1997. They often described it as being responsible for harming their children and blamed it for their children’s misfortunes. According to the Polish academic, some experts and politicians found their presence troubling. They believed that due to their traumatic experiences, parental groups should be moved away from drug policy and decision-making “as they were not neutral participants.”

Others were also sceptical of the view that having a child who is addicted to drugs is a good enough reason to be declared an expert on addiction and drug policy.

The former police officer explained how at that time, “voices advocating for a differentiation between soft and hard substances, for example, were weak.” The “gateway effect” dominated the discourse in certain ways, and many members of the conservative constellation disseminated the view that there is no point in separating drugs into different classes since softer substances lead to harder substances and are therefore equally as harmful. This opinion was well exemplified in a comment by MP Marian Krzaklewski (AWS): “acceptance of so-called ‘soft drugs’ leads to general domestication of a drugs culture, which then brings about hard drugs ... the spread [of hard drugs] and the often-irreparable addiction of young people” (Sejm 2000).

The evidence presented herein also falls in line with the ideas presented by Olli Kangas et al. (2013), who argue that values are more important than knowledge, and Loseke (2003), who shows how fear or anger are adopted to create a sense of urgency. In one of his concluding statements, MP Krzaklewski (Sejm 2000) used such emotive language, saying that “a great number of these human tragedies, which especially affect younger people, are a result of the faulty law [1997] which we are finally resolving today.” Arguably, the increase in drug use would have never got the attention of as many people and would not have been considered as grave if it did not involve children. Family is an important part of Polish society, and drugs were portrayed as an attack on children and mothers. The former Minister of Health explained how the amendment was in fact passed so quickly because it was difficult to vote “against something used to ‘protect children’ and ‘schools.’”

### **The domination of the media and public opinion by the conservative constellation**

The respondents’ opinions support the view that a number of actors from the conservative constellation also managed to obtain significant media power, which influenced public opinion in favour of criminalising the possession of drugs. For Habermas, public opinion is important not because it “rules,” but because it points policymakers in particular directions through communication channels (Habermas 1996). Many of the interviewees argued that negative perceptions towards drugs had always existed in Poland, and this never really changed. Some of the respondents claimed that ‘Polish society was always conservative’ when it comes to drugs (Head of a Polish NGO) and that drugs are “culturally foreign, unknown, and were always portrayed as dangerous in Poland” (ESPAD researcher).

There is, however, a risk here of assuming that these perceptions emerged fully naturally and independent of other contexts. The opinions of the respondents nevertheless indicate that the media had a significant influence on public opinion at the time and likely pushed public opinion in favour of criminalisation. This mechanism could have functioned in three possible ways. Firstly, some of the actors who fell in

the conservative PC enjoyed access to media power, which enabled them to persuade the public that harsher drug sanctions are the main way to address the problem. The former police officer, for example, explained how they 'managed to persuade the media to cooperate' in creating prevention campaigns and disseminating a view which favoured full abstinence. Some of these politicians likely took a moralist stance that all drugs are evil. The former Minister in the Chancellery of the President, who was active at the time, is one such actor as well as one who enjoyed media access. In many ways she is one of the actors most closely associated with the criminalisation from 2000, and some of her views are strong evidence for placing her in the conservative constellation: "I think that no tumour-related illness or any other illness is as big a threat as narcotics in Poland ... and worldwide" (Former Minister). She described how her anti-drug media campaigns were present in every commercial TV station, and she singled out one achievement with particular pride:

I don't remember in which year ... 1999 or 2000 ... we asked all TV stations to play a public information film ... on the same day ... at the same time. Everyone agreed ... it was something incredible ... and that film was viewed by 12 million people, so more people than those who saw the pope visit. (Former Minister)

She adds that her aim was to show the film at all TV stations at the "same time so people couldn't watch anything else." The media initiatives are nevertheless just one element of her campaigns focussed on drug prevention. She first "began anti-drug actions around 1990 and cooperated with therapists, police officers and politicians." Once she was appointed Minister in the Chancellery of the President, the anti-drug campaigns intensified and "lasted from approximately 1996 to 2005." Her campaigns reflect a view that policy is based on the promotion of normative values. The campaigns – according to the former minister – were based on discouraging drug use as well as "awareness, emotions, feelings and a value system." Different institutions of education, including primary schools, secondary schools, colleges and universities, were involved in these campaigns. She concluded that tens of thousands of schools were involved in her anti-drug campaigns. A former politician and journalist referred directly to these campaigns in his online blog, describing the impact of these anti-drug campaigns as being responsible for creating a false consciousness amongst members of the public: "Her 'narcophobic' campaigns reinforced harmful myths about drugs for years, preventing change to the ineffective policy" (Journalist 3).

He summarises that, in his view, her campaigns created a perverse relation between the parents of children addicted to drugs and law enforcement, where parents were encouraged to be grateful for repression. In addition, they were made to believe that repression was equivalent to saving their children's lives.

Some political actors, on the other hand, likely tried using the context of criminalisation as an opportunity to obtain additional political leverage. According to one of the respondents, Lech Kaczyński, for example, was at the time looking for

a way to break out as a party leader. One of the interviewees recalls how in the late 1990s Kaczyński appeared on television in what he referred to as a “sheriff role” in order to explain that amendment 62 would not criminalise people and that it would only be used to apprehend the dealers. Such an appearance was unprecedented at the time. This supports the opinion of another NGO worker who was present at the time, explaining how the main motivation behind the amendment was to “build political capital” (Journalist 2). Kaczyński was not alone in his approach; the former Minister of Health described how politicians were becoming increasingly prone to populist devices used to enrich their power. Small groups of conservative politicians could have, for example, blackmailed the majority by accusing them of “leaning too far left” and “tolerating things.” This “threat mechanism,” as explained by the criminologist, could have been very influential in getting the parliamentary majority to push the amendment through.

Secondly, the media could have also influenced political opinions. The ESPAD worker referred to the media in relation to not only how it ‘influences the society, but also how it influences the politicians’. According to him, this is important because “politicians very frequently look at social attitudes through the prism of the media.” He further explains that often, “politicians prefer to trace social attitudes through newspapers” instead of research. This is directly reflected in a parliamentary speech by MP Krzysztof Baszczynski (AWS) (Seim, 2000) who used what he saw on television as an argument for penalisation: “We see on public television youth advertising their use by saying ‘it’s not illegal so we are allowed’ ... we can take it once ... we can take it twice ... it’s not dangerous.”

A journalist who writes for a left-wing quarterly also recounted how drugs were always presented as mysterious and shrouded in a vision of moral downfall on Polish television. All major soap operas always had a young protagonist who took drugs and overdosed or went to prison because of them. In his words, “drugs were the gates to hell.” These soap operas were then predominantly watched by older people “who also go and vote.” In the 1990s and early 2000s these images were easily created. TV series or streaming platforms like HBO or Netflix, which nowadays produce informative series on drugs, were absent. Since social media was non-existent, newspapers and TV had a monopoly on influencing public attitudes. This also supports Habermas’ idea (1989: 165) that stimulation is a key function of mass media, as opposed to educating and creating guidance for the public.

## **Explaining responses to the novel psychoactive substances**

The Polish drug policy had evolved since the decision was taken in 2000 to criminalise all possession of drugs. Since then, new actors had emerged in the setting. A similar division between advocates for different solutions to NPSs was nevertheless clear. This is well exemplified by a comment from a senior member of

the Sanitary Inspectorate: “There was a large conservative group with different opinions” to the “liberal side on what should be done about NPSs.” As will be shown throughout this section, even though the small liberal PC was proactive in resisting policies based on prohibition, they were dominated by a much larger – conservative – constellation who favoured solutions based on prohibition.

### **The changes to the liberal constellation from 2008 to 2016**

In the early 2000s, new NGOs entered the Polish drug setting, and the presence of the liberal group was much clearer in the context of NPSs. The Polish Drug Policy Network (PDPN) and the Global Drug Policy Programme began resisting the domination of prohibition. Their involvement in the 2010s mostly consisted of publicly scrutinising the government and advocating for more liberal solutions to NPSs, which also overlapped with depenalisation of other drugs. “The PDPN argued that the penalties for the possession of ‘classic drugs’ were one of the reasons for the emergence of NPSs” (Head of a Polish NGO).

The organisation also offered their cooperation to the Minister of Health and asked to be included in the policy process, but was unsuccessful. The PDPN (2010) wrote a letter to the government criticising it for not making sufficient use of scientists and experts when drafting the initial amendments. The letter pointed out that there is a lack of facilities for monitoring NPSs. The director of the Global Drug Policy Programme, on the other hand, was “supportive of treating NPSs like alcohol, with emphasis on informing the public about how these substances work and their dangers” (Head of a Polish NGO). Another notable actor who seems to align with the liberal PC in terms of normative preferences is the Free Hemp Society (FHS). The FHS was established in 2006 and continues to work towards a “rational and effective use of hemp,” but it was likewise critical of the government’s approach to NPSs.

The media likewise seemingly had changed since the year 2000. The consultant for the Open Society Foundation (OSF) described how not many organisations in Poland were interested in drug policy, yet the media were always keenly interested in drugs. The PDPN and Global Drug Policy Programme attempted to use that interest in the context of forming NPS policy. The OSF consultant explained that “it’s not like the public discussion was absent” and that the liberal side of the debate was trying to convince the public and policymakers that amendments focussing on prohibition and additional scheduling of new substances would not bring about the desired results. One of the journalists illustrated how *Krytyka Polityczna* – a left-wing quarterly – took a completely different stance to that of the mainstream media. He went so far as to claim that some of their work managed to influence the mainstream media by introducing harm reduction lexicon, such as *decriminalisation* or *depenalisation*, into the public discourse.

The major political stakeholders and parties did not vocally support alternative approaches to NPSs between 2008 and 2010. This is most likely due to

the political context, in which all opposition would have been seen as creating additional challenges during a national “crisis.” There were instead a handful of MPs who advocated for alternative treatment of “traditional” drugs, which would have acted as a policy to counter the demand for NPSs. SLD members, such as Marek Balicki, were vocal in trying to liberalise Polish drug policy. He was the only politician to vote against scheduling additional NPSs. Opposition then grew when the political party Ruch Palikota (RP) managed to obtain 40 seats in the 2011 general election – making it the third largest party. It was the only party which was actively trying to change drug policy in Poland. In an interview with TVP (2015), Janusz Palikot – the former leader of RP – told the interviewer that he believed NPSs are a problem “because there is no access to regulated soft drugs.” In his view, regulation of the “traditional drugs” market was the only way to stop NPS-related problems. Other RP members also got involved in trying to change the drug laws by sitting on the Parliamentary Team for Rationalising Drug Policy, which consisted of 14 liberal MPs.

### **The conservative constellation in the context of Polish NPSs**

As with the policy setting in the 1990s, the conservative constellation consisted of the police, some medical professionals, members of official bodies dealing with NPSs (e.g., Sanepid) and politicians from both sides of the spectrum. The views and stances of some of these members are best demonstrated in the clash of ideas of how the NPS situation should be interpreted. Actors whose views would place them in the conservative PC argued at the time that the problems associated with NPSs were numerous, including but not limited to the growing number of NPSs, their accessibility and the rising number of poisonings. Members from both PCs seemed to agree that there were indeed some conditions which presented a serious threat to public health. However, some members of the liberal PC criticised officials for overreacting, which in their view led to the problem worsening.

The former Minister of Health described the early NPS period in relation to the “lack of deaths” and not grave – especially in comparison to the number of alcohol-related deaths. He recalled how in the early stages of the “crisis,” only a single death was noted in Szczecin. It was also unknown whether it had been a result of NPSs, yet the “media appropriated the case and reported it sensationally.”

A journalist who was active at the time explained how they tried warning that scheduling well-known “legal highs” as narcotics would lead to health consequences. As a result of such amendments, the composition of these well-known products changed while the name often stayed the same. People were therefore using different products under the same name, but were unaware of the changes to their chemical content. The journalist generally blamed politicians like Donald Tusk for the waves of poisonings: “If they hadn’t touched any of it, then most likely no-one would have been poisoned and the hospitals would not have been filled with young people having problems” (Journalist 3).



These arguments nevertheless run contrary to the values – and political objectives – of the dominant stakeholders who aligned with the conservative constellation. In addition, in some cases these arguments would have also threatened their political position, as they would have indicated that the prohibitive framework is futile. This explains why some actors who enjoyed media power, like Donald Tusk, actively contributed to igniting the NPS crisis. In some of his speeches, Tusk categorised the population into those deserving of protection and those who should be punished. The people deserving of punishment were those profiting from NPSs: shop owners and distributors. Their victims, on the other hand, primarily consisted of children and young people. In the daily tabloid *Fakt* (2010), Prime Minister Tusk told the readers that “there will be no mercy for those who are trying to turn the lives of promising young people into the hell of addiction” and that “we will not let these people breathe.” This shows another side to the NPS-related problems. The focus was never on the problematic drug users or the marginalised groups who may have used NPSs as an alternative to other substances, even though the EMCDDA (2016, 2017, 2018, 2019) demonstrates that NPS use was particularly prevalent among these groups. The lack of focus on these groups reflects a further degree of moral judgement in relation to which social groups should be treated positively or negatively.

What can be observed here is how Tusk tried to redirect criticism from himself and his party onto others. He indicated that the obsolete and sluggish system was the main reason that NPS distributors were able to operate in the first place. In addition, his language separated himself from the system – which he considered part of the problem and somehow beyond the control of the government. In another interview he even attempted to justify the ineffectiveness of the state, when he said that “the enemy in this fight is scrupulous and simultaneously sophisticated” (InteriaFakty, 2010). He then referred directly to the legal tools used to control finances, trade and epidemiology, repeating that “enemy sophistication” is the main reason why legal tools seem not to work in the context of NPSs. He proclaimed that he “will act on the edge of the law” to eradicate NPSs and accused the opposition of standing in the way (Polskie Radio 2010).

Nevertheless, it does not seem that NPSs came to dominate the political agenda for so long because they truly represented the most serious and pressing issue at the time. In many ways NPSs seemed to have been a nuisance for the key political stakeholders. The government arguably became so responsive to the problem because NPSs – or a particular portrayal of them by the media – presented the situation as being particularly dangerous. Overall, the situation of NPSs was not only epidemiological in nature. The media quickly picked up on the idleness of the government and highlighted that the existing legal mechanisms were not working (Krajewski 2015). As previously mentioned, the visible shops became a symbol of failure. Prohibiting new substances also proved to be a very lengthy process, taking from one to two years because each substance had to go through various parliamentary commissions and processes. Governmental effectiveness was therefore scrutinised by the public and the media.

## Systemic advantages of the conservative constellation from 2008 to 2016

Similarly to the context in the 1990s, systemic advantages can be seen in how actors from the conservative PC effectively side-lined policy alternatives and ensured that solutions which fit their own normative preferences and strategic objectives came to dominate. As briefly outlined in the introduction section, there were certainly policy alternatives that could have been adopted by the government at the time. The small liberal PC of actors argued that the emergence of NPSs could have been a direct result of the prohibitive laws. In an open letter to the Minister of Health, the PDPN argued that “the incredible popularity of so-called legal narcotics is a direct legacy of the strict law from the year 2000” (PDPN 2010). The letter pointed out that NPSs emerged as “traditional low-harm drugs were replaced by potentially more dangerous, synthetic equivalents.” It then went on to say that countries which emphasised harm reduction and which “treat marijuana completely differently to Poland experienced the NPS phenomenon to a completely different degree.”

These views, however, were not accepted by the most powerful stakeholders in the Polish drug policy. The Prime Minister, Donald Tusk, voiced his prohibitionist views on numerous occasions. Speaking in the Seim in 2011(b), for example, he said that

when it comes to any form of legalisation of narcotics or liberalisation, I said this earlier – and this view may be different to my friends in RP – but while I am the PM and will have something to say in Poland, the legalisation of narcotics will never take place. The end. Full stop.

The role of Donald Tusk is of paramount importance in the context of NPSs. As demonstrated above, he was partially responsible for shaping the anti-NPS discourse. His actions and speeches also undoubtedly created a more hostile environment towards more liberal policy options. The views of Ewa Kopacz, Minister of Health from 2007 to 2011, reflect a similar conservatism and drug-free ideology. In a radio interview with *Gazeta.pl* (2010), she talked about the fight against NPSs; when asked why the government was not considering depenalising soft drugs to stop the spread of NPSs, she responded in the following way:

In general, not just as a Health Minister but as a doctor ... I am against even the smallest amounts of drugs .... I don't want even this smallest dose ... used to satisfy the curiosity of that young person ... to have an impact on their whole life.

She went on to explain how in her view and based on her experience, “softer and harder drugs are all the start of addiction.” She summed up by saying that she “doesn't want soft or hard narcotics” and “will call for a strong fight against all drugs.” Overall, this indicates why alternative solutions were not adopted in response to NPSs.

The systemic advantages of the conservative PC are also evident in how the governing party used various legal tools to make legislative processes more favourable to their chosen policy, which was based on prohibition. One such tool deployed by

the politicians at the time was *zamrażarka Marszałka* [the Marshal's freezer]. The "Marshall's freezer" is an informal term for a sort of limbo some bills can be placed into. The former Minister explained that, in Poland, any MP can introduce a draft bill.

The freezer is a relic of communism, where it was possible to introduce draft bills, but because no-one used it, it wasn't dangerous. It was only used to say 'look at our great democracy, even MPs can directly introduce bills.'

The official function of the freezer was to separate "silly ideas from good ideas," but now "it is an instrument used to decide what is right and what is wrong." This is only one of the tools that gave a legislative advantage to the members of the conservative PC in the Polish policy on NPSs. At the time of the NPS crisis (2008–2016), there were attempts to change the status of cannabis, which would – in the eyes of the liberal PC – act as an alternative policy option to NPSs. These attempts nevertheless ended up in the "Marshall's freezer" or were judged as violating the constitution.

Another systemic advantage can be seen in how Polish policymakers amended NPS legislation and added new NPSs to the list of controlled substances, in a way that did not require any consultations with the public. These amendments were introduced as "private member's bills" in order to avoid the consultations which are required if a draft bill is introduced as a governmental initiative. The former Minister explained: "The government can introduce some bills through the Sejm, and then it doesn't even need to pretend that it's consulting anyone."

This makes the policy process more favourable for the policymakers, who can amend laws quickly and without putting bills up for a parliamentary debate. However, even when these consultations take place, and bills are open to the scrutiny of experts and relevant communities, the influence of these sessions has become increasingly feeble since 2005. He went on to say that the "process of consultations is becoming more and more of a formality, where it exists but is less and less real" (the former Minister of Health). A good example of this declining influence can be seen in the experience of one NGO worker during a Sejm conference which discussed adding more NPSs to the list of controlled substances. Senior NGO worker explained how she advocated for an amendment that would change the process of criminalisation and make consultations with the public a compulsory policy element. It would have made it a requirement to consult with public institutions before new NPSs could be added to the list. The Central Bureau of Investigation, the Central Criminal Bureau and the Sanitary Inspectorate – all members of the conservative constellation – used their elite status to "bombard her with allegations" concerning widespread NPS use and blocked her amendment from passing.

## Conclusion and discussion

The aim of this article is to explain what led to the initial change in Polish drug policy in 2000 and why prohibition continued to dominate the policy, as later reflected in the response to NPSs. The application of the PC framework to this context sees it in relation to the power struggle between two constellations of actors with different normative preferences and strategic objectives. The very small liberal PC of mainly political actors, whose normative preferences were congruent with individual freedom, was able to assert dominance for much of the 1990s. This is largely due to the fact that many of these actors were in the ruling political parties. Their position became incrementally weakened with the emergence of actors whose normative preferences were congruent with full abstinence, respect for authority, purity and social control. These actors included the police, various organisations working with drug users (notably parental organisations) and AWS politicians, whose victory in the 2000 election allowed the conservative PC to gain systemic advantages.

The criminalisation of drugs in Poland in 2000 is interesting since, at first glance, it appears that the legal response resembles a pluralist decision where the majority of groups and actors involved in the policy process – some bottom-up – wanted criminalisation. It can nevertheless be disputed whether a decision reached in such an emotional setting can be best explained by a pluralist approach. The involvement of parental groups in the policy process is theoretically a strong indicator of pluralism, since the powerful gave those affected by the problem the opportunity to voice their views and recommend solutions that they would like to see implemented. This is also where it becomes paradoxical, however, since these groups dominated the policy setting with their emotional discourse, which disrupted the deliberations. The voices of users, on the other hand, were only echoed through communities of practice and mostly concerned problematic users. This demonstrates a structural advantage, since the voices of parents and certain NGOs mattered more than the voices and cultures of recreational drug users, for example.

The application of the PC framework to the Polish drug policy further reveals that some actors (predominantly found in the conservative PC) enjoyed systemic advantages in creating a favourable setting for the amendment that criminalised the possession of drugs. The mass media and politicians who enjoyed media power were able to influence the public sphere. This context provides a good example of how normative preferences intertwine with the desire to pursue political objectives. Some of these actors, such as Lech Kaczyński, wanted to expand their political power, whilst others – including Barbara Labuda – were likely motivated by a sense of wanting to contribute to the common good.

The second section of this article then shows how the conservative constellation which emerged in the 1990s continued to dominate Polish drug policy when decisions were taken in relation to NPSs. This is interesting since although the actors and groups in the Polish drug policy setting have changed since the amendment of 2000, with the more liberal Civic Platform party winning the election in 2007,

not much has changed in terms of official attitudes towards drugs. The second section presents a paradoxical struggle between the government and the media, where the media dominate the government and the government then uses the media for its own purposes. The NPS drug policy was emotionally charged from the very start of the crisis. All the actors performed certain functions and cooperated in policy implementation, but the evidence again does not indicate that these groups coordinated their actions to achieve their preferred policy options. The decision from 2000 at least created a façade of pluralism with grassroot actors contributing towards the amendment. In the context of NPSs, the ruling politicians dominated in a much more assertive way. The conservative group also enjoyed significant systemic advantages when it came to NPS policy (e.g., the ability to skip consultations with the public and to “freeze” inconvenient policy proposals).

Both stability and change can therefore be best explained with an intertwining of systemic advantages and moral preferences. This is likely even more interesting in the context of NPSs, since stronger evidence shows how the policymakers tried to make the policy processes more favourable to themselves.

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