

Drug Policy and Drug Legislation in South East Europe

Edited by:

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Drug Policy Dialogue in South East Europe

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Σύμφωνα με το Ν. 2121/93 για την Πνευματική Ιδιοκτησία απαγορεύεται η αναδημοσίευση και γενικά η αναπαραγωγή του παρόντος έργου, η αποθήκευσή του σε βάση δεδομένων, η αναμετάδοσή του σε ηλεκτρονική ή οποιαδήποτε άλλη μορφή και η φωτοανατύπωσή του με οποιονδήποτε τρόπο, χωρίς γραπτή άδεια του εκδότη.

ΔΗΛΩΣΗ ΕΚΔΟΤΙΚΟΥ ΟΙΚΟΥ

Το περιεχόμενο του παρόντος έργου έχει τύχει επιμελούς και αναλυτικής επιστημονικής επεξεργασίας. Ο εκδοτικός οίκος και οι συντάκτες δεν παρέχουν διά του παρόντος νομικές συμβουλές ή παρεμφερείς συμβουλευτικές υπηρεσίες, ουδεμία δε ευθύνη φέρουν για τυχόν ζημία τρίτου λόγω ενέργειας ή παράλειψης που βασίστηκε εν όλω ή εν μέρει στο περιεχόμενο του παρόντος έργου.

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NOMIKI BIBLIOTHIKI

Preface

The concept of security has changed, but the problem of drugs remains the same while society itself changes. We should, nevertheless, be able to predict the emergence of new threats in order to reduce the harm they eventually cause. As NGOs have gained a deeper insight into drug related problems in our societies, their impact and contribution in designing solutions to future problems should by no means be ignored. That is why this volume of the country reports of the Drug Law Reform Project initiated by Diogenis Association, one of the leading nonprofit organizations that promote drug policy dialogue in South East Europe is the first step towards reducing the harm to society caused by drugs. The aims and the objectives of the project are to exchange views, concepts, and findings among scientists, researchers and practitioners from various countries on a rather broad field of drug legislation in the South East European countries, in particular with a view to bringing to the fore the role of NGOs in policy making related to drug issues. This cooperation will highlight the differences in legislation, new ideas, theories, methods, and findings in a wide range of research and applied areas in connection with the drug situation in the South East European countries.

The empirical part of the study compares the relevant national strategies on drugs, national substantive criminal legislations, national drug laws and institutions, as well as drug law enforcement in practice, sentencing levels, and the prison situations in Albania, Bulgaria, Bosnia and Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Greece, Romania, Serbia, Slovenia, and Montenegro. As regards the general picture of the report as a whole, several common traits are obvious. There is a severe gap between acts of legislation and their practical implementation. This task includes examination and development of laws, theories, structure, processes and procedures, causes and consequences of societal responses to drug criminality, delinquency, and other security issues. The next paper focuses on supra-regional comparisons and aims to explain why NGOs play an important role in identifying the factors necessary for effective reforms. Adequate financing of NGOs is especially problematic, for it is a crucial factor in establishing their independence. The most profound example of how financing influences this independence-gaining process is the fact that there is currently no workable system for financing NGOs, as these mainly rely on international funding schemes overly susceptible to political influences.

The new security concept of the European Union is built on the Lisbon Treaty and the Stockholm Programme in which drugs turn out to be integral to all contemporary threats. Prevention and repression of drugs and crime is an aim no one would

dare to question. Drugs have always been present, and it seems they always will be; therefore, we must control and manage them to minimize their risk for society, though we might never succeed in totally eliminating them. The countries along the Balkan route of drugs need to take a more balanced approach to gathering and collating intelligence on drugs, and exchange their experiences gained in law reforms and put these into practice. Implementation of new ideas should be based on accurate threat assessments, not on political or media priorities. NGOs can assist in developing the necessary expertise required for these tasks, for they have a broader insight into drug related problems.

Due to various pressures and interests, there is often a lack of cooperation between governmental and non-governmental institutions. It is often the case that the objectives of various interest groups are more strongly defended than those of democratic society, evermore deepening the gap between the law and its practical implementations. A weak civil sector lacks the eagerness to tackle these problems, as there are no powerful NGOs or other pressure groups that would criticize state politicians for their deficient work. Political apathy and the overall mistrust of the populations are reflected in weak support to new ideas and lawful solutions. The media usually play a limited role in presenting these solutions and usually lack the necessary expertise in drug related topics. It seems that the legislation governing civil sectors does not encourage the development of such NGOs that would criticize the state.

The problem with funding and a lack of interest in communication between politics and NGOs prevails and the non-governmental sector still has great difficulties claiming for itself the status of an equal partner in drug reforms. To remedy this, we should encourage any cooperation between the public sector and NGOs. Greater opportunities for funding these organizations may stem from international cooperation and from EU institutions, such as the one established within the Diogenis project which, through its web page, publications, etc., is becoming an increasingly powerful voice informing and educating the public about adverse drug effects and other drug related issues. It participates in international researches and projects. It provides a good example of how to carry out researches, conferences, and round tables while focusing group discussions on drug related problems existing in the South East European countries. Nevertheless, and in spite of the problems, the future researches and legislation should also focus on controlling the flow of the money. Since the money earned from drugs is invested in legal business, through corruption and money laundering, we should expose legal solutions in order to curb those problems in the future.

Bojan Dobovsek Ph. D.

Introduction

In all the countries of South East Europe¹ there are initiatives to change the drug laws. Several countries are changing their legislation in order to adjust it to the new socio-political conditions and some are changing their legislation in order to meet the requirements of the European Union in view of becoming members of the EU.

The Diogenis Association took the initiative to set up a project on *Drug Law reform in South East Europe*, because this is a crucial period for the development of drug policy in the SEE countries within which civil society involvement can play a positive and decisive role. It is our conviction that non-governmental actors in the field of drugs have to have a say in shaping drug policy and influence drug Legislation. This volume is the result of cooperation between the Diogenis Association, NGOs participating in the Drug Policy Network in South East Europe² and the researchers affiliated with research institutes and universities in the countries in South East Europe³.

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1. The countries of South East Europe participating in this project are: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Greece, Montenegro, Romania, Serbia, Slovenia.
 2. The following organisations participate in the Drug Policy Network in SEE: Aksion Plus, Albania; NGO Victorija, Banja Luka, Bosnia Herzegovina; Association Margina, Bosnia and Herzegovina; Initiative for Health Foundation (IHF), Bulgaria; Udruga Terra Association, Croatia; Healthy Options Project Skopje (HOPS), Former Yugoslav Republic of Macedonia; Association DIOGENIS, Drug Policy Dialogue in SEE, Greece; Kentro Zois, Greece; Positive Voice, Greece Juventas, Montenegro; Romanian Harm Reduction Network (RHRN), Romania; NGO Veza, Serbia; Association Prevent, Novi Sad, Serbia; The “South Eastern European and Adriatic Addiction Network” (SEEAN), Slovenia; Harm Reduction Association, Slovenia.
 3. The researchers that worked on this project are: Ulsi Manja, Lecturer, Department of Criminal Justice, University “Justiniani 1, Tirana, Albania; Atanas Rusev and Dimitar Markov, Centre for the Study of Democracy, Sofia, Bulgaria; Irma Deljkic, Assistant Professor at the University of Sarajevo, Faculty of Criminal Justice Sciences, Bosnia and Herzegovina; Dalida Rittossa, Professor’s assistant at the department of Criminal Law Faculty of the Law University of Rijeka, Croatia; Natasa Boskova, Legal advisor, HOPS Skopje, and Nikola Tupanceski, Prof. at the Justinianus Primus Faculty of Law, St. Cyril and Methodius University, Skopje, Former Yugoslav Republic of Macedonia; Nikos Chatzinikolaou, Lawyer, PhD in Law (Criminal Law), academic partner of the Department of Criminal Law and Criminology of Law School, Aristotle University of Thessaloniki and Athanasia Antonopoulou, Lawyer, PhD in Law (Criminology & Crime Policy), senior researcher in the Department of Criminal Law and Criminology of Law School, Aristotle University of Thessaloniki; Vlado Dedovic, Ph.D. Studies, Teaching

The volume contains separate reports per country which describe the current National Strategy on Drugs, the national substantive criminal law, the national drug laws and institutions, Drug law enforcement in practice, sentencing levels and the prison situation, initiatives for drug law reform undertaken by the government and/or parliament in recent years and proposals and recommendations for further research and advocacy work.

Some findings which are characteristic for the situation of drug policy and drug legislation as presented in the country reports are summed up here.

Discrepancy between strategies and practice

All SEE countries have adopted a *National Strategy* during the last decade. The majority of them have also adopted Action Plans for the implementation of the Strategy. With the exception of some countries *the majority have not evaluated their strategy and action plan*. Most of the countries do not have formal evaluation mechanisms. It has been suggested that the establishment of external evaluation has to be carried out by independent institutions. According to the national strategy of all SEE countries, *NGOs and civil society should play an important and active role in policy making*, mainly in the field of treatment and rehabilitation, but also on harm reduction. In practice there is a gap between strategy and practice. Harm reduction is not enshrined in national legislation and many projects will be in danger when external funding is terminated.

Different legal traditions; common practice of high penalties; no distinction between “soft” and “hard” drugs; penalisation of possession for personal use.

The criminal justice systems in the countries of SEE have different legal traditions. There is great diversity in all the participant countries in the typology of the penalties imposed according to the legislation. The main custodial sanction in all SEE countries is imprisonment. Fines are also included in all the sanction systems that were examined. The duration of imprisonment ranges from a few days to 15, 20, 25 or 30 years. Life imprisonment is imposed in five countries (Greece, Bulgaria, Slovenia, Romania, Former Yugoslav Republic of Macedonia), while in Bosnia-Herzegovina long-term imprisonment ranges between 21-45 years. There is also a vast

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diversity in the ways that custodial sanctions are served and the alternative forms provided during sentencing. Probation/conditional sentencing or a suspended sentence are provided in all sanction systems of the SEE countries.

In the criminal legislation of all countries, there are provisions concerning cultivation, production and trade of drugs (trafficking); With the exception of Greece where use is penalised, in the vast majority of the countries, only the possession of drugs is penalized. In general, in the national legislation, there is no distinction between “soft” and “hard” drugs. For the majority of the countries, there is no legally established difference between small and big dealers. For several of the countries, there is a differentiation for organized criminal groups of dealers.

Cannabis production and use is dominant in all countries of the region

Cannabis cultivation is dominant in all the SEE countries. Large quantities of cannabis plants are detected, uprooted and confiscated by the law-enforcement authorities in Greece, Bulgaria, Slovenia, Romania, Bosnia-Herzegovina, Croatia, Former Yugoslav Republic of Macedonia and Albania.

Increase of the prison population over the last years; poor living conditions and increasing drug use in prisons; inadequate medical care inside prisons.

For the majority of the countries, the living conditions in detention facilities are very difficult because prisons are overcrowded. This fact is a common problem and a general endemic characteristic of the correctional systems of the majority of the countries.

The problem of drug-use in prisons emerges clearly through the national reports. There is diversity in the provision of treatment programmes for drug dependent prisoners. Medical care inside prison is provided for all prisoners by medical staff while only outside the prison can help from other medical institutions and NGOs programs be provided to prisoners. It is possible to divert drug users from prison into community-based treatment for drug addicted perpetrators of drug-related offences, though diversion mechanisms combined with treatment programmes (suspension of penal prosecution, execution of the sentence/probation/ conditional release from prison) are currently implemented in a very limited way.

Social re-integration programmes almost absent

For the majority of the SEE countries, the strategy for social reintegration can be characterized as either incoherent or only nominal and there seems to be a long way to go for the implementation of such policy. There is no specific strategy for social reintegration in Bulgaria, while two NGOs have been implementing projects for social reintegration and re-socialization of offenders following the execution of their sentence.

With the exception of Croatia, in the vast majority of the participant countries, there is no statistical data available for recidivism of the offenders sentenced for drug-related crimes. According to the data provided by Croatia, the rates of previous convictions are exceptionally high among drug offenders.

Support for alternative measures to incarceration, reservations to decriminalization

The relevant national authorities and the state recognized agencies and service providers are cautious in their reactions concerning proposals for change which are considered to be contrary to the international conventions. Governments and parliaments are making use of the room that exists in the international conventions to introduce new ways of facing the problem, but they are hesitant to speak about reform of the conventions.

NGOs express clearly the wish for reform in several areas, especially the decriminalization of possession for personal use and the wish to enshrine harm reduction services in the national legislation. But also NGOs are on the one hand concerned about the general feeling of the public that is reserved towards decriminalization of drugs and on the other hand they are in favor of restricting access to illicit drugs, to which young people have easy access via internet.

All relevant stakeholders support alternative measures to incarceration of drug offenders. They are convinced that alternative measures will result in a reduction of incarceration and minimization of the negative consequences of criminal prosecution and short-term prison sentences to drug addicted persons.

Unbalanced Spending of Financial resources

Broadly speaking, the available resources for drug supply reduction and drug demand reduction is not balanced. The national strategies present a comprehensive view in which the elements to reduce drug demand and supply of drugs are balanced. However, in practice there are difficulties in implementing this balanced approach. Some say that this is due to lack of budgetary resources. Others point out that it is a question of priorities and policy orientation. Lack of human resources and financial support for treatment programs is a significant issue; it is necessary to allocate increasing amounts of money from the state budget for treatment services provided to drug users.

The *Drug Law reform Project* will undertake further initiatives concerning legislative reforms in South East Europe. The next steps will be an in-depth analysis and research of specific issues relevant for countries in the region. The regional character of our activities is of great importance since we aim to support reforms that also promote coordination and close cooperation between the South East European countries. This approach is particularly important due to the cross-border charac-

ter of criminal offences associated with drug trafficking, as well as common socio-political characteristics of the majority of states in the region. The project aims to promote policies based on respect for human rights, scientific evidence and best practices which would provide a framework for a more balanced approach and will result in a more effective policy and practice. A major concern of our activities is to encourage open debate on drug policy reform and raise public awareness regarding drug policies, their effect and their consequences for individuals and society.

This project and the other activities of the Diogenis Association are an effort to connect developments and initiatives in the SEE region with the European Union's Drug Strategy and Action Plan as well as with global developments on Drug Policy. After several decades of implementation of the current international drug control system, there is worldwide a sense of urgency to adjust the system, correct the aspects that cause adverse consequences and make it more effective. Open dialogue with the relevant authorities responsible for Drug Policy is essential in the search for more humane and effective Drug Policies and practice. The critical voices of civil society organisations such as the NGOs must be seen as a complementary contribution to the Drug Policy debate. Our cooperation with research institutes and universities is growing and there is mutual appreciation of our activities. The combination of the NGOs practical experience in the field and the scientific insights of researchers is a valuable contribution to the drug policy debate. It is up to the policy makers and governments to make use of proposals and recommendations and incorporate suggestions in Strategic choices and Legislation.

Thanasis Apostolou

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Πρόλογος

Η έννοια της ασφάλειας έχει αλλάξει, αλλά το πρόβλημα των ναρκωτικών παραμένει το ίδιο ενώ η κοινωνία αλλάζει. Θα πρέπει, ωστόσο, να είμαστε σε θέση να προβλέψουμε την εμφάνιση νέων απειλών, προκειμένου να περιορίσουμε τη βλάβη που τα ναρκωτικά τελικά προκαλούν. Δεδομένου ότι οι Μη Κυβερνητικές Οργανώσεις έχουν αποκτήσει μια βαθύτερη κατανόηση των προβλημάτων που σχετίζονται με τα ναρκωτικά στις κοινωνίες μας, η συμβολή τους στο σχεδιασμό για την επίλυση μελλοντικών προβλημάτων και ο αντίκτυπος των προτάσεών τους δεν πρέπει σε καμία περίπτωση να αγνοηθούν. Γι' αυτό και ο παρών τόμος που περιέχει τις ανά χώρα εκθέσεις του Προγράμματος Μεταρρύθμισης της Νομοθεσίας περί ναρκωτικών, που ξεκίνησε με πρωτοβουλία της Εταιρείας Διογένης, μιας από τις σημαντικές μη κερδοσκοπικές οργανώσεις που προωθεί τον διάλογο για την πολιτική των ναρκωτικών στη Νοτιοανατολική Ευρώπη, είναι το πρώτο βήμα για τη μείωση των αρνητικών συνεπειών που προκαλούν τα ναρκωτικά στην κοινωνία μας. Οι σκοποί και οι στόχοι του Προγράμματος Μεταρρύθμισης της Νομοθεσίας είναι η συνεργασία, η ανταλλαγή απόψεων, ιδεών και προτάσεων, μεταξύ επιστημόνων, ερευνητών και επαγγελματιών σε ένα σχετικά ευρύ πεδίο της νομοθεσίας περί ναρκωτικών στις χώρες της Νοτιοανατολικής Ευρώπης. Στόχο αποτελεί επίσης η προβολή του ρόλου των Μη Κυβερνητικών Οργανώσεων στη χάραξη πολιτικής για τα ναρκωτικά. Η συνεργασία αυτή θα αναδείξει τις διαφορές στη νομοθεσία, νέες ιδέες, θεωρίες, μεθόδους, και συμπεράσματα ερευνών σε ένα ευρύ φάσμα θεμάτων που σχετίζονται με την κατάσταση των ναρκωτικών στις χώρες της Νοτιοανατολικής Ευρώπης.

Στο εμπειρικό μέρος των εκθέσεων συγκρίνονται οι σχετικές εθνικές στρατηγικές για τα ναρκωτικά, η εθνική ουσιαστική ποινική νομοθεσία, οι εθνικές νομοθεσίες και τα θεσμικά όργανα για τα ναρκωτικά, τα θεσμικά όργανα επιβολής του νόμου, το επίπεδο επιβολής ποινών, και η κατάσταση στις φυλακές στην Αλβανία, Βουλγαρία, Βοσνία και Ερζεγοβίνη, Κροατία, Πρώην Γιουγκοσλαβική Δημοκρατία της Μακεδονίας, Ελλάδα, Ρουμανία, Σερβία, Σλοβενία και Μαυροβούνιο. Όσον αφορά στη γενική εικόνα των εκθέσεων στο σύνολό τους, είναι προφανώς πολλά τα κοινά χαρακτηριστικά. Υπάρχει μεγάλη διάσταση μεταξύ των νομοθετικών διατάξεων και της πρακτικής εφαρμογής τους. Ένα μέρος των εκθέσεων περιλαμβάνει την εξέταση και την ανάπτυξη των νόμων, των δομών, των διαδικασιών, των αιτίων και των συνεπειών των κοινωνικών αντιδράσεων για την εγκληματικότητα που σχετίζεται με τα ναρκωτικά, καθώς και άλλα ζητήματα ασφάλειας. Μια άλλη ενότητα επικεντρώνεται σε συγκρίσεις που υπερβαίνουν τα περιφερειακά όρια και έχουν ως στόχο

να εξηγήσουν γιατί οι ΜΚΟ διαδραματίζουν σημαντικό ρόλο στον εντοπισμό των παραγόντων που είναι απαραίτητοι για την επίτευξη αποτελεσματικών μεταρρυθμίσεων. Επαρκής χρηματοδότηση των ΜΚΟ είναι ιδιαίτερα προβληματική, αλλά αποτελεί κρίσιμο παράγοντα για τη διατήρηση της ανεξαρτησίας τους. Το πλέον έκδηλο παράδειγμα του πώς η χρηματοδότηση επηρεάζει αυτή την απόκτηση ανεξαρτησίας, αποτελεί το γεγονός ότι σήμερα δεν υπάρχει εφαρμόσιμο σύστημα για τη χρηματοδότηση των ΜΚΟ, καθώς αυτές στηρίζονται κυρίως σε διεθνή συστήματα χρηματοδότησης υπερβολικά ευαίσθητα σε πολιτικές επιρροές.

Η νέα έννοια της ασφάλειας της Ευρωπαϊκής Ένωσης βασίζεται στη Συνθήκη της Λισαβόνας και το πρόγραμμα της Στοκχόλμης όπου τα ναρκωτικά φαίνεται να είναι αναπόσπαστο κομμάτι όλων των σύγχρονων απειλών. Πρόληψη και καταστολή των ναρκωτικών και του εγκλήματος είναι ένας στόχος που κανείς δεν θα τολμούσε να αμφισβητήσει. Ναρκωτικά υπήρχαν πάντα και φαίνεται ότι πάντα θα υπάρχουν. Ως εκ τούτου, πρέπει να τα ελέγχουμε και να τα διαχειριζόμαστε για να ελαχιστοποιούμε τους κινδύνους για την κοινωνία, αν και ποτέ δεν θα μπορούσαμε να πετύχουμε την παντελή τους εξάλειψη. Οι χώρες κατά μήκος της Βαλκανικής οδού των ναρκωτικών χρειάζεται να υιοθετήσουν μια πιο ισορροπημένη προσέγγιση συλλογής και αντιπαραβολής πληροφοριών σχετικά με τα ναρκωτικά, να ανταλλάξουν τις εμπειρίες τους που αποκτήθηκαν από νομοθετικές μεταρρυθμίσεις και να τις εφαρμόσουν στην πράξη. Η εφαρμογή νέων ιδεών πρέπει να βασίζεται σε ακριβείς εκτιμήσεις των απειλών, και όχι σε πολιτικές ή επικοινωνιακές προτεραιότητες. Οι ΜΚΟ μπορούν να βοηθήσουν στην ανάπτυξη της απαραίτητης τεχνογνωσίας που απαιτείται για αυτές τις δράσεις, γιατί έχουν μια ευρύτερη εικόνα των προβλημάτων που σχετίζονται με τα ναρκωτικά.

Λόγω διαφόρων πιέσεων και συμφερόντων, υπάρχει συχνά έλλειψη συνεργασίας μεταξύ κυβερνητικών και μη κυβερνητικών οργανισμών. Συμβαίνει συχνά να υπερασπίζονται σθεναρά τα συμφέροντα και οι στόχοι των διαφόρων ενδιαφερόμενων ομάδων αντί των συμφερόντων και των στόχων της δημοκρατικής κοινωνίας έτσι ολόένα και περισσότερο βαθιάειν το χάσμα μεταξύ της νομοθεσίας και της εφαρμογής της στην πράξη. Από μια ανίσχυρη κοινωνία των πολιτών λείπει ο ενθουσιασμός να ασχοληθεί με κοινωνικά προβλήματα, αν δεν υπάρχουν δυναμικές Μη Κυβερνητικές Οργανώσεις ή άλλες ομάδες πίεσης που θα επικρίνουν τους πολιτικούς του κράτους για την πλημμελή εργασία τους. Η πολιτική απάθεια και η γενική δυσπιστία των πολιτών αντικατοπτρίζονται στην αδύναμη υποστήριξη νέων ιδεών και νόμων λύσεων. Τα μέσα ενημέρωσης διαδραματίζουν συνήθως περιορισμένο ρόλο στην παρουσίαση αυτών των λύσεων και συνήθως στερούνται της απαραίτητης τεχνογνωσίας σε θέματα που σχετίζονται με τα ναρκωτικά. Φαίνεται ότι η νομοθεσία που διέπει τις οργανώσεις της κοινωνίας των πολιτών δεν ευνοεί την ανάπτυξη Μη Κυβερνητικών Οργανώσεων που θα έχουν μια κριτική στάση προς το κράτος.

Ο μη κυβερνητικός τομέας εξακολουθεί να έχει μεγάλες δυσκολίες να διεκδικήσει για τον εαυτό του τη θέση του ισότιμου εταίρου στις μεταρρυθμίσεις των ναρκωτικών, μια και η χρηματοδότηση και η έλλειψη ενδιαφέροντος επικοινωνίας ανάμεσα στην πολιτική και τις Μη Κυβερνητικές Οργανώσεις αποτελεί το κυρίαρχο πρόβλημα. Για να αντιμετωπιστεί αυτή η κατάσταση, θα πρέπει να ενθαρρύνουμε κάθε συνεργασία μεταξύ του δημόσιου τομέα και των Μη Κυβερνητικών Οργανώσεων. Περισσότερες ευκαιρίες για χρηματοδότηση των οργανισμών αυτών μπορεί να προέλθουν από τη διεθνή συνεργασία και από τα όργανα της ΕΕ. Στην προκειμένη περίπτωση του Προγράμματος Μεταρρύθμισης της Νομοθεσίας της Εταιρείας Διογένης, η φωνή των Μη Κυβερνητικών Οργανώσεων γίνεται όλο και ισχυρότερη μέσω του Διαδικτύου, δημοσιεύσεων, κ.λπ., ενημερώνοντας και εκπαιδεύοντας το κοινό σχετικά με τις δυσμενείς συνέπειες της χρήσης ναρκωτικών και άλλα θέματα που σχετίζονται με τα ναρκωτικά. Είναι ένα καλό παράδειγμα για το πώς μπορεί κανείς να πραγματοποιήσει έρευνες, συνέδρια και συζητήσεις στρογγυλής τραπέζης, δίνοντας παράλληλα προτεραιότητα σε συζητήσεις για τα ναρκωτικά που σχετίζονται με προβλήματα που υπάρχουν στις χώρες της Νοτιοανατολικής Ευρώπης.

Παρ' όλα αυτά, και παρά τα προβλήματα, οι μελλοντικές έρευνες και η νομοθεσία θα πρέπει επίσης να επικεντρωθεί στον έλεγχο της ροής χρήματος. Δεδομένου ότι τα χρήματα που κερδίζονται από τα ναρκωτικά επενδύονται σε νόμιμες δραστηριότητες μέσω της διαφθοράς και του ξεπλύματος μαύρου χρήματος, θα πρέπει να σκεφτούμε νόμιμες λύσεις προκειμένου να περιορίσουμε αυτά τα προβλήματα στο μέλλον.

Bojan Dobovsek Ph.D

Εισαγωγή

Σε όλες τις χώρες της Νοτιοανατολικής Ευρώπης¹ έχουν αναληφθεί πρωτοβουλίες για να αλλάξει η νομοθεσία περί των ναρκωτικών ουσιών. Αρκετές χώρες αλλάζουν τη νομοθεσία τους προκειμένου να την προσαρμόσουν στις νέες κοινωνικο-πολιτικές συνθήκες και μερικές αλλάζουν τη νομοθεσία τους προκειμένου να ανταποκριθούν στις απαιτήσεις της Ευρωπαϊκής Ένωσης με σκοπό την ένταξή τους στην ΕΕ.

Η Εταιρεία Διογένης ανέλαβε την πρωτοβουλία να αρχίσει το Πρόγραμμα για τη Μεταρρύθμιση της Νομοθεσίας περί Ναρκωτικών στην Νοτιοανατολική Ευρώπη, επειδή αυτή η περίοδος είναι κρίσιμη για την ανάπτυξη της πολιτικής για τα ναρκωτικά στις χώρες της Νοτιοανατολικής Ευρώπης, όπου η κοινωνία των πολιτών θα πρέπει να διαδραματίσει θετικό και αποφασιστικό ρόλο στη διαμόρφωσή της. Είναι πεποίθησή μας ότι οι μη κυβερνητικοί φορείς στον τομέα των ναρκωτικών πρέπει να έχουν λόγο στη διαμόρφωση της πολιτικής για τα ναρκωτικά και να επηρεάσουν τη σχετική νομοθεσία. Ο παρών τόμος είναι το αποτέλεσμα της συνεργασίας μεταξύ της Εταιρείας Διογένης, των Μη Κυβερνητικών Οργανώσεων που συμμετέχουν στο Δίκτυο Συνεργασίας για την Πολιτική των Ναρκωτικών στην Νοτιοανατολική Ευρώπη² και των ερευνητών που απασχολούνται σε ερευνητικά ιδρύματα και πανεπιστήμια χωρών της Νοτιοανατολικής Ευρώπης³.

1. Οι χώρες της Νοτιοανατολικής Ευρώπης που συμμετέχουν σ' αυτό το πρόγραμμα είναι οι εξής: Αλβανία, Βοσνία και Ερζεγοβίνη, Βουλγαρία, Κροατία, Πρώην Γιουγκοσλαβική Δημοκρατία της Μακεδονίας, Ελλάδα, Μαυροβούνιο, Ρουμανία, Σερβία, Σλοβενία.
2. Οι ακόλουθες οργανώσεις συμμετέχουν στο Δίκτυο Συνεργασίας για την Πολιτική των Ναρκωτικών στη Νοτιοανατολική Ευρώπη: Aksion Plus, Αλβανία, ΜΚΟ Victorijsa, Μπάνια Λούκα, Βοσνία-Ερζεγοβίνη, Σύλλογος Margina, Βοσνία και Ερζεγοβίνη, Ιδρυμα Πρωτοβουλία για την Υγεία (IHF) Βουλγαρία, Σύλλογος Udruga Terra, Κροατία, Πρόγραμμα Υγιείς Επιλογές Σκόπια (HOPS), Πρώην Γιουγκοσλαβική Δημοκρατία της Μακεδονίας, Εταιρεία ΔΙΟΓΕΝΗΣ, Πρωτοβουλία Διάλογου για τα Ναρκωτικά στη Νοτιοανατολική Ευρώπη, Ελλάδα, Κέντρο Ζωής, Ελλάδα, Θετική Φωνή, Ελλάδα, Juventas, Μαυροβούνιο, Ρουμανικό Δίκτυο Συνεργασίας για τη Μείωση της Βλάβης (RHRN), Ρουμανία, ΜΚΟ Veza, Σερβία, Σύλλογος Πρόληψη, Novi Sad, Σερβία, Δίκτυο Συνεργασίας για τις Εξαρτήσεις στην Νοτιο-ανατολική Ευρώπη και την Αδριατική (SEEAN), Σλοβενία, Σύλλογος για τη Μείωση της Βλάβης, Σλοβενία.
3. Οι ερευνητές που συνεργάστηκαν στο Πρόγραμμα είναι: Ulsi Manja, Λέκτορας, Τμήμα Ποινικής Δικαιοσύνης, Πανεπιστήμιο "Ιουστινιάνι 1, Τίρανα, Αλβανία, Atanas Rusev και Dimitar Markov, Επιστημονικοί συνεργάτες του Κέντρου για τη Μελέτη της Δημοκρατίας, Σόφια, Βουλγαρία, Irma Deljkic, Επίκουρος Καθηγήτρια στο Πανεπιστήμιο του Σεράγεβο, Σχολή Επιστημών Ποινικής Δικαιοσύνης, Βοσνία και Ερζεγοβίνη, Dalida Rittossa, βοηθός

Ο τόμος περιέχει ξεχωριστές εκθέσεις ανά χώρα οι οποίες περιγράφουν την τρέχουσα Εθνική Στρατηγική για τα Ναρκωτικά, το εθνικό ουσιαστικό ποινικό δίκαιο, τις εθνικές νομοθεσίες περί ναρκωτικών και τα θεσμικά όργανα, την επιβολή του νόμου στην πράξη, τα επίπεδα ποινών και την κατάσταση στις φυλακές, τις πρωτοβουλίες για τη μεταρρύθμιση της νομοθεσίας περί ναρκωτικών που έχουν αναληφθεί από την κυβέρνηση ή / και το κοινοβούλιο τα τελευταία χρόνια και τις προτάσεις και συστάσεις για περαιτέρω έρευνα και προώθηση μεταρρυθμιστικών προτάσεων.

Ορισμένες διαπιστώσεις οι οποίες είναι χαρακτηριστικές για την κατάσταση της πολιτικής για τα ναρκωτικά και την νομοθεσία περί ναρκωτικών, όπως παρουσιάζονται στις εκθέσεις των χωρών συνοψίζονται παρακάτω:

Ασυμφωνία μεταξύ των στρατηγικών και της πρακτικής εφαρμογής τους.

Όλες οι χώρες της Νοτιοανατολικής Ευρώπης έχουν υιοθετήσει μια εθνική στρατηγική κατά τη διάρκεια της τελευταίας δεκαετίας. Η πλειοψηφία των χωρών έχει επίσης επεξεργαστεί σχέδια δράσης για την εφαρμογή της στρατηγικής. Με εξαίρεση ορισμένες χώρες, η πλειοψηφία των χωρών δεν έχει κάνει μέχρι τώρα αξιολόγηση της στρατηγικής και των σχεδίων δράσης. Οι περισσότερες χώρες δεν έχουν επίσημους μηχανισμούς αξιολόγησης. Θα πρέπει να δημιουργηθεί μηχανισμός εξωτερικής αξιολόγησης βάσει του οποίου θα πρέπει να διενεργείται η αξιολόγηση από ανεξάρτητους φορείς. Σύμφωνα με την εθνική στρατηγική όλων των χωρών της Νοτιοανατολικής Ευρώπης, οι Μη Κυβερνητικές Οργανώσεις και γενικότερα

καθηγητή στο τμήμα του Ποινικού Δικαίου της Νομικής Σχολής του Πανεπιστημίου της Rijeka, Κροατία, Natasha Boskova, Νομικός Σύμβουλος, HOPS Σκόπια, και Nikola Turancski, καθηγητής της Νομικής Σχολής Αγίου Κυρίλλου και Μεθοδίου του Πανεπιστημίου Iustinianus Primus, Σκόπια, Πρώην Γιουγκοσλαβική Δημοκρατία της Μακεδονίας, Νίκος Χατζηνικολάου, Δικηγόρος, Διδάκτωρ Νομικής (Ποινικό Δίκαιο) συνεργάτης του Τομέα Ποινικών και Εγκληματολογικών Επιστημών της Νομικής Σχολής του Αριστοτελείου Πανεπιστημίου Θεσσαλονίκης και Αθανασία Αντωνοπούλου, Διδάκτωρ Νομικής (Εγκληματολογία και Αντεγκληματική πολιτική), ερευνήτης στο τμήμα Ποινικού Δικαίου και Εγκληματολογίας της Νομικής σχολής του Αριστοτελείου Πανεπιστημίου Θεσσαλονίκης, Vlado Dedovic, Σπουδές Ph.D, Επιστημονικός Συνεργάτης, Τμήμα Νομικής, Κρατικό Πανεπιστήμιο του Μαυροβουνίου, Μαυροβούνιο, Andrea Parosanu, ερευνήτρια, Master of Laws (LL.M.) στην Εγκληματολογία και Ποινική Δικαιοσύνη, Πανεπιστήμιο του Greifswald, Γερμανία και Ecaterina Georgeta Balica, Ερευνήτρια, Αναπληρώτρια Καθηγήτρια Ph.D. Πανεπιστήμιο Βουκουρεστίου, Τμήμα Κοινωνιολογίας και Κοινωνικής Εργασίας, Ρουμανία, Dragoljub Jovanovic, Τμήμα Ειδικής Αγωγής και Αποκατάστασης, Πανεπιστήμιο Βελιγραδίου, Βελιγράδι, Σερβία, Bojan Dobovsek, Καθηγητής Σχολής Ποινικής Δικαιοσύνης και Ασφάλειας του Πανεπιστημίου του Μάρμπουργκ, και Gašper Hribar, Τμήμα Ποινικής Δικαιοσύνης και Ασφάλειας του Πανεπιστημίου του Μάρμπουργκ, Σλοβενία.

η κοινωνία των πολιτών πρέπει να διαδραματίσουν σημαντικό και ενεργό ρόλο στη χάραξη πολιτικής, κυρίως στον τομέα της θεραπείας και της κοινωνικής αποκατάστασης, αλλά και στη μείωση της βλάβης. Στην πράξη, υπάρχει χάσμα μεταξύ της στρατηγικής και της πρακτικής της εφαρμογής. Η μείωση της βλάβης δεν είναι ενσωματωμένη στην εθνική νομοθεσία και πολλά προγράμματα κινδυνεύουν να κλείσουν όταν η εξωτερική χρηματοδότηση θα λήξει.

Διαφορετικές νομικές παραδόσεις, συνήθης πρακτική η επιβολή υψηλών ποινών, δεν γίνεται διάκριση μεταξύ «μαλακών» και «σκληρών» ναρκωτικών, ποινικοποίηση της κατοχής για προσωπική χρήση.

Τα συστήματα ποινικής δικαιοσύνης στις χώρες της Νοτιοανατολικής Ευρώπης έχουν διαφορετικές νομικές παραδόσεις. Υπάρχει μεγάλη διαφοροποίηση μεταξύ των χωρών που συμμετείχαν στο πρόγραμμα ως προς την τυπολογία των κυρώσεων που επιβάλλονται σύμφωνα με τη νομοθεσία. Η κύρια ποινή στέρησης της ελευθερίας σε όλες τις χώρες της Νοτιοανατολικής Ευρώπης είναι η φυλάκιση. Πρόστιμα περιλαμβάνονται επίσης σε όλα τα συστήματα κυρώσεων που εξετάστηκαν. Η διάρκεια της φυλάκισης κυμαίνεται από λίγες ημέρες έως 15, 20, 25 ή 30 χρόνια. Επιβάλλεται ισόβια κάθειρξη σε πέντε χώρες (Ελλάδα, Βουλγαρία, Σλοβενία, Ρουμανία, Πρώην Γιουγκοσλαβική Δημοκρατία της Μακεδονίας), ενώ στη Βοσνία-Ερζεγοβίνη μακροχρόνια φυλάκιση κυμαίνεται μεταξύ 21-45 έτη. Υπάρχει επίσης μεγάλη διαφοροποίηση στους τρόπους που οι στερητικές της ελευθερίας κυρώσεις επιβάλλονται και στις εναλλακτικές μορφές που προβλέπονται (δικαστική επιτήρηση/καταδίκη υπό όρους ή αναστολή της ποινής παρέχονται σε όλα τα συστήματα επιβολής κυρώσεων των χωρών

Στην ποινική νομοθεσία όλων των χωρών, υπάρχουν διατάξεις που αφορούν στην καλλιέργεια, την παραγωγή και το εμπόριο ναρκωτικών. Με εξαίρεση την Ελλάδα, όπου η χρήση τιμωρείται, στη συντριπτική πλειοψηφία των χωρών της Νοτιοανατολικής Ευρώπης, μόνο η Κατοχή ναρκωτικών τιμωρείται. Σε γενικές γραμμές, στην εθνική νομοθεσία, δεν υπάρχει καμία διάκριση μεταξύ «μαλακών» και «σκληρών» ναρκωτικών. Στις περισσότερες χώρες δεν υπάρχει επίσης νομικά κατοχυρωμένη διαφορά μεταξύ μικρών και μεγάλων εμπορών. Σε πολλές χώρες, υπάρχει μια διαφοροποίηση σχετικά με οργανωμένες εγκληματικές ομάδες εμπορών.

Παραγωγή και χρήση κάνναβης επικρατεί σε όλες τις χώρες της περιοχής

Η καλλιέργεια κάνναβης κατέχει δεσπόζουσα θέση σε όλες τις χώρες της Νοτιοανατολικής Ευρώπης. Εντοπίζονται μεγάλες ποσότητες φυτών κάνναβης και ξεριζώνονται και κατάσχονται από τις αρχές επιβολής του νόμου στην Ελλάδα, τη Βουλγαρία, τη Σλοβενία, τη Ρουμανία, τη Βοσνία-Ερζεγοβίνη, Κροατία, Πρώην Γιουγκοσλαβική Δημοκρατία της Μακεδονίας και την Αλβανία.

Αύξηση του πληθυσμού των φυλακών τα τελευταία χρόνια, κακές συνθήκες διαβίωσης και αύξηση της χρήσης ναρκωτικών στις φυλακές, Ανεπαρκής ιατρική φροντίδα μέσα στις φυλακές.

Για την πλειοψηφία των χωρών, οι συνθήκες διαβίωσης στις φυλακές είναι πολύ δύσκολες, επειδή οι φυλακές είναι υπερπλήρεις. Το γεγονός αυτό είναι κοινό πρόβλημα και γενικό ενδημικό χαρακτηριστικό των σωφρονιστικών συστημάτων της πλειοψηφίας των χωρών της περιοχής.

Το πρόβλημα της χρήσης ναρκωτικών στις φυλακές προκύπτει σαφώς από τις εκθέσεις των χωρών. Υπάρχει διαφοροποίηση στην παροχή των προγραμμάτων θεραπείας για εξαρτημένους από ναρκωτικά κρατούμενους. Ιατρική περίθαλψη εντός της φυλακής παρέχεται για όλους τους κρατούμενους από ιατρικό προσωπικό, ενώ μόνο έξω από τη φυλακή μπορούν να παρασχεθούν σε κρατούμενους ιατρικές υπηρεσίες από άλλα νοσηλευτικά ιδρύματα και τα προγράμματα Μη Κυβερνητικών Οργανώσεων. Είναι δυνατόν να παραπεμφθούν χρήστες ναρκωτικών που διέπραξαν σχετιζόμενα με ναρκωτικά αδικήματα από τη φυλακή σε θεραπευτικά προγράμματα εξαρτημένων στο πλαίσιο της κοινότητας, αν και τα εναλλακτικά της φυλάκισης μέτρα (αναστολή της ποινικής δίωξης, αναστολή εκτέλεσης της ποινής / δικαστική επιτήρηση/αποφυλάκιση υπό όρους) σε συνδυασμό με τα προγράμματα θεραπείας εφαρμόζονται πολύ περιορισμένα.

Προγράμματα κοινωνικής (επαν)ένταξης είναι σχεδόν ανύπαρκτα

Για την πλειοψηφία των χωρών της Νοτιοανατολικής Ευρώπης, η στρατηγική για την κοινωνική (επαν)ένταξη μπορεί να χαρακτηριστεί είτε ως μη συνεκτική είτε μόνο κατ' όνομα/συμβολική και φαίνεται ότι πρέπει να διανυθεί πολύς ακόμα δρόμος για την εφαρμογή της. Δεν υπάρχει συγκεκριμένη στρατηγική για την κοινωνική επανένταξη στη Βουλγαρία, ενώ δύο Μη Κυβερνητικές Οργανώσεις έχουν υλοποιήσει προγράμματα κοινωνικής επανένταξης παραβατών μετά την εκτέλεση της ποινής τους.

Με εξαίρεση την Κροατία, στη συντριπτική πλειοψηφία των χωρών, δεν υπάρχουν διαθέσιμα στατιστικά στοιχεία για υποτροπή των παραβατών που έχουν καταδικαστεί για παραβάσεις που σχετίζονται με τα ναρκωτικά. Σύμφωνα με τα στοιχεία που παρέχονται από την Κροατία, τα ποσοστά προηγούμενων καταδικαστικών αποφάσεων είναι εξαιρετικά υψηλά μεταξύ των παραβατών του νόμου περί ναρκωτικών.

Υπάρχει υποστήριξη για τα εναλλακτικά της φυλάκισης μέτρα, αλλά και επιφυλάξεις για την αποποινικοποίηση

Οι αρμόδιες εθνικές αρχές και οι αναγνωρισμένοι από το κράτος φορείς παροχής υπηρεσιών είναι επιφυλακτικοί στις αντιδράσεις τους σχετικά με τις προτάσεις για

αλλαγές στη νομοθεσία οι οποίες θεωρούνται ότι αποτελούν παραβίαση των διεθνών συμβάσεων για τα ναρκωτικά. Οι κυβερνήσεις και τα κοινοβούλια κάνουν χρήση των περιθωρίων που υπάρχουν στις διεθνείς συμβάσεις για την εισαγωγή νέων τρόπων αντιμετώπισης του προβλήματος, αλλά είναι διστακτικοί να μιλήσουν για μεταρρύθμιση των διεθνών συμβάσεων.

Οι Μη Κυβερνητικές Οργανώσεις εκφράζουν σαφώς την επιθυμία για μεταρρυθμίσεις σε διάφορους τομείς, ιδιαίτερα την αποποινικοποίηση της κατοχής για προσωπική χρήση και την επιθυμία να κατοχυρωθούν οι υπηρεσίες μείωσης της βλάβης στην εθνική νομοθεσία. Αλλά και οι Μη Κυβερνητικές Οργανώσεις ενώ από τη μια πλευρά ανησυχούν για τη γενική αίσθηση της κοινής γνώμης, που είναι επιφυλακτική ως προς την αποποινικοποίηση των ναρκωτικών από την άλλη είναι υπέρ του περιορισμού της διαθεσιμότητας παράνομων ναρκωτικών, στα οποία οι νέοι έχουν εύκολη πρόσβαση μέσω του διαδικτύου.

Όλα τα ενδιαφερόμενα μέρη υποστηρίζουν τα εναλλακτικά της φυλάκισης μέτρα για τους παραβάτες του νόμου περί ναρκωτικών. Είναι πεπεισμένοι ότι τα εναλλακτικά μέτρα θα οδηγήσουν σε μείωση του εγκλεισμού στις φυλακές, στην ελαχιστοποίηση των αρνητικών συνεπειών της ποινικής δίωξης και στη μείωση των βραχυπρόθεσμων ποινών φυλάκισης για εξαρτημένους χρήστες.

Ασύμμετρη διάθεση των οικονομικών πόρων

Σε γενικές γραμμές, δεν υπάρχει ισορροπία στη διάθεση των πόρων για τη μείωση της προσφοράς και τη μείωση της ζήτησης ναρκωτικών. Οι εθνικές στρατηγικές περιγράφουν στα κείμενά τους ότι επιδιώκουν μια ολοκληρωμένη στρατηγική όπου η μείωση της ζήτησης και της προσφοράς ναρκωτικών θα αντιμετωπίζονται εξισορροπημένα. Ωστόσο, στην πράξη υπάρχουν δυσκολίες στην εφαρμογή αυτής της ισορροπημένης προσέγγισης. Μερικοί λένε ότι αυτό οφείλεται στην έλλειψη δημοσιονομικών πόρων. Άλλοι επισημαίνουν ότι πρόκειται για ζήτημα προτεραιοτήτων και προσανατολισμού της πολιτικής. Η έλλειψη ανθρώπινου δυναμικού και οικονομικής στήριξης των προγραμμάτων θεραπείας είναι ένα σημαντικό θέμα. Είναι απαραίτητο να διατεθούν αυξημένα χρηματικά ποσά από τον κρατικό προϋπολογισμό για τις υπηρεσίες θεραπείας που παρέχονται στους χρήστες ναρκωτικών.

Το Πρόγραμμα Μεταρρύθμισης της Νομοθεσίας για τα Ναρκωτικά θα αναλάβει περαιτέρω πρωτοβουλίες σχετικά με νομοθετικές μεταρρυθμίσεις στη Νοτιοανατολική Ευρώπη. Τα επόμενα βήματα θα είναι μια σε βάθος ανάλυση και έρευνα εξειδικευμένων θεμάτων που αφορούν τις χώρες της περιοχής. Ο περιφερειακός χαρακτήρας των δραστηριοτήτων μας έχει μεγάλη σημασία, δεδομένου ότι στόχος μας είναι να στηρίξουμε τις μεταρρυθμίσεις που προωθούν το συντονισμό και τη στενή συνεργασία μεταξύ των χωρών της Νοτιοανατολικής Ευρώπης. Αυτή η

προσέγγιση είναι ιδιαίτερα σημαντική, λόγω του διασυννοριακού χαρακτήρα των ποινικών αδικημάτων που σχετίζονται με τη διακίνηση ναρκωτικών, καθώς και των κοινών κοινωνικο-πολιτικών χαρακτηριστικών των κρατών της περιοχής. Το Πρόγραμμα στοχεύει στην προώθηση πολιτικών που βασίζονται στο σεβασμό των ανθρωπίνων δικαιωμάτων, την επιστημονική τεκμηρίωση, και τις βέλτιστες πρακτικές που θα προσφέρουν ένα πλαίσιο για μια περισσότερο ισορροπημένη προσέγγιση και θα οδηγήσουν σε αποτελεσματικότερες πολιτικές και πρακτικές. Ιδιαίτερα σημαντική επιδίωξη μας είναι να ενθαρρύνουμε την ανοιχτή συζήτηση για μεταρρύθμιση της πολιτικής των ναρκωτικών και να ευαισθητοποιήσουμε την κοινή γνώμη, για τις δυσμενείς επιπτώσεις και την αναποτελεσματικότητα της ισχύουσας πολιτικής των ναρκωτικών για τα άτομα και την κοινωνία.

Το παρόν Πρόγραμμα και οι άλλες δραστηριότητες της Εταιρείας Διογένης είναι μια προσπάθεια να συνδέσουμε εξελίξεις και πρωτοβουλίες στην περιοχή της Νοτιοανατολικής Ευρώπης με τη στρατηγική για τα ναρκωτικά και το σχέδιο δράσης της Ευρωπαϊκής Ένωσης, καθώς και με τις παγκόσμιες εξελίξεις σχετικά με την πολιτική των ναρκωτικών. Μετά από αρκετές δεκαετίες εφαρμογής του ισχύοντος διεθνούς συστήματος ελέγχου των ναρκωτικών, υπάρχει σε όλο τον κόσμο η αίσθηση ότι επείγει η προσαρμογή του συστήματος για να διορθωθούν οι πτυχές που προκαλούν δυσμενείς επιπτώσεις και να καταστεί αποτελεσματικότερο. Ανοικτός διάλογος με τις αρμόδιες αρχές που είναι υπεύθυνες για την πολιτική των ναρκωτικών είναι απαραίτητος στην αναζήτηση ανθρωπινότερων και αποτελεσματικότερων πολιτικών και πρακτικών για τα Ναρκωτικά. Οι επικριτικές φωνές των οργανώσεων της κοινωνίας των πολιτών, όπως οι Μη Κυβερνητικές Οργανώσεις, πρέπει να θεωρηθούν ως συμπληρωματική συμβολή στη συζήτηση για την πολιτική των ναρκωτικών. Η συνεργασία μας με ερευνητικά ιδρύματα και πανεπιστήμια αυξάνεται και υπάρχει αμοιβαία εκτίμηση των δραστηριοτήτων μας. Ο συνδυασμός της πρακτικής εμπειρίας των Μη Κυβερνητικών Οργανώσεων και της επιστημονικής γνώσης των ερευνητών είναι μια πολύτιμη συμβολή στη συζήτηση. Εναπόκειται στους υπεύθυνους χάραξης πολιτικής και τις κυβερνήσεις να κάνουν χρήση των προτάσεων και των συστάσεων και να τις ενσωματώσουν στις στρατηγικές επιλογές και στη Νομοθεσία τους.

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Summary

This summary contains common general features of drug policy and drug legislation in the countries of Southeast Europe, according to the country reports presented in this volume. It addresses the following thematic areas.

1. National strategy on Drugs

All countries have adopted a National Strategy for a shorter or longer period of time during the last decade. The majority of them (Greece, Bulgaria, Bosnia-Herzegovina, Serbia, Croatia, Former Yugoslav Republic of Macedonia, Albania) have adopted Action Plans for the implementation of the Strategy. In only four countries (Slovenia, Romania, Former Yugoslav Republic of Macedonia, Albania), though, is it mentioned that a New National Strategy has been prepared concerning the forthcoming period. With the exception of some countries there is no information about the evaluation of the national strategies. Most of the countries do not have any formal evaluation mechanisms. Concerning the planning of future national strategies, the majority of the countries are waiting for the New Drugs Strategy and Action Plan of the European Union which will be very important documents for the future plans of the SEE countries.

According to the first comparative approach of the country reports, there is a great complexity and diversity within the institutions, the services, sectors and Ministries that are involved in the drug policy of each participant country. Ministries of Health, Interior, Finance and Justice are some of the Ministries actively involved in all countries. Inter-ministerial cooperation (through a committee or an agency) plays a notable role in some of them (Greece, Bulgaria, Slovenia, Croatia, and Former Yugoslav Republic of Macedonia). Inter-ministerial cooperation and coordination is one of the main interests for the EU, but countries face difficulties in proceeding easily with reforms concerning this issue. The role of law enforcement remains underexposed in policy documents such as the National Strategy and the Action Plan. There is very little discussion about supply reduction. National Strategies are mainly focused on demand reduction.

All countries have signed and ratified the three international conventions on drugs namely: the Single Convention on Narcotic Drugs of 1953 as amended by the Protocol of 1972, the UN Convention on Psychotropic Substances of 1971 and the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

According to the National Strategy of all countries, NGOs and civil society should play an important and active role mainly in the field of treatment and rehabilitation, but also on harm reduction policy. A remarkable discrepancy is noted between the national strategy's provisions and its actual implementation in practice, mainly because of poor financing or an inadequate regulating framework. In some countries (Croatia, Albania), the involvement of NGOs seems to be already more established. In Croatia, NGOs, while being nominally very expansive, in reality play a role that is still quite limited. But even if on a practical level, their role is limited, there is at least the structure for their further involvement and this fact is important. In Slovenia, the Office on Drugs operates with the participation of 20 people coming from the government, relevant state service providers as well as from NGOs. Even if according to the initial strategy of Slovenia, NGOs were not allowed to participate in decision making bodies, they did manage to work effectively through this Office, which is the primary office on drug policy in the country. Recently, NGOs have been invited to participate as full members of the national commission on drugs, the main policy-making body of the government. In Serbia, there is a number of NGOs working actively on the harm reduction field. Their involvement in Drug Policy is limited to harm reduction services. In Greece, only the organizations and agencies that are recognized by the government are actively participating in drug policy discussions. Other NGOs working in the field do not participate in the established policy-making structures. Monitoring and oversight of NGOs is very important and necessary. Regarding the involvement of the NGO sector in The Former Yugoslav Republic of Macedonia, the National Drugs Strategy considers civil society as an important partner in achieving the aims and objectives of the National Drugs Strategy and the National Drug Action Plan(s).

According to the country reports, all national strategies of the participant countries are in line with the European Union's Drugs Strategy, covering the basic pillars that are described in it. The actual implementation, though, is affected by the specific characteristics of each country. Economic and political instability, lack of effective institutional commitment and sustainable mechanisms for financing, operational ineffectiveness, structural lack of communication are some of the problems related to the implementation of the national strategies.

2. National substantive criminal law

In five of the SEE countries, there is a distinction between misdemeanors and felonies (Greece, Slovenia, Albania, Former Yugoslav Republic of Macedonia, Croatia), according to the danger or the seriousness of the offence, while in Serbia there is a distinction between misdemeanours and "criminal offences", and in Bulgaria, there is a distinction between serious and minor offences. In Romania, such a di-

stinction will come into effect in 2013. It is noted that there is a methodological problem concerning this specific issue because of the different criminal justice systems and different legal traditions of the countries.

There is great diversity in the typology of the penalties imposed according to the legislation of the SEE countries. In the majority of the sanction systems, both penalties (main and supplementary or additional ones) and security measures are provided. The main custodial sanction is imprisonment in all the countries. Fines are also included in all the sanction systems that were examined. The duration of imprisonment ranges from a few days to 15, 20, 25 or 30 years. Life imprisonment is imposed in five countries (Greece, Bulgaria, Slovenia, Romania, Former Yugoslav Republic of Macedonia), while in Bosnia-Herzegovina long-term imprisonment ranges between 21-45 years.

There is also a vast diversity in the ways that custodial sanctions are served and the alternative forms provided during sentencing. Probation/conditional sentencing or a suspended sentence are provided in all sanction systems. In almost all the countries, conditional release from prison/parole is also provided (it is not mentioned in the report of Bosnia-Herzegovina). In the majority of the participant countries (Greece, Slovenia, Romania, Serbia, Croatia, Former Yugoslav Republic of Macedonia) community service is also provided. In Greece and Bosnia-Herzegovina, a sentence may be converted to a fine.

3. National drug laws and institutions

In the criminal legislation of all SEE countries, there are provisions concerning cultivation, production and trade of drugs (trafficking); these criminal offences are provided either in the Criminal Code (Croatia, Former Yugoslav Republic of Macedonia) or in special criminal laws (Greece, Romania), or in both (Slovenia, Bosnia-Herzegovina, Serbia). In Greece, drug use is penalized as such, while in the vast majority of the participant countries, only the possession of drugs is penalized. In Bosnia, Former Yugoslav Republic of Macedonia and Albania, possession of drugs for personal use is not a criminal offence. As a rule, the quantity that is considered adequate for personal use is not stipulated by law. In Former Yugoslav Republic of Macedonia, drug use is criminalized in practice, as there is a problem with implementing the law. Very often, the intention of users about the quantity of drugs that they possess is manipulated by the police. As a result, users are almost always prosecuted for possession of drugs.

Only in Greece is drug addiction considered as a mitigating circumstance (less severe penalties are provided for drug addicts according to specific law provisions) during sentencing for drug-related crimes. For all other countries, drug addiction does not

constitute either a mitigating or an aggravating circumstance according to the law; it is up to the discretion of the court to take into account drug-addiction as a personal circumstance and to decide the way that addiction may influence the sentencing. In Serbia, Croatia, Slovenia, Bosnia-Herzegovina and Former Yugoslav Republic of Macedonia, drug addiction influences sentencing by imposing mandatory treatment.

Regarding the impact of drug addiction in terms of liability for other offences indirectly associated with a “craving for use”, in Greece there are specific provisions that intend to encourage the drug-addicted perpetrator of any crime to participate in an approved treatment programme during sentencing. Criminal legislation in the majority of the participant countries does not provide for different penalties depending on whether the offender is a drug addict or not. As mentioned above, in Serbia, Croatia, Slovenia, Bosnia-Herzegovina and Former Yugoslav Republic of Macedonia, drug addiction influences sentencing with the imposition of mandatory treatment.

In general, in the legislation of the SEE countries, there is no distinction between “soft” and “hard” drugs. In Greek legislation, there are only a few indirect references to this issue according to law provisions, while during sentencing, the degree of harm of each drug is actually taken into account by the court. In Bulgaria, Slovenia, Romania and Bosnia-Herzegovina, there is a triple categorization of drugs based upon the risk that each of them represents or upon the severity of the official control provided for them.

Penalties prescribed for drug-related offences vary, depending on the different criminal actions and the different sanction systems of the countries. For the majority of them, there are several aggravating crimes for which more severe sentences are provided, such as drug trafficking in schools, illicit acts of a recidivist offender or in cases where the drug-related crime is committed within a criminal organization. The penalties that are provided in the law for the crimes of trafficking of drugs are very severe according to the Greek and Romanian sanction systems. Greece also provides for life-imprisonment for some serious drug-related offences stipulated by the law. For the majority of the countries, long-term imprisonment is provided for acts of trafficking. Penalties that are provided in the law and imposed by the court are similar to the sentences provided and imposed for other severe crimes, such as manslaughter. In Bulgaria, Former Yugoslav Republic of Macedonia and Croatia, though, regardless of the strict frame of legal provisions, the sentences that are actually imposed by the courts are less severe. In Bulgaria, this is due to a plea-bargaining system, while in Croatia, courts are more lenient (compared to the law provisions) not only for drug-related offences but, generally, for all criminal offences.

For the majority of the countries, there is no legally established difference between small and big dealers. For several of the SEE countries, there is a differentiation for organized criminal groups of dealers (e.g. Greece, Slovenia, and Bosnia-Herzegovina, Serbia). In Greece, more lenient sentences are provided for drug addicted dealers; in Bulgaria, for some drug related offences, more severe penalties are provided if the drugs are 'in large quantities' or 'in particularly large quantities', while Romanian law distinguishes between the illegal activities of risk-drugs and the illegal activities of high-risk drugs. Since 2009, more lenient penalties have been imposed for small quantities of drugs (1-3 years in the Former Yugoslav Republic of Macedonia). This small quantity is prescribed according to the prosecutor's regulation and not according to the law. In Slovenia, there are contradictions on court decisions about the quantity of drugs that are considered as large or small. Usually the police make this decision. Also in Bulgaria, this issue is a police responsibility.

The principle of universality is applicable for crimes related to drug trafficking in Greece, Bosnia-Herzegovina and Croatia. The principle does not apply to drug-related crimes in Bulgaria, Slovenia, Former Yugoslav Republic of Macedonia, Serbia and Albania. There is no specific answer on this issue from Romania.

4. Drug law enforcement in practice

In Greece there are four law enforcement/prosecuting authorities that are in charge of policing drug-law related offences; in Slovenia and Bosnia-Herzegovina, the Police and its organizational units play an important role in the law enforcement of drug offences; in Romania, Croatia, Albania and Serbia, the penalties for drug offences have changed over the last 15 years, in accordance with European standards, so as to help in their progress towards accession to the European Union.

Drug policing practices include stop-and-search tactics and arrests of both drug-users and dealers in Greece, Bulgaria, Bosnia-Herzegovina, Former Yugoslav Republic of Macedonia and Albania. In Slovenia, harassment of drug users is not common practice among police officers because drug use is not illegal. In Romania and Serbia, there is little data on maltreatment of drug users by the police, while in Croatia no official data on this issue exists.

Cannabis cultivation is dominant in all SEE countries. Large quantities of cannabis plants are detected, uprooted and confiscated by the law-enforcement authorities in Greece, Bulgaria, Slovenia, Romania, Bosnia-Herzegovina, Croatia, Former Yugoslav Republic of Macedonia and Albania.

Pre-trial detention does not depend on the drug addiction of the offender, for the vast majority of the countries. Voluntary or mandatory treatment cannot be im-

posed at the pre-trial stage for the majority of the countries. In Greece, during interrogation, the competent judicial authority may order a drug addicted perpetrator to be placed in a special therapeutic institution or in a special treatment department of a prison. In Romania, the public prosecutor may order, with the consent of the accused, his/her inclusion in an integrated care programme for drug-users; in Albania, drug-users can be placed under mandatory treatment in the pre-trial phase, only when this treatment is absolutely necessary and the length of penalty foreseen is less than 10 years, but no such case has actually been reported during the last years.

According to the Greek and Romanian legal systems, the conducting of an expert examination is ordered in order to establish substance dependence, soon after the arrest of the offender or the initiation of prosecution. In Greece, there is an intense critical discussion on the process by which dependence is determined, and there are many calls for amending the specific legal provisions. In Croatia, if there is an indication that the defendant has committed a criminal offence due to his addiction to alcohol or drugs or that the defendant is unfit to stand trial due to such addiction, an expert witness testimony, based on the psychiatric examination of the defendant, shall be ordered. In Albania, a urine test is conducted in order to prove that the offenders are drug users or not, but also in order to prove whether the person was under the influence of any narcotic substance or not at the time of the crime. No legal obligation to establish substance dependence during interrogation exists for Bulgaria, Slovenia, Bosnia- Herzegovina and Former Yugoslav Republic of Macedonia.

In the majority of the SEE countries, there are specific provisions for undercover investigation and special investigation measures for several categories of crimes, among which are also drug-related crimes. Law-enforcement officers in Greece may pretend to be prospective dealers, buyers or carriers, in order to discover or arrest a perpetrator who has committed a drug-related crime, according to a specific law provision, while research may include activities of interrogating and penetration concerning organized crime. In Slovenia, the police can, in some cases and under specific conditions laid down by the law, use covert investigative measures, but these must not provoke criminal activity with the implementation of the previously-mentioned measures. The Criminal Procedural Code of Croatia regulates special investigative measures conducted by undercover investigators who may be interrogated as witnesses about the course of the implementation of the measures. In Romania, the law contains provisions regarding the carrying out of deliveries under surveillance, undercover investigation and the possibility of monitoring the telecommunications systems and the IT systems. Special investigative measures are possible for specific crimes upon written order by the investigative judge or the

prosecutor in Former Yugoslav Republic of Macedonia. Also in Albania, there is a legal framework for police entrapment. There are neither general provisions dealing with the issue of police entrapment nor specific rules for the offence of drug trafficking in Bulgaria, Bosnia-Herzegovina and Serbia.

Data on the imposed sentences are available in the majority of the countries but making comparisons is difficult because of different definitions, categorizations and methods of collecting and analyzing data. In Greece, from a total number of 46,128 persons sentenced during 2008, 1,831 (4.0%) were convicted for offences of drug law. Of those convicted for offences of drug law, 1,212 (66.2%) were sentenced for drug use, possession or cultivation of small quantities for personal use; 539 (29.4%) were sentenced for drug use, dealing and trafficking; 55 (3.0 %) for drug dealing and trafficking and 25 (1.4%) for drug cultivation/production. In Romania, during recent years, the number of prosecuted drug law offenders has been increasing. The number of drug related offences rose from 2,906 criminal cases in 2009 to 3,360 cases in 2010 and reached 4,087 in 2011. Thus, the number of cases has increased by 21.64% in 2011 compared to 2010. In Slovenia, data are available only for categories of offences (e.g. offences related to illicit drugs fall into the category of 'Criminal offences against public health'). In Serbia, statistics are kept on the execution of penal sanctions, while in Croatia, data on the perpetrators of criminal offences are kept on a regular basis. In Bulgaria, separate statistical data are available for all-drug related crimes without trafficking, while drug trafficking and smuggling in goods is a unified statistical category. In Former Yugoslav Republic of Macedonia, there is no distinction between possession of drugs and trafficking, but there is no available statistical data on the number of prisoners convicted for drug-related crimes or for recidivists convicted of drug related crimes, while there are statistics related to illegal drug trafficking. The standardized data are produced annually and published in the annual statistical report of the Ministry of Justice in Albania. There is no available data for the imposed sentences from the courts for drug related crime in Bosnia-Herzegovina, while statistical data is currently available for drug-related crime offences according to police reports.

5. Sentencing levels and the prison situation

Prison population data are not comparable between the SEE countries unless the prison population rate is given (number of prisoners per 100,000 of total population): in Greece the prison population rate was 101 in 2010, while in Romania it was 150 in 2012. However, several of the countries mentioned an increase in the prison population over the last years.

The correctional system of Greece includes 34 institutions of various kinds; in Bulgaria there are 11 prisons for male offenders, 1 prison for female offenders and 1

reformatory for male juvenile offenders and 1 reformatory for female juvenile offenders; Slovenia has 6 institutions of incarceration (with 7 additional sections in other locations) and a correctional institution for minors. In Romania, there are 45 detention facilities in the country. Apart from the Detention Unit of the Court of BiH, there are 14 prison facilities in Bosnia-Herzegovina. There are 28 prisons in the Republic of Serbia. 14 prisons are organised within the Croatian penal system. In Former Yugoslav Republic of Macedonia, prisoners are categorized based on the type of sanction, sex, age and on whether the convicted is a recidivist. There are 19 penitentiary institutions in Albania.

Due to methodological reasons, it was very difficult to compare data on the number of persons incarcerated for drug-related offences. In Greece, the percentage of prisoners incarcerated for drug related offences has ranged from 33.1% to 47.4% over the last years. According to the Bulgarian report, the data that are provided refer to persons convicted of drug-related offences, not those actually imprisoned (according to which there has been a steady growth in convictions during the last 20 years). In 2011, 1,471 offenders (4.8%) out of 30,694 offenders were imprisoned for the possession of drugs or for drug trafficking in Romania. In Croatia, the percentage of the offenders sentenced to imprisonment for abuse of narcotic drugs has ranged from 17.10% to 22.8% during the last years. In Albania, out of the 2,864 persons that are placed in prisons, 530 are for drug trafficking, while out of the 1,930 persons that are placed in pre-trial detention centres, 430 persons are for drugs trafficking. No specific data is available for the rest of the countries.

In Greece (even if the majority of the convicted persons are for drug use/ possession/cultivation of a small quantity for personal use) as well as in Romania, the majority of the imprisoned persons is for drug trafficking/dealing. The majority of persons imprisoned in Albania are sentenced for possession of drugs. The majority of drug-related offences in Bulgaria and Slovenia are related to drug use or possession for use, but there is no answer on the imprisoned convicted persons. No specific data are available for the rest of the participant countries.

For the majority of the SEE countries, the living conditions in detention facilities are very difficult because prisons are overcrowded. This fact is a common problem and a general endemic characteristic of the correctional systems of the majority of the participant countries. The occupancy levels have been recorded at between 140-170% over the last years in Greece. At the beginning of 2010, the overall occupancy level in Bulgarian prisons was 113.2 persons held per 100 places available. In 2012, 1,404 persons were imprisoned in the Slovenian prisons, while the capacity of all prisons is for 1,309 people. The occupancy level in Romania in 2012, regarding all detention facilities, including rehabilitation centres and prison hospitals,

was 119.5% and 123.1% in penitentiaries. The prison population is already 10% above capacity in Bosnia-Herzegovina. In Serbia, there are between 8,000 to 10,000 inmates at any moment, while the estimated maximum capacity of institutions is 8,887 persons. In 2009 and 2010, the penal institutions in Croatia were able to accommodate 3,351 inmates; however, there were between 4,891 and 5,165 of them housed within the prison walls. In the Former Yugoslav Republic of Macedonia the prison population has increased by some 25% to 2,505 inmates (2,158 sentenced prisoners and 347 persons on remand) in four years, for an overall official capacity of some 2,000. In Albania, the prisons are operating at full capacity and sometimes some of them are over the recommended level.

The evidence of drug use/injecting, or related problems (HIV, drug market related violence) are fragmentary and diverse in most of the participant counties. The problem of drug-use in prisons emerges clearly, though, through the national reports. In Greece, there is only a little data embedded in empirical research, presenting the number of drug addicted prisoners, but it is assumed that their number is higher than those who are imprisoned for drug related offences. In 2009, 17% of the imprisoned persons in Bulgaria reported lifetime drug-use prior to imprisonment, while 1.56% of prisoners in Bulgaria were infected with HIV. In Slovenia, prisoners with problems with illicit drug use represented 21.6% of the prison population in 2011, 26.5% in 2010, and 25.6% in 2009. In Romania, according to a study, 25.1% of all persons in the prison system stated they had used drugs throughout their life, where there seems to be enough evidence on the issue. The results of the study from 2011 show a growing proportion of drug users in prison (in 2006 there were 18.5%). On the contrary, in Bosnia-Herzegovina there is no available statistical data about the prisoners that are incarcerated for drug-related offences, but according to some empirical data for a specific territory of the country, between 30% and 70% of inmates are addicted to drugs. In Serbia, based on statistical data and data from seized illegal and legal psychoactive substances, it can be concluded that there is continued use of drugs in prisons. In 2010, in Croatia (which also seems to have a sufficient amount of evidence), 17.03% of all imprisoned persons, regardless of their legal status of imprisonment, were drug addicted. In Former Yugoslav Republic of Macedonia, there is some evidence on the rising number of prisoners with substance abuse problems and the widespread availability of illicit drugs in prisons. In Albania, little information is available on the specific issue.

In Greece, since 2002 there has been only one public treatment programme for drug dependent prisoners, but besides the above public therapeutic centre, treatment is also available through the therapeutic communities of the EN DRASI programme of KETHEA and 18 ANO (mainly counselling programmes, as no methadone programme is available in Greek prisons). In Bulgaria, methadone treatment

programmes are implemented in all prisons countrywide, as well as optimizing the detoxification of drug dependents admitted to prison hospitals and medical centres, while a small number of drug addicted prisoners undergo specialized treatment during the service of their sentences. In Slovenia, on the other hand, medical care inside prison is provided for all prisoners by medical staff and only once outside the prison can help from other medical institutions and NGOs programmes be provided to prisoners. In Romania, within the penitentiary system, several programmes are carried out to reduce drug-related risks. There are methadone substitution programmes and syringe exchange programmes among others. In Bosnia-Herzegovina access to prevention, treatment, rehabilitation and harm reduction programmes in detention facilities and detoxification methadone treatment are provided in the National Strategy, while the security measure of mandatory treatment of addiction, is imposed alongside a sentence of probation or community service. In practice, though, drug abuse treatment in prisons is a big problem, due to the lack of a consistent state policy in respect to drug dependent persons.

In Serbia, institutes of the principle of opportunity (Delayed prosecution) are implemented (the public prosecutor may have to accept delaying prosecution if the suspect agrees to undergo rehabilitation for alcohol or drugs). In Croatia, if an offender is sentenced to prison and compulsory treatment of addiction, he/she will undergo the treatment while being incarcerated. The treatment can be also carried out within the prison if the need for it has been established by psychosocial diagnostics; in most prisons and penitentiaries, Clubs for Treated Addicts have been set up as a therapeutic community method if the prison conditions allow for it; In the Former Yugoslav Republic of Macedonia health care services are regularly provided in prison (methadone detoxification was not offered nor was there any psycho-social support to accompany the methadone maintenance, but since the beginning of 2012 methadone programmes have been introduced at the prison in Bitola and Skopje and the new HIV strategy plans to increase the number of prisons that have a methadone programme). In Albania, Special Care Sections for people with mental disorders and dependency on narcotic substances were first initiated and applied in 2010 as a pilot project (mainly psycho-social service and intensive therapy, aiming at the rehabilitation of convicts with mental disorders and of those with dependence on narcotic substances, while methadone treatment is provided inside prisons as well as harm reduction programmes). In general, many of the participant countries report a very active role of NGOs concerning drugs in prison institutions.

In Greece, it is possible to divert drug users from prison into community-based treatment for drug-addicted perpetrators of drug-related offences though diversion mechanisms combined with treatment programmes (suspension of penal prosecution, execution of the sentence/probation/conditional release from pris-

on), but currently they are implemented in a very limited way. In Bulgaria, if a drug-dependent person is sentenced to probation, the penal sanction may include, as a probation measure, inclusion of the sentenced person in a special program for drug-dependent persons, but there is lack of sufficient human and financial resources for the elaboration and implementation of such programmes. In Slovenia, courts may impose a penalty of community work instead of prison (but it is not clear whether this applies to drug-addicts in practice or not). A range of diversionary measures will be expanded in Romania with the enactment of the new Criminal Code; prosecutors can decide to suspend prosecution in case a drug user has not committed other offences and in that case the offender will then be sent to a Centre for drug prevention, evaluation and counselling for the assessment and referred for treatment. In Bosnia-Herzegovina, a suspended or reduced sanction may be imposed on the defendant who has committed an offence under the decisive influence of addiction to alcohol or drugs, on condition that he/she undergoes outpatient treatment for alcohol and drug use within a specified period, or until it is established that there is no need for further treatment of the defendant, provided that the duration of treatment is not more than one year, while courts have the right to impose a penalty of community work instead of prison, suspended sentence and judicial admonition if the requirements prescribed by the Criminal Codes are met. In Serbia, it is possible that such mechanisms are much more developed and/or extend to the implementation of alternative sanctions. In Croatia, already since 1997, the Criminal Code has prescribed the possibility of diverting drug users from prison into community-based treatment. The compulsory treatment of addiction, as a security measure, can be ordered together with a prison sentence, community service and a suspended sentence. The only potential for diversion in Albania is foreseen in the use of custodial measures, but the efforts to develop and expand mechanisms for the diversion of drug users into community treatment have failed as the diversion cases themselves have failed.

Social reintegration

For the majority of the SEE countries, the strategy for social reintegration can be characterized as either incoherent or only nominal and there seems to be a long way to go for the implementation of such a strategy. There is no specific strategy for social reintegration in Bulgaria, while two NGOs have been implementing projects for social reintegration and re-socialization of offenders following the execution of their sentence. In the field of social reintegration, the draft of the new Resolution on the National Programme on Drugs of Slovenia includes the objectives of accelerating the development of psychosocial treatment programmes for drug users, therapeutic communities and communes as well as programmes of social reintegration and employment of former substance abusers

(NGOs, charitable organizations, self-help and other civil society organizations can also help implementing the individual treatment/reintegration programme). There is no national strategy for the reintegration of inmates in Romania, while in 2010 it started to work on the draft of the National Strategy designed for the reintegration of inmates. Neither does Bosnia-Herzegovina have a comprehensive strategy for the social reintegration of offenders following the execution of their sentence (however, the National Strategy and the Action Plan foresee it). Also Serbia has no comprehensive strategy for dealing with the reintegration of offenders following the execution of prison sentence, but preparation of legislation to regulate this area is ongoing. Regarding the social reintegration of prisoners after the execution of their sanction, there is no comprehensive strategy for their rehabilitation and re-socialization in Former Yugoslav Republic of Macedonia (after their release, the role of reintegration is transferred to the centres for social care). Only in recent years, has the Greek correctional policy moved towards the organization of a coordinating body that will have as its main task the provision of substantial assistance to prisoners and released prisoners. In Croatia, at least on the normative level, a comprehensive strategy for social reintegration of prisoners after serving their sentence does exist, while the National Strategy and the Action Plan contain special provisions on re-inclusion of addicts into society. In Albania the National Prison Administration has established a strategy and plan of action which should create appropriate conditions for the implementation of the existing legal framework based on European Union standards. Also in this field, it seems that there is potential for NGOs to support a reintegration strategy in practice for the majority of the participant countries.

With only the exception of Croatia, in the vast majority of the participant countries, there is no statistical data available for recidivism of the offenders sentenced for drug-related crimes. According to the data provided by Croatia, the rates of previous convictions are exceptionally high among drug offenders.

Concerns of relevant stakeholders about drug legislation in the countries of SEE

One of the paragraphs of the questionnaire used for the national reports was the question to relevant stakeholders to express their concerns about developments in drug law in their countries. Some thematic clusters about issues which were mentioned in the country reports are presented here.

National legislation in relation to international agreements

It is obvious that the relevant national authorities and the relevant agencies and service providers whose governments have signed the international drug conventions are careful in their reactions concerning proposals for changes to the law which are considered to be contrary to the conventions. The Serbian report for ex-

ample, states that their Criminal Code is in line with the current trend in the world and therefore it does not recognize the division between light and heavy drugs and criminalizes all acts related to illicit drugs. In another comment the report states that issues related to illicit drugs should not be regulated only at state level, but there should be an international collaboration of all sectors. The Slovenian report states that some activists say that the Slovenian legislation is not flexible enough and that by legalizing drugs the state could also collect taxes from the trade in what are now illicit drugs. On the other side, some NGOs oppose legalization because it would only worsen the health situation in Slovenia. The Slovenian report refers also to the legalization/liberalization discussion and connects it to the debated issue of cannabis. It states that “the issue of cannabis control would have to be tackled at an international level and not just a national one, because changing/liberalizing legislation in only one country does not change the global drug problem”. Also the promotion of food products from hemp is controversial. Cosmetic products from hemp do not represent such a problem, because they are not used in the same way as food, do not contain as much THC as food products from hemp, and are used by other types of consumers. An NGO reaction to the issue of legalization states that Society is not mature enough for the legalization/decriminalization of illicit drugs, though it would be good if illicit drugs were legalized/ decriminalized. At the same time, it would also be necessary to restrict access to illicit drugs, to which even very young people could have access (e.g. ordering drugs over the Internet).

Governments and parliaments are making use of the room that exists in the international conventions to introduce new ways to face the problem, but they are hesitant to speak about reform of the conventions. Indicative is the reaction of the Croatian office on drugs when they point out that there is no need for future legislative reforms, when -for example- the implementation of treatment programmes for drug abusers in prisons can already be implemented.

Decriminalization of drug possession for personal use

This issue has been discussed in several countries of the SEE region and law proposals for decriminalization are already under discussion in parliaments. The Croatian Government supports decriminalization of drug possession in case the possessor has no intent to sell the possessed drugs or to put them into circulation. Stressing the severity of overcrowded prisons, a strong majority of criminal court judges and public prosecutors in Croatia support recent proposals to decriminalize drug possession for personal use. Moreover, positive views have been expressed with regard to the principle of opportunity as a public prosecutor’s tool to persuade a drug-addicted offender to undergo treatment as a condition not to instigate criminal proceedings against him. Such initiatives are also used in Greece and Slovenia.

About the *quantity of drugs for personal use* there are different approaches. Some are in favor of determined thresholds while others are not. NGOs in Slovenia are of the opinion that thresholds for personal use will not eliminate any problems, therefore they preclude determining thresholds. In the Bosnian report it is said that it is necessary to define what is the smallest amount of a drug that constitutes a criminal offence, but it also says that “there shouldn’t be the classification of amounts of drugs, because it is considered that drug dealers can resell even small amounts of drugs (Bosnian Justice Ministry).

Drugs users and prisons:

This is an issue of serious concern in all countries of the region. The principle that it is preferable to help drug users instead of punishing them is widely accepted. Drug users need help from professionals, parents and society in general. Especially NGOs who are working with dependent drug users point out that drug users have to be treated individually, in order to know where to refer a drug user/addict. Not all drug users should be immediately sent to detoxification, as is normally done (and this is wrong). Instead, some of them could also be sent to NGO programmes, which offer different types of help (*opinion of NGOs in Slovenia*). Several reports speak also about avoiding stigmatization of drug users. The problematic situation of drug users in prisons has to do with the absence of sufficient treatment services in prisons. Some indicate that organized activities in this field are limited to activities related to information. The information/education of prisoners is conducted on prevention of HIV, sexually-transmitted diseases, tuberculosis and drug addiction. Problems are related to the implementation of therapeutic services in prisons. Many countries have introduced Methadone Substitution Treatment in prisons; others are still discussing the issue. There is support for alternatives measures to incarceration of drug offenders. These measures will result in a reduction of incarceration and minimization of the negative consequences of criminal prosecution and short-term prison sentences to drug addicted persons.

Unbalanced Spending of Financial resources

Broadly speaking, the available resources for drug supply reduction and drug demand reduction is not balanced. The national strategies present a comprehensive document in which the elements to reduce drug demand and supply of drugs are balanced. However, in practice there are difficulties in implementing this balanced approach. Some say that this is due to lack of budgetary resources (*Bosnia*). Others point out that it is a question of priorities and policy orientation. In the current system, supply reduction is more of a priority compared to demand reduction (prevention, treatment and rehabilitation).

Lack of human resources and financial support for treatment programmes is a significant issue. Post-release programmes should be improved with respect to ex-prisoners' treatment and support.

Evaluation mechanisms of treatment, prevention and reintegration programmes are insufficiently developed, especially for drug offenders after serving their sentence. There is a strong feeling that the probation system should respond better to the needs of drug-addicted offenders. Employing skilled professionals is essential.

It is necessary to allocate increasing amounts of money from the state budget for treatment services provided to drug users or there must be a liberalization of the use of methadone (currently there are very few accredited institutions due to the restrictive criteria). (*Probation service Romania*). The same is the case for the allocation of funds from the state budget for services provided by NGOs for drug users.

The police (*in this case the Bosnian police*) propose that 75% of the seized drug money should be put into the budget of police agencies.

There is a big problem with the deposit of confiscated drugs. Although the Rulebook on the destruction of narcotic drugs was adopted, the established Commission responsible for the destruction of the narcotic drugs has not yet started working. (*Bosnia*)

Harm reduction programmes are implemented in cooperation with the NGO sector, which is primarily engaged in programmes of the exchange of syringes and needles. These programmes are at the time mostly funded by the Global Fund (*Bosnia*)

NGOs state that absolutely nothing has changed regarding the adoption of the Strategy and Action Plan in the context of improving their working conditions and activities. In other words, there is no progress in the role of NGOs in drug rehabilitation programmes and activities.

Supervised consumption rooms

Slovenian NGOs are in favour of introducing so-called 'safe injection rooms' or "Supervised consumption rooms" for drug injection. Bulgarian NGOs are also in favour of supervised consumption rooms. Such facilities have to be introduced as soon as possible, in order to prevent further infections, 'overdoses' and the risky use of drugs. Injecting drugs in public places, is risky for the user and the public, therefore it is necessary to create safe places, and - more importantly to use drugs under the supervision of medical personnel. (*NGOs Slovenia*)

Solutions to addressing the problem of illicit drugs should be sought together in dialogue; hence tolerance and maintenance of communication are important.

NGO Participation in policy making and legislation:

NGOs work as an intermediary between individuals and the state. Users of their programmes find it difficult to express their desires and problems, and do not know how to improve or help to improve their situation. However NGOs are not officially recognised and do not have an active role in policy making (Croatian NGOs). Only Slovenia has actually incorporated NGOs into important policy making bodies.

Athanasia Antonopoulou

Thanasis Apostolou

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Country Report Albania

Country Report Albania

by Ulsi Manja¹

I. The current national drug strategy and drug legislation in Albania

1. National strategy on Drugs

Albania approved the first National Drug Strategy 2004 - 2010 on 7th May 2004 with the Order No 292 of the Council of Ministers. Based on the Order No 125 9th June 2010 of the Prime Minister a new working group was established that drafted the 2012 - 2016 National Drugs Strategy. This new document is based on the positive achievements and best practices achieved in the implementation of the previous strategy, its action plan and on the best international standards and practice.

The strategy is approved by act no 403 of the Prime Minister dated 20th June 2012 and the implementation of the National Strategy 2012 - 2016 and its action plan shall be funded by the state budget and other donors.

This strategy contains two action plans that shall be subsequently approved for the time-frames of 2012 - 2013 and 2013 - 2016, containing specific measures and activities for achieving the objectives in order to facilitate the implementation of the Strategy.

The action plans, as part of this strategy, shall enable the connection of this Strategy with the reforms and other important national strategies, such as: the health reform, the national strategy against organized crime and terrorism, the national strategy on the fight against AIDS, potential changes in the Criminal Code and in the Criminal Procedure Code, the anti-corruption strategy, judiciary reform, etc.

Ministries and Departments that are involved in drug policy and their task/role.

Drug policy is an issue that concerns different Ministries, Institutions and Departments. The most important institutions responsible for drug policy in Albania and those assigned by the order of date 20.06.2012 of the Prime Minister to play a specific role for the implementation of the National Drug Strategy are:

1. Ulsi Manja, Lecturer, Department of Criminal Justice, University Justiniani 1, Tirana.

The Albanian Parliament in the framework of its constitutional duties approves and ratifies all the *legislative documents, changes in the laws and other important documents that affect drug policy* in general and specific issues as well.

The Ministry of Interior - This Ministry has established the Section of The Fight against Drugs which is the only responsible body that deals with all police structures in the field of drug offenses. The task of this section is to coordinate, collaborate, do all operational, administrative and investigative work related to drug offenses and those tasks delegated by the prosecution, Penal code and current legislation in the territory of the Republic of Albania. This section coordinates the activities of international police cooperation and other international organizations dealing with drug issues, coordinates the operational activities of all Regional Department Offices in The Fight against Drugs (Regional Offices) and other structures involved in the fight against crime.

The Directorate for the Fight against Organized Crime and Protection of Witnesses and Justice Collaborators - This directorate is part of the General Directorate of State Police and it has been established by the Order of Ministry of Interior no 3180 dated 13.09.2004. The Directorate is composed of six Sectors:

1. Sector for the Fight against Drugs;
2. Sector for the fight against trafficking of human beings;
3. Sector for the fight against money laundering and financial crimes;
4. Sector for Special Operations;
5. Sector for Protection of Witnesses and Justice Collaborators;
6. Sector for Analysis of criminal information.

The Section for the fight against Drugs is operating at a central level and at a regional level. There are 12 regional offices for the fight against drugs and this sector is the main responsible structure related to the prevention and the combating of criminal activities in the field of drugs.

The Ministry of Justice - Responsible for the overall management of prosecution offices and all levels of courts in Albania. The general department of the approximation of legislation and the general department of codification are the most important departments in the field of drug policy within the Ministry of Justice.

At the beginning of 2004 the Serious Crime Court and the Serious Crime Prosecutors Office started to function in Albania. These institutions carry out their activities together with the district Courts and Prosecutors' Offices. They are located in Tirana and are responsible for the whole Albanian territory. Their competences are

defined by Law and include those criminal offences that contain organized crime elements such as organized crime groups, structured criminal groups and other criminal offences for which the law foresees severe sanctions.

The Ministry of Finance - General Directorate of Customs in the framework of a memorandum of understanding “On interagency cooperation for the fight against drug trafficking and precursors” that closely cooperates with the Ministry of Interior.

The Ministry of Health - The National Centre of Drug Control is in charge of analysis and administrative supervision in relation to drug control used for legal purposes. The pharmaceutical Department is in charge of the law related to pharmacists’ activity, monitoring and pharmaceutical inspection. It is responsible for the enforcement of the law relating to pharmaceutical activities through the Pharmaceutical Inspection Service.

The Public Health Institute is in charge of monitoring the practices related to the descriptions of prescriptions and prepares guidelines for prescribing medicines containing narcotics. This institute is in charge of MMT therapy under the funding of GFTAM and it is also the reporting unit for all issues concerning drug use in Albania.

The Ministry of Education and Science - It cooperates with the Ministry of Interior in the framework of the bilateral agreement “To fight against use, abuse and drug distribution in school premises”.

The Ministry of Agriculture - It cooperates with the Ministry of Interior in the framework of the bilateral agreement “On the fight against poppy cultivation”

The National Committee for Coordination of the Fight against Drugs - Inter-ministerial committee - The National Committee for Coordination of the Fight against Drugs was established on 26th March 2001 by the Law no 8750 “For the prevention and Combating against illicit trafficking of narcotic drugs and psychotropic Substances”. This committee met on several occasions to assess the drug situation in Albania

Albania adhered to the three UN Conventions in the drug field.

- Law no.8722, date 26 December 2000 “On the adherence of the Republic of Albania to the “United Nations Convention Against illicit traffic in narcotic drugs and psychotropic substances,1988”;
- Law no. 8723 dated 26 December 2000 “On the adherence of the Republic of Albania to the Single Convention on narcotic drugs of 1961, and that Convention as amended by the 1972 Protocol”;

- Law no.8965 dated 07 November 2002 “On the adherence of the Republic of Albania to the Convention on drugs and psychotropic substances, 1971”.

Domestic legislation is based on these laws:

Law No 7975, dated 21 July 1995 “On narcotic and psychotropic substances” and amended by Laws: No 9271 dated 9 September 2004 and Law No 9559 dated 8 July 2006.

This law contains the list of psychotropic drugs and defines the rules of production, manufacturing, import and export of psychotropic substances.

Law No 7895, dated 27 January 1995 “Criminal Code of the Republic of Albania” amended by Laws: No 8279 date 15 January 1998; No 8733, date 24 January 2001; No 9275, date 16 September 2004. Important improvements have been made to the Albanian Criminal Code since 2004, such as changes regarding criminal organizations (Article 333) and structured criminal groups (Article 333/a).

Law No 7905, dated 21 March 1995 “Penal Procedural Code of the Republic of Albania”.

Important changes were also made to laws: No 8813, dated 13 June 2002; No 9187 dated 12 February 2004 with regard to the use of special investigative means, such as surveillance and interceptions (Articles 221, 222, 223, 224), simulation actions and infiltration (Article 294/a, 294/b).

Law on the Prevention of Money Laundering and Terrorism Financing (Law no. 9917 dated May 19, 2008).

Law No 8750, dated 26 March 2001 “On the prevention and combating of illicit trafficking of narcotic drugs and psychotropic substances” that defines the standards for the prevention and combating of illicit trafficking of drugs and their precursors. The creation and functioning of the National Committee for Coordination of the Fight against Drugs is foreseen in this law.

Law No 8874, dated 29 March 2002 “On the control of substances that can be used for illicit manufacturing of narcotic and psychotropic substances” that defines the rules for the control of substances that are often used for the illicit manufacturing of narcotic and psychotropic drugs, with the aim of preventing the supply or deviation from the legal destination of such substances.

The role of NGOs is included more specifically in the field of rehabilitation and treatment. One of the specific objectives of the National Drug Strategy concerns the rehabilitation system and involvement of NGOs in this area:

Treatment for drugs is aimed at providing services and treatment for drug addicts so as to make them free of drug dependency. Cures can be provided in a variety of rehabilitation institutions, and for different treatment durations. The integral addictive treatment is realized in several services, venues and institutions specialized in such intervention, which make use of a variety of behavioural and pharmacological approaches. Instead, treatment is a long-term process, including multi-fold interventions and regular monitoring.

The most acceptable contemporary categorization of the training programmes includes: the outreach services; day care centers; detoxification and meditational management of the withdrawal syndrome, long-term residential treatment, short-term residential treatment; non-hospital training programmes; individual counselling; group therapy, addictive treatment in the penitentiary system.

The most important activities regarding social aid services foreseen in this strategy are (8.5.3):

The establishment and empowering of community services for drug users

- Preparation of standards and guidelines for the residential and community centers (cooperation with the Ministry of Health, Ministry of Labor, local government, NGOs, etc.);
- The establishment of two long-term community residential centers for the rehabilitation of drug users and abusers (in Tirana and in Vlora) through public funding or other types of support.
- Implementation of integrated community services (centers with a low outreach threshold, mobile units, constant follow-up and prevention).
- Extension of the health care insurance scheme to involve the community services provided by the NGOs.
- The establishment of state subsidized opportunities for both private and/or public services for addicts and for NGO-provided community-based services.
- The establishment of suitable services for vulnerable groups
- The development of specialized training programmes for the creation of specific multi-disciplinary teams for training in the addictive processes of teenagers with disorders caused by drug abuse.
- The establishment of a specific rehabilitation residence center (therapeutical community)

for women suffering from drug use/addiction problems.

-A multi-professional approach, including parental care for pregnant women having problems with drug addiction.

-Fulfilment of pharmaceutical-therapy standards for pregnant women having issues with opiate addiction.

-Promotion of access to and establishment of necessary capacities in the addictive training system to face the complex treatment of drug dependents suffering from other diseases.

-*The* establishment of addictive services in the penitentiary system.

-The establishment of multi-disciplinary structures for addiction treatment in penitentiary institutions, including both pre-detention centers and prisons;

-The application of alternative sentences for drug addicted convicts, so as to enable adequate treatment for them;

-The implementation of retention therapy programmes in prisons (with agonists, semi-agonists, and antagonists);

-The development of educational programs on drugs in the penitentiary system;

-The development of risk reduction programmes;

-The development of psycho-social programmes;

-The establishment of support groups;

-The offering of addiction services outside prison and involvement of their staff in treating convicts having issues with drug abuse and drug addiction

-Social re-integration

-The encouragement of private entities and of businesses to raise social service funds for improving such services and supporting this category of people.

-The coordination and cooperation through public and non-public bodies offering social services through periodical meetings, working meetings, etc.

-The encouragement of local government structures and of municipalities, in particular, to provide financial support for this category of beneficiaries, depending on their resources.

Civil organizations in Albania play an important role in offering social services in the field of drugs. These services include awareness, prevention, harm reduction

and treatment. The main NGOs currently operating in Albania focused on drug abuse are Aksion Plus, Stop AIDS and Emanuel Center.

The methadone maintenance treatment (MMT) was implemented in 2005 by Aksion Plus, funded by the Soros Foundation. The overall (cumulative) number of clients entering the methadone free-of-charge program at this outpatient treatment unit from June 2005 (starting point in time) till August 2012 is 620 PDUs. The continuity (2008 onwards) of such a free-of-charge program of “Aksion Plus” NGO is ensured by the financial support from the Global Fund to Fight AIDS, Tuberculosis and Malaria (GFATM). The local government is providing in kind contribution and human resources such as counsellors from HIV Voluntary Testing and Counselling (VCT) centres. As of 2012, there were 5 centers run by Aksion Plus established in other cities outside Tirana. Aksion Plus dispenses methadone to about 200 patients daily in Tirana, and has opened 5 local centers in other cities, (www.aksionplus.net.)

Emanuel Center, (<http://www.komunitietiemmanuel.org>) a not-for-profit, residential rehabilitation facility is located a short distance outside Tirana. It consists of a shelter for drug users, and a daily centre, which offers counselling, psychosocial support, and information on drug use. The work in the centre is based on the psycho-physical rehabilitation of drug users, and is supported by the Italian Catholic Church. In addition there are other supportive state services such as the HIV and other blood borne diseases testing centre in the Institute of Public Health etc - which try to facilitate the services for drug dependence in Albania. In 2010, 77 persons received residential service in Emanuel Centre. Admissions for drug-dependent individuals are intended to be for 3-6 months.

Stop Aids implements a needle and syringe program (NSP) which currently has 150 regular clients picking up needles and syringes in Tirana. The NSP includes outreach workers distributing near heroin dealing hot spots, (<http://www.stopaids-al.com>). Other activities of this organization are HIV/Hep B & C testing, condom distribution, medical and social counselling services, training seminars with medical and paramedical staff, educational staff, collaboration with the Police and Army force for positive attitudes toward Harm Reduction strategies, creation of Peer Educator groups, creating a Voluntary and Counseling Testing Center, national and local studies, conferences and symposia, producing training manuals, books, booklets, leaflets etc.

Albania has approved laws and regulations to control issues related to citizens access to drug use, production, trafficking and to access to alcohol. Services regarding drug and alcohol treatment and problems are still at the initial development stage. It is necessary to increase and improve these kinds of services and base them on the real needs of the country.

The social problems and poor economic conditions that Albania has been facing in the last years has meant the Albanian Government has been able to offer few resources on drug treatment and preventive education. Although the National Strategy is very specific and detailed regarding the areas and plan of action there are still concerns regarding its implementation.

The strategy and its plan of action are very ambitious programs to be implemented in a period of budget cuts due to the financial crisis. It represents a statement of intention with many activities foreseen but it is very difficult to be implemented given the resources required for this implementation.

Training of staff is very important to ensure a proper implementation of this strategy. Lack of human resources will make the strategy not easy to be implemented and its results will not be easily achieved.

The strategy bases its implementation on hospitalization to respond to the critical needs of heroin users, the majority of Problem Drug Users (PDU's) consists of heroin users, which is not the most effective treatment. The methadone treatment is one of the most important pillars on which the strategy and treatment of drugs in Albania is based.

2. National Substantive Criminal Law

Domestic law in Albania foresees changes between misdemeanors and felonies. This is based on the typology of the crime. The first distinction is the danger of the crime committed. The danger of a misdemeanor is lower compared to that of a felony. The second difference is the age of the persons committing crime, for a misdemeanor the minimum age is 16 years old, while for a felony the minimum age when a person is arrested, pre-trialed and convicted is 14 years old.

The penalty for a misdemeanor is from 5 days to two years, and the penalty for a felony is from 2 years to 25 five years. There are also some crimes which, although the penalty foreseen is less than two years, are still considered a felony and this is based on the danger of the crime committed. This is decided by the judge.

The Criminal Code of Albania foresees two typologies of sanctions: main sanction and supplementary sanction. The main sanction can be a fine or imprisonment. Imprisonment can be from 5 days to 25 years or life imprisonment based on the typology of the penal act that is committed. These two sanctions cannot be given for the same act.

The Criminal Code foresees also the alternatives to imprisonment which are: Fragmentation of imprisonment - For punishments up to one year of imprisonment, if the court notices grave family, medical, professional, or social circumstances, it

may decide that the sentence be executed fragmentarily but for not less than two days per week.

Suspending the execution of a sentence - If the person and the circumstances under which the criminal act was committed are of little danger the court, while sentencing up to five years of imprisonment, may rule that the convicted person be put on probation, thus suspending the execution of the sentence, provided that during probation he will not commit any other criminal act equally serious or more serious than the previous one.

Suspension of imprisonment and compulsory labor in favor of public interest - The court may suspend the imprisonment sentence if the latter is less than one year, and replace it with the compulsory labor in favor of the public interest, if the person and the circumstances under which the criminal act was committed are of little danger.

Early release on parole - The prisoner could be released earlier and on bail only for specific reasons, if his behavior and work show that during the time of punishment, the purpose of his education is fulfilled, and when he has spent:- not less than half of the punishment time given for penal transgression;

- not less than $\frac{2}{3}$ of the punishment given for committing the crimes punishable by imprisonment up to 5 years;

- not less than $\frac{3}{4}$ of the punishment for crimes that have the punishment of imprisonment from 5 to 25 years.

Custodial sentences are foreseen in the Criminal Code and in the amendments made to the law no. 8331, dated 27.11.2008, "On Execution of Penal Sentences".
Criminal Code:

Article 59 - Suspending the execution of a sentence. If the person and the circumstances under which the criminal act was committed are of little danger the court, while sentencing up to five years of imprisonment, may rule that the convicted person be put on probation, thus suspending the execution of the sentence, provided that during the probation he will not commit any other criminal act equally serious or more serious than the previous one. Probation extends from eighteen months to five years.

Article 60 - Sanctions against the convicted person under probation

The court may compel the convicted person under probation to meet one or some of the following sanctions:

1. To exercise a professional activity or to gain professional education or training.

2. To pay family pensions in due time.
3. To compensate for torts.
4. To be banned from driving certain vehicles.
5. To be forbidden to exercise a professional activity if the criminal act relates to such activity.
6. To be forbidden from certain places.
7. To be forbidden from shops serving alcoholic beverages.
8. To stay in his residence during certain hours.
9. To avoid the company of determined persons, mainly convicts or collaborators of the criminal act.
10. Not to carry weapons.
11. To be subjected to medical treatment against alcohol and narcotics.

Article 61 - obligations of the convicted persons under probation

During probation the convicted person is obliged:

1. To respond to calls and demands of the legal bodies supervising probation.
2. To inform the supervising bodies of probation of work-related changes.
3. To obtain permission from the supervising bodies of probation for any changes of residence or job, or visits abroad.

Article 62 - Revoking the sentence on suspension

If, during the term of probation, the convicted person commits a criminal act of the same degree or an even more serious act than the previous one, the court shall revoke the suspending decision.

Revoking is made even when the convicted person, without having reasonable cause, has not met the measures and sanctions mentioned in Articles 60 and 61 of this Code, which were imposed upon him. When the suspending decision is not revoked, the [first] sentence given is considered void. An important aspect of the justice system reform in Albania is Law no. 10024, date 27.11.2008 on Some Amendments and Additions to Law no. 8331, dated 21.4.1998 "On the Execution of Criminal Judgments". The Albanian Parliament approved the normative legal framework for the establishment and functions of the institution of the Probation Service as a specialized institutional body concerning the supervision of alternative sentences to imprisonment.

Special provisions are not foreseen for drug-related offences, the penalty for severe drug-related offences is that of the maximum of the imprisonment period foreseen to change this imprisonment into a custodial sanction. In the cases when the offender is also a drug user he is obliged to take treatment within the prison facilities.

When the offender is sentenced with a custodial sanction, article 60 of Criminal Code states that the court may compel the convicted person under probation to meet one or some of the following sanctions:

6. To be forbidden from certain places.
7. To be forbidden from shops serving alcoholic beverages
9. To avoid the company of determined persons, mainly convicts or collaborators of the criminal act
11. To be subjected to medical treatment against alcohol and narcotics.

3. National drug laws and institutions

The Criminal Code foresees severe penal sanctions against the trafficking, manufacture, preparation, distribution, transportation, maintenance and sale of drugs and psychotropic substances (without distinction)

- 5-10 years of imprisonment for production, selling, distribution and possession and
- 7-15 years for trafficking “import-export” of drugs.

Penal sanctions are also foreseen for illicit cultivation of narcotic plants (3-7 years of imprisonment) and trafficking or derivation of precursors (3-7 years of imprisonment).

Article 283 Manufacturing and selling narcotics (Paragraph I amended, paragraph II added by Law No. 8733, date 24 January 2001, article 63)

Selling, offering to sell, providing or receiving in any form, distributing, commercialization, transporting, sending, delivering, as well as carrying, except in case of personal use and in small portions, narcotic and psychotropic substances as well as seeds of narcotic plants, in violation of law or in excess of its content, is punished by five to ten years of imprisonment.

The same offense, if committed in collusion with others, or repeatedly, is punished by seven to fifteen years of imprisonment.

Organizing, managing or financing this activity is punishable by ten to twenty years of imprisonment.

Article 283/a about Traffic of narcotics says:

Import, export, transit, and trade of narcotic and psychotropic substances and of seeds of narcotic plants, in violation of law, is punished by seven to fifteen years of imprisonment. The same offense, if committed in collaboration with others, or repeatedly, is punished by ten to twenty years of imprisonment. Organizing, leading, or financing of this activity is punished by not less than fifteen years of imprisonment.

Article 284

Cultivating narcotic plants (Paragraphs I and III amended, paragraph II added by Law No.8733, date 24 January 2001, article 66): Cultivating plants which serve or are known to serve in the production and extraction of narcotic and psychotropic substances, without permit and authorization according to the law is punished by three to seven years of imprisonment. The same offense, if committed in collaboration with others, or repeatedly is punished by five to ten years of imprisonment. Organizing, managing or financing this activity is punishable by seven to fifteen years of imprisonment.

Article 284/c about Production and fabrication of narcotic and psychotropic substances (Added by Law No. 8733, date 24 January 2001, article 67) says: Production, fabrication, extraction, refinement, or preparation without a license or in excess of its content of narcotic and psychotropic substances, is punished by five to ten years of imprisonment. The same offense, if committed in collaboration with others or repeatedly is punished by seven to fifteen years of imprisonment. Organizing, leading, and financing this activity is punished by ten to twenty years of imprisonment.

Drug use Possession of drugs in small quantities for personal use is not punished, but the amount is not specified, misleading the interpretation of the law either by the police forces or the court. According to the unified decision of the High Court No 1, dated 27.3.2008: 'Penal and legal notion that is expressed by the legislator with the phrase "in small doses", even though there may be a numerical determination of the quantity of prohibited materials that will be indicative of the amount of weight to be considered a small dose, must be interpreted in the sense that, in quantitative terms, narcotics and psychotropic substances etc., should be to the extent considered really small for personal use by individuals, and not in general. It should not exceed the physical and biological capabilities of the individual user and within the limits of tolerance that his body represents for that type of drug, at the time and within the conditions of use in order for the person to avoid going beyond the scale of effects that will damage the health". Taking into account this analysis the United College concluded that: "a small dose, in its legal sense, is not the consideration of the physical separation of the amount into some parts, but the

amount of narcotic and psychotropic substances that it contains as a whole and according to experts is considered a small dose”.

Such a definition of the term “in small doses” is used for the purpose of implementing the provisions of Article 283 of the Criminal Code, in addition to the preventive role that it plays in preserving the health of users and persons dependent on drugs. It also plays a role in general prevention in the fight against the phenomenon of illegal use of these materials. In circumstances where it is not yet determined by a special law or by-laws, the case of the use of a dose of narcotic and psychotropic substances “in accordance with the law” (a requirement that United Colleges consider is dictated by the way it is formulated in the above mentioned provision), the above definition serves to narrow to a reasonable extent the parameters of use by perpetrators which might otherwise unfairly affect the criminal responsibility of users of narcotics and psychotropic substances who are on the edges of these cases.

The Criminal Code does not consider drug addiction as a mitigating or an aggravating circumstance. However, being obliged to consider all relevant facts and circumstances related to the case, the court has to take into account the personal characteristics of the offender, including drug use and drug addiction. Case law in some sentences considers drug addiction as a mitigating circumstance, while in other sentences it considers it as an irrelevant circumstance. Procedural Criminal Code foresees the mitigating and aggravating circumstances to be taken into consideration in a penal court, but Article 49 of the Procedural Criminal Code leaves it at the discretion of the judge that besides the circumstances foreseen in this Code he may take into account other circumstances such as those in Article 48 (deep repentance).

Other circumstances that are considered relevant are the need to attend obligatory education and further education, familiar and social situations, unemployment, familiars that the offender has under his custody and their need for economic and social care.

Albanian Criminal Code does not provide different penalties based on the fact that the offender is a drug addict or not. Offences associated with ‘cravings for use’ are prosecuted in the same manner as ordinary offences that are not related to drugs. It is up to the court to decide whether and how to consider the offender’s addiction when determining the penalty. Almost all penal cases have been prosecuted without taking into consideration drug addiction as a mitigating circumstance. These persons have been sentenced in the same way as other non-addicted persons who have committed similar offences.

According to the Albanian judicial practice in the cases when a person is arrested for the possession of 5 grams of hashish (soft drug) and if the person is drug ad-

dicted the person can benefit or can be given a more lenient sentence or alternative sentence to prison, unlike in the case when the person is arrested for the possession of 5 grams of heroin or cocaine (hard drug). Article 283 makes no difference between user, seller and trafficker. They are placed in the same category where the same penalty is foreseen regardless of what kind of drug “soft” or “hard” has been used, produced or trafficked.

Policy discussions in the legislative practices have always requested the improvement of Article 283 of Criminal Code regarding categorization of the criminal subjects and typology of substance and the consequences that drug use has on those persons who use it.

The Albanian Criminal Code defines the following sentences for different drug law offences

SECTION III

CRIMINAL ACTS AGAINST PUBLIC ORDER AND SECURITY

Article 283

Manufacturing and selling narcotics (Paragraph I amended, paragraph II added by Law No. 8733, date 24 January 2001, article 63)

Selling, offering to sell, providing or receiving in any form, distributing, commercialization, transporting, sending, delivering, as well as carrying, except in case of personal use and in small portions, narcotic and psychotropic substances as well as seeds of narcotic plants, in violation of law or in excess of its content, is punished by five to ten years of imprisonment.

The same offense, if committed in collusion with others, or repeatedly, is punished by seven to fifteen years of imprisonment. Organizing, managing or financing this activity is punishable by ten to twenty years of imprisonment.

Article 283/a

Traffic of narcotics (Added by Law No. 8279, date 15 January 1998, article 2

Amended by Law No. 8733, date 24 January 2001, article 64)

Import, export, transit, and trade of narcotic and psychotropic substances and of seeds of narcotic plants, in violation of law, is punished by seven to fifteen years of imprisonment. The same offense, if committed in collusion with others, or repeatedly, is punished by ten to twenty years of imprisonment. Organizing, leading, or financing of this activity is punished by not less than fifteen years of imprisonment.

Article 283/b

Creation of facilities for delivering and use of drugs (Added by Law No. 8733, date 24 January 2001, article 65). Illegal facilitation of narcotic or psychotropic substances, by persons, who, because of their duty administer such substances, as opposed to the respective legal dispositions, is punished by imprisonment from three to seven years.

Article 284

Cultivating narcotic plants (Paragraphs I and III amended, paragraph II added by Law No. 8733, date 24 January 2001, article 66)

Cultivating plants which serve or are known to serve in the production and extraction of narcotic and psychotropic substances, without permit and authorization according to the law, is punished by three to seven years of imprisonment. The same offense, if committed in collusion with others, or repeatedly, is punished by five to ten years of imprisonment. Organizing, managing or financing this activity is punishable by seven to fifteen years of imprisonment.

Article 284/a

Organizing and leading criminal organizations (Added by Law No. 8279, date 15 January 1998, article 2)

Organizing, leading and financing criminal organizations with the goal of cultivating, producing, fabricating or illegal trafficking of the narcotics is punishable by imprisonment of 10 up to 20 years. Creation of conditions or facilities for such activities by persons with state functions is punishable by imprisonment from 5 to 15 years.

Article 284/b

Supporting the disclosure of crimes (Added by Law No. 8279, date 15 January 1998, article 2) The arrested or sentenced person for one of the criminal offences related to trafficking in narcotics, weapons, clandestine activities, prostitution or criminal offences committed by criminal organizations, that cooperates and assists the criminal proceeding bodies in the struggle against them, or as the case might be, in the disclosure of other persons that commit such crimes, cannot be sentenced to more than half of the contemplated punishment for the offense committed by him. In specific cases, when the facilitating circumstances contest in his favor too, this person can be excluded from the punishment.

Article 284/c

Production and fabrication of narcotic and psychotropic substances (Added by Law No. 8733, date 24 January 2001, article 67). Production, fabrication, extrac-

tion, refinement, or preparation without license or in excess of its content of narcotic and psychotropic substance, is punished by five to ten years of imprisonment. The same offense, if committed in collusion with others or repeatedly, is punished by seven to fifteen years of imprisonment. Organizing, leading, and financing this activity is punished by ten to twenty years of imprisonment.

Article 284/ç

Production, commercialization, and illegal use of precursors (Added by Law No. 8733, date 24 January 2001, article 67) Production, import, export, transit, commercialization, and carrying of precursors provided by law in relevant tables in violation of relevant legal provisions, is punished up to five years of imprisonment. The same offense, if committed in collusion with others, or repeatedly, is punished by three to seven years of imprisonment. Organization, leading, and financing this activity is punished by five to fifteen years of imprisonment.

Article 285

Possession, production, and transport of chemical substances (Amended by Law No. 8733, 24 January 2001, article 68). Production, possession, transport or delivery of basic chemical substances, or of different kinds of substances, equipment, or materials, if known that these are used or will be used for the production or illegal trafficking of narcotic or psychotropic substances, is punished by three to ten years of imprisonment.

Article 285/a Adaptation of places for use of a drug (Added by Law No. 8733, date 24 January 2001, article 69). Adaptation or permission to adapt a place, dwelling, vehicle, and any other public or private means to gather persons, with the purpose of consuming narcotic or psychotropic substances, is punished by up to five years of imprisonment.

Article 285/b Disposal or abandonment of syringes (Added by Law No. 8733, date 24 January 2001, article 69). Disposal or abandonment in public places or places open to the public, as well as in private environments of common use, of syringes or dangerous instruments, used to inject narcotic or psychotropic substances, constitutes criminal contravention and is punished by fine or up to one year imprisonment.”

Article 286

Inducing the use of drugs (Amended by Law No. 8733, date 24 January 2001, article 70) Inducing others to use narcotic or psychotropic substances, or providing or injecting others without their knowledge or consent, is punished by five to ten years of imprisonment. When the inducing or forced injection is conducted upon

children or in penitentiary, educational, sport or any other institutions providing social activity, it is punishable by not less than fifteen years of imprisonment.

Article 286/a

Illegal use of high technology. Production and running of systems, equipment, and means of high technology, in cases of criminal acts included in the articles 283 until 286/a of this Code, or when this technology is used to facilitate or enable the consumption of narcotic or psychotropic substances, or broadcasting advertisements to promote their use, is punished by imprisonment up to five years.

These sentences are harsh compared to petty crimes, but are not considered similar to first degree murder. The maximum penalty imposed for drug trafficking, article 283/a and 284/a is 10 - 20 years while first degree murder is sentenced with life imprisonment or up to 25 years of imprisonment for women.

There is no difference in the treatment of drug-offenders compared to other offenders. Although it is stated in the media articles and reports about the level of corruption in the justice system (Transparency International Reports, EU Progress Reports) it might be said that drug-dealers are treated according to the law, (imposing a wide range of minimum till the maximum of the penalties foreseen in the Criminal Code).

The Albanian Criminal Code and Procedural Criminal Code, articles 283 until 286 and 286/a of Criminal Code, foresees severe penal sanctions against the trafficking, manufacture, preparation, distribution, transportation, maintenance, sale of drugs and psychotropic substances. (See 3.6 above)

Severe penal sanctions are foreseen for illicit cultivation of narcotic plants and trafficking or derivation of precursors. Article 283 makes no difference between user, seller and trafficker. They are placed in the same category where the same penalty is foreseen regardless of the kind of drug, “soft” or “hard” which has been used, produced or trafficked and the quantity of substance.

The legislator has foreseen no difference between small and big dealers and this absence of difference has affected the initiation of several discussions about the changes needed in the drug policy in Albania. Referring to this case Article 283 of Criminal Code does not distinguish any difference between small and big dealers, the only difference is that of personal use. See decision of High Court about the judicial practice in this case. (See 3.2 above)

According to Criminal Procedural Code there are three stages of judgment:

- a) The district criminal Court
- b) Appeal Court
- c) High Court

All criminal offences are trialled in the first instance by the district court, by the courts of serious crimes, the military court and the Supreme Court.

The Districts Criminal Court judges the offenses for which the punishment ranges from a fine up to 7 years of imprisonment, these trials are judged by one judge. The other offenses are judged by panels composed of three judges.

In 2004 in Albania the changes in the procedural criminal code established the Court of Serious Crimes. According to Article 75/a- under the competences of the Court of Serious Crimes are the following drug offenses: Article 283/a - Traffic of narcotics and 284/a Organizing and leading criminal organizations.

Regarding the principle of universality Albanian criminal law is applicable for all Albanian nationals and foreigners who commit an offense within or outside the territory of the Republic of Albania. The Criminal Code foresees the principle of universality in Article 6 and Article 7.

Article 6

For criminal acts committed by Albanian citizens within the territory of the Republic of Albania, the criminal law of the Republic of Albania shall apply.

The criminal law of the Republic of Albania shall also be applicable to the Albanian citizen who commits an offence within the territory of another country, when that offence is concurrently punishable, unless a foreign court has given a final sentence.

In the sense of this article, Albanian citizens shall also be considered those persons who apart from Albanian citizenship hold another one too.

Article 7

The foreign citizen who commits a criminal act within the territory of the Republic of Albania is held responsible on the basis of the criminal law of the Republic of Albania. The criminal law of the Republic of Albania is also applicable to a foreign citizen who, outside of the Republic of Albania, commits one of the following offences against the interest of the Albanian State or an Albanian citizen:

- a) Crimes against humanity
- b) Crimes against Albanian independence and its constitutional order;
- c) Terrorism;
- d) Organization of prostitution, illegal manufacturing and trafficking of drugs, other narcotic substances, of weapons, nuclear substances, as well as pornographic materials;

- e) Hijacking airplanes or ships;
- f) Falsifying the Albanian state seal, Albanian currency, or Albanian bonds or stocks; for a punishment by imprisonment of five years or any other heavier punishment
- h) Laundering of the proceeds of crimes;
- i) The crimes of active and passive corruption committed by persons exercising public duties/functions, as well as in the private sectors.

4. Drug law enforcement in practice

In June 1995 -after the fall of communism in Albania- the new Albanian Criminal Code was approved and a very important section of this Code of 1995 was the introduction of articles that address the problems of cultivation, production and trade of narcotics.

The legislative framework continued to be improved with the changes in 1998, Article 283/a about the trafficking of narcotics adding the offences of import, export and trade of narcotic substances or psychotropic and narcotic plant seeds.

Changes in 2001 of the criminal Code added in Article 283/a if the same offense is committed in collusion with others, or repeatedly, is punished by ten to twenty years of imprisonment and organizing, leading, or financing of this activity is punished by not less than fifteen years of imprisonment. In the meantime these changes aimed to introduce stricter measures against narcotic trafficking.

Also Article 283/b added the offence of “creation of facilities for delivering and use of drugs” and 284/c talks about production and fabrication of narcotic and psychotropic substances. These articles control the number of licensed persons that work with narcotic and psychotropic substances and article 284/c presents the sanctions for the production, trade and illegal use of precursors. Through these changes the aim is to reinforce the fight against narcotics. After 2001 a lot of changes to the Criminal Code and respective laws have been made, but there are no changes in the drug policy.

The criminal procedural code defines the ways persons and houses are observed and controlled, articles of 198 -199 about the examination of persons and places and articles 202-206 about the control of a house.

The Procedural Code also describes the procedures of confiscation- article 208; interception - article 221-226; arrest in flagrante and detention- articles 251- 259;

The arrests in flagrante can be organized by the special methods of investigation by the central and regional offices on the fight against drugs. Police practice towards

heroin users includes regular stop-and-search, arrests and harassment. Moreover heroin users are often involved in petty crimes in order to support their daily use. Policing practice towards cannabis users varies, as most often police harass occasional users, who smoke in public. Regular cannabis users have different patterns and habits of use - they usually avoid smoking in public and therefore are rarely stop-and-searched by the police.

Also according to the law no 8750 date 26.03.2001 "For the prevention and fight against trafficking in narcotic drugs or psychotropic substances" the police officer and Judicial Police or a person authorized by them may be charged to make a "purchase" of the narcotic substances while hiding their identity. They can use false documents when they are infiltrated. The "purchase" can be made only by the authorization of the General Prosecutor, by the authorization of the Prosecutor who has initiated the investigation and by the authorization of the Prosecutor who has under his jurisdiction the territory where this action is going to be organized with the aim of collecting evidence, identifying and arresting persons involved in drug trafficking.

Policing of illicit cultivation

Albania still remains a country of origin for cannabis and its derivatives (marijuana /hashish/hashish oil). Cannabis is the only narcotic plant cultivated in Albania. The southern "drug- hotspot" is called Lazarat, an area near Gjirokaster, which is not under permanent control of the Albanian State authorities.

With the exception of cannabis, Albania is not a significant producer of illicit drugs. The Anti-Narcotics Unit of Ministry of Interior reports that cannabis is currently the only drug grown and produced in Albania, usually for regional distribution. Cultivation of marijuana during the last years decreased noticeably with increased enforcement action against both traffickers and cultivators. There is no poppy cultivation, no evidence of labs for the manufacture of synthetic drugs, and the trade in synthetic drugs remains virtually non-existent.

Awareness campaigns against drug cultivation are organized all over the country. Focus of these campaigns has been in the communities in general and among school children specifically. Meetings of police officers and pupils are organized within school settings to discuss the danger of drugs and also how pupils can discuss with parents in cases of illegal drug cultivation. The Police has organized campaigns in the well-known hot-spots in the country, cutting and destroying the plants.

Law No. 9559, dated 8.6.2006 for an amendment of law no 7975, dated 26.7.1995 "On Narcotic Drugs and Psychotropic Substances" added Article 10/1 about the re-

sponsibility of mayors and other officials of local government units. Order Police and Criminal Police in the area should work together and organize the work for the prevention of plant cultivation, narcotic detection of cultivated areas and to identify those responsible. They are required to report immediately to the relevant authority on the fight against drugs of the county police department. When the above persons act in violation of paragraph 2 of this Article, as the case may be, they are subject to criminal offenses under Articles 248, 300 and 301 of the Criminal Code. “.

The **pre-trial detention** is implemented in Albania and it is one of the most used security measures imposed by the court. Although there was a big discussion when the law about the establishment of the Probation Service was prepared on including the alternative measures in the detention and pre-trial phase, alternative sanctions cannot replace the security measure of imprisonment. Exceptions can be made only when according to article 239 the person to be arrested is mentally ill, and for this reason this person instead of being held in detention be ordered to be hospitalized in a psychiatric institution. This is mandatory treatment.

However judicial practice has recognized that security measures can be mitigated due to health status or family circumstances of the offenders, where it is judged that this person has few possibilities to escape or to commit other offenses. But health conditions cannot affect the security measures, as it is also stated in the decision no 367, dated 11.2001 of High Court that “health treatment of the offenders is under the responsibility of Prison Hospital, which is an institution under the General Directory of Prisons charged by law to treat persons in the pre-trial facilities and prisons.

Drug-users can be placed in mandatory treatment in the phase of pre-trial only when this treatment is absolutely necessary and the penalty foreseen in the Criminal Code for the offence they have committed is less than 10 years. No such case has been reported in the last years.

According to the Article 248 of Criminal Procedure Code **interrogation** of a person takes place no later than 3 days after the application of the measure, the court interrogates the person placed in jail or under house arrest. The prosecutor and the lawyer are present at the interrogation session.

In cases of arrest, the interrogation is made by judicial police officers (article 255 (law no 8813, date 06.13.2002) and the prosecutor (article 256) in the presence of the lawyer. For those who are drug users interrogation is made after the person's health has stabilized. In the case of drug offenders, for all the crimes the first thing that they undertake is conducting a urine test to prove whether they are drug users or not but also to prove whether at the time of the crime the person was under the influence of any narcotic substance or not.

There is a legal framework in Albania for **police entrapment** and it is regulated by Law no8750, date 36.3.2001. Articles 6, 7, 8 and 9 of this law are about “Services for the war against drugs”. This service consists of the Central Service and Criminal Police Directorate Regional Offices for the fight against drugs, which are part of the regional police departments. It is under the competence of the Central Service for the Fight against Drugs to deal with prevention and combating of criminal offenses in the field of drugs.

This service, in cooperation with Judicial Police, department of Prosecution Offices can organize police entrapment. According to the law no 8750 date 26.03.2001 “For the prevention and fight against trafficking in narcotic drugs or psychotropic substances” the police officer and Judicial Police or a person authorized by them may be charged to make a “purchase” of the narcotic substances while hiding their identity. They can use false documents when they are infiltrated.

The “purchase” can be made only by the authorization of the General Prosecutor, by the authorization of the Prosecutor who has initiated the investigation and by the authorization of the Prosecutor who has under his jurisdiction the territory where this action is going to be organized that aims to collect evidence, identify and arrest persons involved in drug trafficking. Police officers of the central service on the fight against drugs and Judicial Police officers have the right to make interpretation of the conversations and other communications using scientific and technical means. They can make observations, photos and filming based on the Articles 221 -226 of the Criminal Procedural Code. In the case of filming and photos made in the case of a simulated purchase of narcotic substances they should be accepted by the court if they are made in accordance with Article 151 of the Criminal Procedural Code, where it is stated that when evidence is not based on the law, the court can take it into consideration only when it can verify the facts and when it does not affect the freedom and will of the person.

Available data for imposed sentences, possible special provisions for drug addicted offenders

The latest data about the imposed sentences of courts in Albania that have established the online system are published online. The full final decision imposed can be found online.

The standardized data are produced annually and published in the annual statistical report of Ministry of Justice. Data of 2010 regarding the articles about drug offences are:

Article 283: up to 2 years - 2 cases; 2-5 years - 18 cases; 5-10 years - 3 cases

Selling, offering to sell, providing or receiving in any form, distributing, commercialization, transporting, sending, delivering, as well as carrying, except in case of personal use and in small portions, narcotic and psychotropic substances as well as seeds of narcotic plants, in violation of law or in excess of its content, is punished by five to ten years of imprisonment.

The same offense, if is committed in collusion with others, or repeatedly, is punished by seven to fifteen years of imprisonment.

Organizing, managing or financing this activity is punishable by ten to twenty years of imprisonment. Article 283/1: up to 2 years - 24 cases; 2-5 years - 128 cases; 5-10 years - 22 cases. Article 283/2: up to 2 years - 11 cases; 2-5 years - 10 cases. Article 283/3: up to 2 years - 1 case; 10 -25 years - 1 case.

-Traffic of narcotics

-Amended by Law No. 8733, date 24 January 2001, article 64). Import, export, transit, and trade of narcotic and psychotropic substances and of seeds of narcotic plants, in violation of law, is punished by seven to fifteen years of imprisonment.

-The same offense, if committed in collusion with others, or repeatedly, is punished by ten to twenty years of imprisonment.

-Organizing, leading, or financing of this activity is punished by not less than fifteen years of imprisonment. Article 283/a1: up to 2-5 years - 2 cases; 5-10 years - 1 case. Article 283/a 2: up to 2-5 years - 5 cases; 5-10 years - 50 cases; 10-25 years - 13 cases.

The court provides special provisions in the final decision for drug offenders when they are under probation services such as to attend school, not to be associated with other drug users, to attend a rehabilitation program against drugs.

5. Sentencing levels and the prison situation:

According to the statistical data of August 2012, the number of persons held in the penitentiary institutions in Albania is 2864 persons who are placed in prisons and 1930 persons who are placed in pre-trial and detention centers.

There are 19 penitentiary institutions around the country, prisons and pre-trial centers, 1 Prison Hospital and 1 Institute for Juveniles in Kavaja. Three new prisons are under construction, financed by European Union assistance. 2864 persons are placed in prisons - 530 are for drugs trafficking. 1930 persons are placed in pre-trial and detention centers - 430 persons are for drug trafficking.

Prisons in Albania are operating to full capacity and sometimes some of them are over the recommended level. The opening of the new institutions decreased signif-

icantly overpopulation of prisons in Albania, which was one of the main problems of the penitentiary system. Another important factor for decreasing overpopulation of prisons is the amendments to the Penal Code and of Law “On execution of penal decisions”. The Probation Service was established based on those amendments.

Public Health Institutions and Directorate General of Prisons are very active in the field of prevention activities in the prison setting. They also cooperate with international and national NGOs regarding problems of HIV and Hepatitis.

“Stop Aids” association with the funding of Global Fund for HIV/AIDS in cooperation with National Programme for HIV/AIDS have successfully implemented the first and second phase of the project “Prevention of HIV/AIDS” in the penitentiary system. During the project, capacity building of social and medical staff was organised. Prisoners were contacted, interviewed and participated in meetings about raising awareness of these problems in prisons. There were no data exposed in the project about HIV and Hepatitis transmission.

The arrests made in the last years during visits of familiars who aimed to bring drugs inside the prisons and pre-trial facilities show that there are efforts to bring in drugs and there are drug users inside. Methadone treatment is offered by Aksion Plus in prisons in order to avoid the problems of drug use and treat the abstinence crisis of arrested persons.

The health care personnel in prisons was reorganized during 2009 along with the provision of health care. The structure of a penitentiary institution consists of a doctor, a dentist, a pharmacist and there is a 24 hour service. Convicts and detainees are subject to health check-ups at the moment of arrival in the institution. They are provided with a medical and dentistry file, which specifies the treatment to be followed and specialized medical assistance offered in the Prison Hospital.

A recent development in the health care service is the decision of the Council of Ministers nr.337, dated 06/04/2011 “For the involvement of the detainees and pre-trial detainees in the category of persons economically non-active”. As to this decision, they benefit from all benefits, offered by the health insurance scheme, free of charge.

Special Care Sections for people with mental disorders and dependency on narcotic substances was first applied in April 2010 as a pilot project initiated in Fushë-Krujë, Ali Demi, Lezhë, Peqin, Vlorë and Durrës facilities. The programme includes mainly psycho-social service and intensive therapy, aiming at the rehabilitation of convicts with mental disorders and of those with dependence on narcotic substances.

Women are considered to be one of the most vulnerable categories in prisons. A nursery is established inside the internal regime, for female convicts - mothers of newborns, aiming to provide a harmless environment for children to grow up with their mothers. Children have the assistance of social and health care personnel on a 24hour service and may stay with their mothers in prison up to the age of three years old.

Methadone treatment is provided inside prisons and harm reduction programs as well. Capacity building of health staff is organized by NGOs specialized in drugs, physical health and mental health problems.

The potential of diversion of drug users from prison to community based treatment is only foreseen in the use of custodial measures. The diversion is difficult in the phase of pre-trial as the precedent of mandatory treatment for drug users who need it may be misused by those who don't need it and use this measure as a way to escape prison. The efforts to develop and expand a mechanism for the diversion of drug users into community treatment have failed, since many diversion cases have failed.

Reform of the Penitentiary System is one of the 12 key priorities that Albania needs to address in order to be considered for European Union membership. The emphasis is put on the continuous improvement of the legislation, improvement of infrastructure and accommodation premises and capacity building of staff. The vision of the Albanian penitentiary service is to create appropriate conditions for the implementation of the existing legal framework and base it on the European Union standards.

Very good work has been done for the continuous improvement of legal acts, whose implementation provides humane treatment of convicts and detainees, emphasizing here the re- education of the convicts in these institutions and expansion of the concept for non discrimination of the convicts and detainees.

The National Prison Administration has established a strategy and plan of action on which the work of this institution should be based.

Although it is accepted that the rate of recidivism is high among drug-related crimes there are no official data about recidivism in general and about drug-related crimes specifically. The law does not allow for early release or bail of a recidivist convicted for deliberately committed crimes. Early and on bail release is revoked by the court, when the convict of a deliberately committed crime, during an on bail period, perpetrates another serious penal act (on purpose), or more serious penal act than the first one; in this case, the dispositions of blending the punishments could be applied.

II. Initiatives for drug law reform undertaken by the government and/or the parliament in the last 10 years

The only changes made to the legislative framework about drug policy in Albania are those mentioned above, (refer point 4.1). After 2001 a lot of changes in the Criminal Code and respective laws have been made, but there are no changes in the drug policy. A detailed description of the legislation is elaborated above, point 1.3.

Regarding the government efforts, these are included in the strategies, action plans and different ministerial decisions. The first National Drug Strategy 2004 - 2010 was approved on 7th May 2004 with the Order No 292 of Council of Ministers. On June 2010 the new working group was established which drafted the 2012 - 2016 National Drugs Strategy and the strategy was approved by act no 403 of Prime Minister dated 20th June 2012. The Strategy is connected with the reforms and other important national strategies, such as: the health reform, the national strategy against organized crime and terrorism, the national strategy on the fight against AIDS, potential changes in the Criminal Code and in the Criminal Procedure Code, the anti-corruption strategy, judiciary reform, etc.

A previous review report (SAIMS, 2011) noted the lack of central coordination of drug policy (P25). Several respondents expressed concern that without clearly identified government or bureaucratic leadership, implementation of the Drug Strategy 2012 will be problematic. However, divisions and competition between services make the government's role more difficult. Albanian government devotes just over 3% of GDP to provision of health services. The remainder of health expenditure, approximately twice the government contribution, comes from private payments for care and medicines. In the Albanian legislation, issues related to the treatment and prevention of health disorders caused by drugs are not covered by any special law. The only reference to this problem is found in the Law no. 10138, date 11.05.2009 "On the public health". According to this law, 'Article 7' listing of public health services, in section 'e', describes the services of prevention and control of substance abuse (tobacco, alcohol, narcotic drugs and psychotropic substances, etc.). Also in 'Article 53' on health protection from abusive use of narcotic and psychotropic substances, note the "treatment, rehabilitation and reintegration into society of abusive users of narcotic and psychotropic substances" as part of the totality of the measures to be taken.

During 2010 - 2012 5 meeting of experts from Ministry of Health, Ministry of Justice, Ministry of Education, Ministry of Labour, Ministry of Interior, Prosecutor Office, Informative Service, National prison Administration, Institute of Public Health and NGOs were organized. The meetings were about drug policy in Al-

bania to discuss the current drug situation, trends and the future. Almost all the participants raised the need for the Albanian government to develop integrated treatment systems, offering drug users access to a wider range of treatment programmes, and managing their re-integration into jobs, housing and community life. These should be designed and implemented through partnerships between health, social, and criminal justice agencies. These meetings were facilitated by the UNODC and the WHO representatives as part of their Joint Programme on drug dependence treatment and care.

On March 2012, a group of representatives of the Albanian Parliamentary Commission on Health and of NGOs discussed amendments in the Criminal Code, article 283 about categorization of “soft and hard drugs”. This initiative failed because it was not accepted by the Health Commission. Albania lacks a specific scheme to cover social assistance for chronic health problems, including disability caused by substance abuse. Welfare coverage for disability caused by the use of drugs is not provided by the social security system in Albania.

III. Standpoints of relevant stakeholders (political parties, scientific community and civil society organizations) on drug law reform

This report summarizes the drug policy that was in place in Albania till September 2012. Main stakeholders that were contacted were members of the Albanian Parliament, Lawyers, Human Rights Activists, Public Health Experts, the Ministry of Justice, the Ministry of Interior, Prosecutors, Judges, and national NGOs active in the field of drugs. Their general opinion is that although Albania has made considerable progress in the field of drug policy the risk of drug offenses remains high. Albania has a history of organized crime with clan-based and hierarchically organized networks that are mainly involved in drug trafficking.

Domestic and international cooperation is good. Albania has established a number of domestic and international cooperation mechanisms that facilitate cooperation between competent authorities and foreign counterparts; however, cooperation mechanisms between supervisory agencies, both domestically and internationally, are underutilized.

The Albanian Drug Strategy envisages allocation of resources to expand drug treatment capacity. It will be critical to ensure that funding for drug treatment is clearly identified, that the broad objectives of funding are agreed, and that services in receipt of funding are accountable. For this to occur, there need to be agreed

treatment priorities, and agreed reporting of activity, outcomes and expenditure. Continued funding of clinical services is subject to meeting these requirements.

Albanian authorities indicate that drugs trafficking, human beings and arms trafficking, and corruption are the main predicate offences that generate proceeds in Albania. Due to its geographical position, Albania continues to be used by drug traffickers as a transit country. Albania is also a producer of cannabis.

Despite eradication programs that have resulted in a reduction of cannabis cultivation, such cultivation persists in various regions of the country. According to the authorities, no laboratories for the production of synthetic drugs have ever been discovered in Albania, and the trade in synthetic drugs remains virtually non-existent.

In 2005, the Albanian Government outlawed the circulation of speedboats and several other varieties of water vessels on all Albanian territorial coastal waters for a period of three years. This has slowed the movement of drugs by smaller waterborne vessels.

While drug demand reduction is a concern, the supply reduction of drugs is one of the most important issues on the agenda of the Albanian government. Drug demand reduction is spontaneous and few resources are available from the state budget. Drug-supply reduction and law enforcement issues are important in the fight against corruption and organized crime, and figure prominently among the Albanian government priorities.

It is exactly this kind of determination from the Albanian government in the fight against drugs, in close collaboration with international law enforcement agencies that has led to positive results over the past years. Today, drug trafficking in Albania has been reduced after tightening the country borders (land, sea, air). Measures that are taken against the cultivation of narcotics have decreased the level of cannabis cultivation in Albania.

IV. Proposals and recommendations for further research and advocacy work

Drug dependent patients are disproportionately from the poorer elements of society, and reliance on privately funded treatment and privately purchased medications reduces access to treatment, and potentially creates serious risks of feeding a black market. The consolidation and expansion of MMT (and of other Addiction services) in Albania will require staff to gain experience and skills across a range of Addictions treatments. In principle, this approach, laid out in the strategic plan of commissioning, a specialist service to provide leadership, guidelines, training,

research and evaluation is a sound one, designed to set treatment of drug addiction on a sustainable, long term basis.

It is better to start with a regulated system and move towards a more liberal one as more experience is gained, than to begin with a liberal program which risks giving Opiate Substitution Treatment a bad reputation (as occurred in the 1990s in Albania). Heroin supply is plentiful in Albania, and the persistent use of heroin during methadone treatment (and relapse after drug free treatment) is common.

International agencies have led in establishing harm reduction services for drug users, for which the Albanian Health system will need to assume responsibility. Investment in treatment of problem drug users is cost-effective, a public health investment which should substantially be met by the state, as without a state budget, no expansion of treatment capacity is going to be sustainable. Methadone is an inexpensive drug. The first necessary condition for sustaining (let alone expanding) access to methadone treatment is funding from Albanian Ministry of Health to purchase methadone supplies. Whether regulatory or legislative change is necessary, this is required to ensure methadone is a reimbursable medication, and that the government will supply medication for treatment programs.

Even today, the existing unbalanced positioning between drug demand and drug supply would be identified as the main gap. While drug demand reduction has remained an issue of inadequate concern, the supply reduction of drugs is high on the agenda of the Albanian government. While drug demand reduction is still spontaneous, fragmented and poorly financed, the drug-supply reduction and law enforcement issues constitute an integral part of the fight against corruption and organized crime, and figure prominently among the Albanian government priorities. It is exactly this kind of determination from the Albanian government in the fight against drugs, in close collaboration with international law enforcement agencies, that has led to positive results over the past years. Thanks to their efforts, they have seen: a reduction of drug trafficking after tightening the country borders (land, sea, air); the uprooting of the phenomenon of cannabis cultivation in Albania; an improvement of the professionalism of state police and a large suppression of criminal organizations/networks. Though the obtained positive results on drug supply reduction have a positive impact on drug demand reduction, this impact is an indirect one. Therefore, posing the drug demand reduction problem as a priority issue of the same importance as the drug supplies one represents a policy of a currently indispensable need.

Bibliography

-Anti-drug strategy 2012-2016, plus draft budget accompanying anti-drug strategy

- Annual Statistical Report 2010, Ministry of Justice
- Behavioral and Biological Surveillance Study among injecting drug users Report 2011 (Stop Aids)
- Criminal Code of Republic of Albania
- Criminal Procedural Code of Republic of Albania
- Compilation of Albanian Legislation in the Justice System, August 2010, EM-CDDA report on Albania
- Ensuring relevant authorities act to contain the HIV/TB/Hepatitis C epidemics among drug users and in prison settings in Albania, Serbia and the FYR of Macedonia: Assessment of policy and training needs in Albania REPORT UNODC 2012
- Official Gazette, no 85 24 July 2012
- Revista Shqiptare për Studime Ligjore, Takimi IV, Instituti Alb-Shkenca, 2009, Prof.As. Dr. Fatos GJATA
- SAIMS "Report on Prevention and Treatment Systems for drug-related health disorders in Albania 2011
- Section from R9 GFATM
- Unified decision of High Court, No 1 dated 27.03.2008
- Website addresses: <http://www.ishp.gov.al> www.aksionplus.net <http://www.komunitetiemanuel.org> www.qpz.gov

Country Report Bosnia and Herzegovina

Country Report Bosnia and Herzegovina

by Irma Deljković¹

I. Current national drug strategy and the drug legislation in Bosnia and Herzegovina

1. National Strategy on Drugs

The Dayton Peace Agreement that put an end to the 1992-1995 war in Bosnia and Herzegovina, created a country with a complex political structure, comprised of governments at the State, Entity (Federation of Bosnia and Herzegovina and Republic of Srpska) and District (Brčko) levels. Namely, each level has its own constitution, presidency (except District), government, parliamentary assembly and judiciary. The Constitution of Bosnia and Herzegovina limits the competencies of the central government and allocates residual powers to the Entities. The Federation is subdivided into ten Cantons, also with their own constitution, government, parliamentary assembly and judiciary, while the Republic of Srpska has no Cantons, only municipalities. It should also be mentioned that Cantons consist of municipalities. Further, Brčko District presents a self-governing administrative unit in Bosnia and Herzegovina, with its own Statute, government, parliamentary assembly and judiciary.

Due to such complex governmental structure, Bosnia and Herzegovina further has fragmented legislation, that is, each jurisdiction has its own laws, which are applicable only in these jurisdictions, except the state laws which apply to the entire territory of Bosnia and Herzegovina. One of the major problems has been the lack of a Supreme Court at the state level that can harmonise the application of legislation across the country. However, the Constitutional Court of Bosnia and Herzegovina has jurisdiction over disputes between the central institutions of Bosnia and Herzegovina, between the Entities and the central government or between the Federation of Bosnia and Herzegovina and the Republic of Srpska. In addition, at the request of any court in Bosnia and Herzegovina, the Constitutional Court can examine the compatibility of any law (including the Entities' laws) with the Constitution of Bosnia and Herzegovina, the European Convention on Human Rights and international public law.

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Bosnia and Herzegovina adopted its national Strategy for the Prevention and Suppression of Narcotic Drugs Abuse for 2009-2013 and its Action plan for the same period of time.

The Strategy sets out the following general objectives: Increasing awareness through community education to implement healthy lifestyles and mental health; Combating and preventing further spread of drug abuse; Prevention of the development of addiction, death and injury due to abuse of narcotic drugs; Reducing damage to the community caused by abuse of drugs; Reducing the demand for narcotic drugs, especially among young people; Strengthening institutional capacity and responsible involvement of society; Improvement of legislation and its implementation; Reducing the supply of drugs; Formation of an independent multisectoral Office for the Prevention of drug abuse at the state level.

The Action Plan to Combat Drug Abuse in Bosnia and Herzegovina is designed based upon the strategic objectives stemming from the state Strategy for the Prevention and Suppression of Narcotic Drugs Abuse for 2009.-2013, and it consistently monitors its content structure and terminology. For each of the strategic areas, the Action Plan defines the specific objectives, priority measures, activities, deadlines, holders of implementation and indicators of implementation of measures and activities.

According to the Law on the Prevention and Combating of the Abuse of Narcotic Drugs in Bosnia and Herzegovina that was passed in 2006, corresponding and coordinating bodies at the state level, which are responsible for implementing drug policy are the Commission and Office for Suppressing Narcotic Drug Abuse.

The **Commission for Suppressing Narcotic Drug Abuse** is a body that coordinates the activities of ministries, independent administrative organisations and other entities involved in implementing the national Strategy for the Prevention and Suppression of Narcotic Drug Abuse for 2009-2013. The Commission for Suppressing Narcotic Drug Abuse was established by the Council of Ministers, and it is composed of members of: the Ministries of Health (the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District) and the Chief of the Office for Suppressing Narcotic Drug Abuse from the Ministry of Security of Bosnia and Herzegovina. The Commission is chaired by the Minister of Civil Affairs of Bosnia and Herzegovina. While performing the tasks referred to in the Law on the Prevention and Combating of the Abuse of Narcotic Drugs, the Commission for Suppressing Narcotic Drug Abuse:

a) considers issues and makes recommendations and suggestions for the implementation of the international conventions on the control of narcotic drugs and other regulations and mechanisms of action;

- b) develops and oversees the implementation of a comprehensive and systematic vision surveillance strategy in drugs, prevention and control of drug abuse;
- c) promotes preventive action and public information about the harmful use of drugs;
- d) establishes a system to collect data on the nature and extent of the abuse of drugs in Bosnia and Herzegovina, and the system of processing;
- e) coordinates and supports the activities of non-governmental organizations and other organizations in the prevention and treatment of harmful use of narcotic drugs;
- f) proposes laws and regulations, and other mechanisms of action in connection with the issue of abuse and harmful use of narcotic drugs;
- g) performs other duties entrusted to it by the Council of Ministers of Bosnia and Herzegovina.

Office for Suppressing Narcotic Drug Abuse - is a body of the Ministry of Security of Bosnia and Herzegovina which is responsible for the systematic gathering of data and monitoring of the phenomena, collecting and processing data required for preventing and combatting illicit drug trafficking and other criminal offences related to the abuse of narcotic drugs, and coordination of activities conducted by the police, customs and other bodies in the fight against the abuse of narcotic drugs. While performing the tasks referred to in the Law on the Prevention and Combat of the Abuse of Narcotic Drugs, the Office for Suppressing Narcotic Drug Abuse:

- a) receives and analyzes reports of crimes and offenses relating to narcotic drugs, persons convicted of the crimes and offenses related to drugs, executing sentences and other sanctions against the perpetrators, seized quantities of narcotic drugs, psychotropic substances, plants and precursors, funds and other proceeds from the illicit traffic in narcotic drugs, and reports of customs offenses related to narcotic drugs;
- b) collects and analyzes data on the annual needs of drugs that in compliance with the law be produced and put into circulation, follows plant growing, import, export and transit of narcotic drugs and precursors based on the reports of the permit of competent authorities;
- c) cooperates with the authorities at all levels of government, social welfare institutions, educational, cultural, health and other institutions, religious communities, associations, foundations, the media, and legal and individual persons in order to prevent narcotic drug abuse;

d) cooperates with international bodies, institutions, associations and other legal entities and individuals, and cares for the successful implementation of international cooperation in preventing and combating illicit drugs, particularly the illicit traffic in narcotic drugs;

e) performs other tasks in the area of prevention of drug abuse that are established by the Council of Ministers Bosnia and Herzegovina or the Commission for Suppressing Narcotic Drug Abuse.

Police agencies that are responsible for taking actions to prevent and suppress drug-related crime in Bosnia and Herzegovina are: State Agency for Information and Protection, State Border Police, Ministries of internal affairs in entities and cantons and Police of Brčko District. Within these institutions, there are special units that are responsible for all necessary operational measures to fight drug-related crimes, especially those related to organised forms of illegal manufacturing and trafficking of narcotic drugs.

The Ministry of Trade and Economic Relations is responsible for the control of plants containing narcotic and psychotropic substances.

Customs and the Border Police are responsible for controlling the import and export of drugs and precursors.

The Agency for Medicines and Medical Equipment is responsible for the authorisation of narcotic and psychotropic substances for legal (medical) purposes in Bosnia and Herzegovina

Bosnia and Herzegovina as a full member of certain international and regional organizations such as the United Nations and the Council Europe has committed to accepting all agreements and conventions that were made under the auspices of these organizations. Therefore, Bosnia and Herzegovina as one of the republics of the former Yugoslavia, with a notification of succession became a member of the three UN drug Conventions and the Protocol: the 1961 Single Convention on Narcotic Drugs as well as the Protocol of 1972 amending it, the 1971 UN Convention on Psychotropic Substances, and the 1988 UN Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Since illegal drug trafficking is one of the most profitable activities of organized crime, in addition to the above, Bosnia and Herzegovina in 2002 ratified the United Nations Convention against Transnational Organized Crime from 2000. Bosnia and Herzegovina has also ratified the regional acts of the Council of Europe, which are important in the field of countering narcotic drug abuse: the European Convention on the Suppression of Terrorism from 1977. and the Council of Europe

Convention on Money Laundering, Search, Seizure and Confiscation of the Proceeds of Crime from 1990.

Furthermore, regional cooperation on the issue of drugs is also established at the level of countries of South East Europe, through the signing and implementation of bilateral and multilateral agreements. Therefore, Bosnia and Herzegovina signed the following bilateral agreements: Agreement between the Council of Ministers of Bosnia and Herzegovina and the Republic of Croatia on Cooperation in the Fight Against Terrorism, Trafficking, Narcotic Drug Abuse and Organized Crime in 2002;² The Agreement on Cooperation in the Fight Against International Terrorism, Illicit Trafficking, Narcotic Drugs and Psychotropic Substances and Organized Crime between the Council of Ministers of Bosnia and Herzegovina and the Republic of Turkey in 2000; and the Agreement between the Government of the Republic of Bosnia and Herzegovina and Government of the Republic of Hungary on Cooperation in the Struggle Against Terrorism, Drug Trafficking and Organized Crime in 1996.

The Council of Ministers of Bosnia and Herzegovina in August 2012 forwarded to the Parliamentary Assembly of Bosnia and Herzegovina a Draft decision on ratification of the Agreement between the Council of Ministers of Bosnia and Herzegovina and the Republic of Moldova on Cooperation in the Fight Against Organized Crime, Illicit Trafficking in Narcotic Drugs and Psychotropic Substances, Terrorism and Other Forms of Serious Crime; and requested its ratification.

An example of multilateral regional cooperation is the Agreement on Cooperation in Preventing and Combating Cross-Border Crime and the Charter of Organization and Operation of the Regional Centre for Cooperation of Southeast European initiatives - SECI. And finally, documents of the European Union, which have an important role in policy for combating narcotic drug abuse within the international arena are of great importance to Bosnia and Herzegovina.

The national Strategy for the Prevention and Suppression of Narcotic Drug Abuse for 2009-2013, addresses the issue of social aid services through its provisions on welfare programs, drug rehabilitation programs, resocialisation of drug addicts and their social integration. The Strategy also refers to strengthening institutional capacity and responsible involvement of society. To that end, the Strategy provides that the NGOs will be involved in rehabilitation programs of drug addicts, establishing therapeutic communities and drug addiction rehabilitation centers, as well as in the establishment of a network of institutions to support users in their resocialization. It is of further importance to mention that the Strategy places special

2. Expiry date: 17.9.2010.

emphasis on the role of civil society in solving problems related to drugs. Specifically, the Strategy states that due to this complex social issue, it is necessary to ensure the participation of civil society, the private sector and volunteers in all phases of elaboration, adoption and enforcement of legal decisions and policy documents at all levels, as well as the implementation of the planned program activities. Developing forms of institutional and non-institutional communication and connections between these subjects will contribute to strengthening partnerships and harmonization of their activities on the implementation of assistance programs for drug addicts and their families, as well as the development of a competitive mixed system of service delivery.

The Strategy for the Prevention and Suppression of Narcotic Drug Abuse for 2009-2013 and the National Action Plan to Combat Drug Abuse in Bosnia and Herzegovina for 2009-2013, follow the standards set in the EU drug policy, and therefore no major important issues are missing in them. However, one of the drawbacks of the Strategy is that it doesn't prescribe well the actions required to reduce the supply of drugs. In these terms, the Strategy fails to clearly define measures to be taken for this purpose, such as: directing police officers to detect international organized crime involving drugs, increasingly taking operational-tactical measures and actions in order to suppress the street resale of drugs, increasing oversight of the state border to prevent smuggling of narcotics, preventing and combating all forms of (especially organized) production, smuggling and selling of narcotics and trafficking of precursors, money laundering and confiscation of money and other valuables that are the proceeds of illegal drug trafficking, and other measures. What is more, the Action Plan also very superficially elaborates activities to operationalize the objectives of the Strategy. Finally, the major shortcoming stems from the lack of effective institutional commitment and sustainable mechanisms for financing the implementation of these documents.

2. National Substantive Criminal Law

The criminal laws of Bosnia and Herzegovina (State Criminal Code, the Criminal Codes of Federation of Bosnia and Herzegovina, Republic of Srpska and Brčko District) do not make a distinction between misdemeanors and felonies. The criminal laws only prescribe criminal offences which are prosecuted *ex officio*. The basic right and the basic duty of the prosecutor is the detection and prosecution of perpetrators of criminal offences falling within the jurisdiction of the courts.

According to the Criminal Code of Bosnia and Herzegovina, criminal sanctions are:

- penalties,
- suspended sentence,

- security measures and
- educational measures.

According to the Criminal Codes of the Federation of Bosnia and Herzegovina, Republic of Srpska and Brčko District, criminal sanctions are:

- penalties,
- warning sentences (Judicial admonition and Suspended sentence).
- security measures and
- educational measures.

The penalties include: imprisonment and fines. Although it is a criminal system that is reduced to a small number of penalties, it is still quite flexible, because under certain legal requirements, the court may impose a suspended prison sentence for the offender instead of prescribed punishment, and towards entities judicial admonition can also be imposed. Also, the law provides not only the ability to mitigate or alleviate penalties, but exemption from punishment, and the possibility that an already imposed sentence of imprisonment for a term not exceeding six months, with the consent of the accused, can be replaced with community service. This system applies to all criminally responsible and adult perpetrators of criminal acts. Juveniles under certain conditions, may be sentenced to juvenile prison, which is a special kind of prison sentence, and does not enter into the general system of penalties.

Long-term imprisonment and imprisonment may be pronounced only as the principal punishment, while a fine may be pronounced both as a principal and as an accessory punishment. If both punishments are prescribed for a criminal offence, only one of them may be pronounced as a principal punishment. Imprisonment may not be shorter than thirty days or longer than twenty years. For the gravest forms of serious criminal offences perpetrated with intent, imprisonment for a term between twenty-one and forty-five years (in the Republic of Srpska for a term between twenty-five and forty-five years) may be exceptionally prescribed (long-term imprisonment). Long-term imprisonment cannot be prescribed as the only principal punishment for a single criminal offence.

Criminal Codes also prescribe a possibility of the **substitution of imprisonment**, that is, imposed prison sentence of up to one year may (State level, Federation of Bosnia and Herzegovina and Brčko District), at the request of the convict, be replaced with a fine to be paid in one lump sum within 30 days. A sentence of imprisonment shall be replaced by a fine for every day of a prison sentence equated with a daily amount of 100 KM (50 €) or if the fine is determined at a fixed amount. In the Republic of Srpska, a sentence to imprisonment not exceeding six months may be replaced at the request of a convicted person with a fine.

For a **suspended sentence**, the court shall impose a punishment on the perpetrator of the criminal offence, but at the same time it shall order that the sentence shall not be executed if the convicted person does not perpetrate another criminal offence over a period of time established by the court which may not be shorter than one or longer than five years (probation period). A suspended sentence may be pronounced on a perpetrator only for an imprisonment term not exceeding two years or for a fine. While deciding on the suspended sentence, and on the basis of all circumstances relevant to the assessment, the court shall assess whether there are reasonable grounds to believe that the perpetrator will not commit any criminal offence in the future although the sentence will not be executed. If the perpetrator has been sentenced to both imprisonment and a fine, the suspended sentence may be pronounced either for both sentences or only for the sentence of imprisonment.

Judicial admonition - the purpose of judicial admonition is to give to a criminally responsible perpetrator a reprimand, when a punishment does not need to be imposed to achieve the purpose of criminal sanctions nor to ensure criminal justice protection. A judicial admonition may be pronounced for criminal offences for which a punishment of imprisonment for a term not exceeding one year or a fine is prescribed, which have been perpetrated under such extenuating circumstances which render them particularly minor, when, given all the circumstances regarding the perpetrator, his attitude toward the injured party and compensation for the damage caused by the criminal offence in particular, all requirements have been met for achieving the purpose of criminal sanctions without punishment.

Security measures - their purpose is to remove situations or conditions that might influence a perpetrator to perpetrate criminal offences in the future. These measures may only be imposed on the offender who is criminally accountable, and can not be imposed on the perpetrator of a crime as the only legal sanction, only as a complementary. The following security measures may be pronounced on perpetrators of criminal offences:

1. Mandatory psychiatric treatment,
2. Mandatory medical addiction treatment,
3. Ban on carrying out a certain occupation, activity or duty,
4. Forfeiture of items

Educational recommendations, measures and punishment for juveniles may be applied to a juvenile for criminal offences for which a fine or a punishment of imprisonment for a term not exceeding three years is prescribed. The educational recommendations may be applied to a juvenile by a competent prosecutor or judge

for juvenile perpetrators. The conditions for application of educational recommendations are: the juvenile's admission that he has perpetrated the criminal offence, and his expressed willingness to make amends with the injured party. Educational recommendations are:

- a) Personal apology to the injured party;
- b) Compensation of damage to the injured party;
- c) Regular school attendance;
- d) Working for a humanitarian organisation or local community;
- e) Accepting an appropriate job;
- f) Being placed in another family, home or institution;
- g) Treatment in an adequate health institution;
- h) Attending instructive, educational, psychological and other forms of counselling;

Educational recommendations given under items a) to c) and h) shall be applied by the competent prosecutor, while the recommendations given under items d) to g) shall be applied by the juvenile judge.

3. National Drug Laws and Institutions

With the aim of implementing the Single Convention on Narcotic Drugs of 1961, as amended and modified by the Protocol in 1972 amending the Single Convention on Narcotic Drugs of 1961, the Convention on Psychotropic Substances, 1971 and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1998, the Parliamentary Assembly of Bosnia and Herzegovina in February 2006 adopted the **Law on the Prevention and Suppression of Drug Abuse in Bosnia and Herzegovina** .

This Law serves as the foundation of all laws and regulations on drugs in Entities and Brčko District on issues of growing plants, manufacturing, possession and trafficking of drugs, other substances used for making drugs, precursors, and the cultivation of plants used for drug manufacturing. Cultivation, production and trade of drugs, if committed without the necessary permits, are considered criminal offences. Permits are issued according to the terms and procedures prescribed in the Law on the Prevention and Suppression of Drug Abuse in Bosnia and Herzegovina.

Bosnia and Herzegovina through its criminal legislation has incriminated misuse of narcotic drugs and their illegal trade. Due to the fragmented legislation, the legal protection in the field of drug issues is regulated differently in Criminal Codes of Bosnia and Herzegovina.

The Criminal Code of Bosnia and Herzegovina criminalizes certain forms of illegal trafficking of narcotic drugs that have an international dimension, while the integrity of legal protection from different forms of drug misuse has been ensured through enactment of criminal offences in Criminal Codes of entities and Districts. Therefore, the Criminal Code of Bosnia and Herzegovina, in chapter seventeen, under the heading *Crimes against Humanity and Values Protected by International Law* in article 195, has prescribed one criminal offence:

Illicit Trafficking in Narcotic Drugs: For this criminal offence to be prosecuted at the state level, it is necessary that all acts (i.e., the international sale, transfer, purchase, transport, delivery, etc.) present unauthorized international circulation of substances or preparations which are by regulation proclaimed narcotic drugs:

- (1) Whoever without authorization performs an international sale or transfer or offers for such sale, or purchases, keeps, transports or transfers for the purpose of such sale, or intercedes in an international sale or purchase, sends, delivers, imports or exports or otherwise puts into unauthorised international circulation substances or preparations which are by regulation proclaimed narcotic drugs, **shall be punished by imprisonment for a term not less than three years.**
- (2) Whoever organizes a group of people with the aim of perpetrating the criminal offence referred to in paragraph 1 of this Article, or whoever becomes a member of such a group of people, **shall be punished by imprisonment for a term not less than five years.**
- (3) Whoever without authorization makes, procures, intermediates or gives for use the equipment, material or substances knowing that they are to be used for the manufacturing of narcotic drugs, when it concerns the international transaction, **shall be punished by imprisonment between one and ten years.**
- (4) The intoxicating drugs and processing equipment shall be forfeited.

Apart from the State Criminal Code, Criminal Codes of Federation of Bosnia and Herzegovina (articles 238. and 239.), Brčko District (articles 232. and 233.) and Republic of Srpska (articles 224. and 225) under the heading *Criminal Offences Against People's Health*, have enacted two drug related criminal offences:

Unauthorized Production and Sale of Narcotic Drugs (Article, 238. Criminal Code of Federation of Bosnia and Herzegovina) - this offence includes the sale, manufacture, purchase (for sale), transfer (for sale) of narcotic drugs, etc., and punishment for these activities **is imprisonment for a term of one year to ten years.**

The punishment of **imprisonment for a term not less than three years** will be imposed on a person who has organized a group of people with the aim of perpetrating this criminal offence, and for the person who becomes a member of such a group.

Furthermore, a person who manufactures, procures, possesses or gives for use the equipment, material or substances for the production of narcotic drug shall be punished by **imprisonment for a term of six months to five years**.

Possessing and Enabling Enjoyment of Narcotic Drugs (Article 238, Criminal Code of Federation of Bosnia and Herzegovina) - second offence, inducing giving another a narcotic drug for his use or the use of a third person, rendering available premises for the enjoyment of narcotic drugs, or otherwise enabling another to illegally use narcotic drugs, may be punished by **imprisonment for a term of three months to five years**.

Imprisonment for a term of one year to ten years will be imposed if this criminal offence is committed against a child, juvenile or against a number of persons, or if particularly grave consequences are caused.

Possession of narcotic drugs without authorization is punishable by **imprisonment for a term not exceeding one year**.

Unauthorised Production and Distribution of Narcotics (Article 232, Criminal Code of Brčko District):

- (1) An unauthorised person who produces, processes, sells or offers for sale, or purchases for resale, who keeps, transports or intermediates in the sale or purchase, or in some other way distributes substances or products which are declared narcotics by regulations, shall be **sentenced to prison from one to ten years**.
- (2) A person who organizes a group of persons in order to commit the offence referred to in Paragraph 1 of this Article or a person who becomes a member of such an organized group shall be **sentenced to prison for not less than three years**.
- (3) An unauthorised person who manufactures, purchases, intermediates or provides for use the equipment, material or substances for which he knows are intended for the production of narcotics, shall be **sentenced to prison from six months to five years**.
- (4) The narcotics and the equipment for their production shall be confiscated

Enabling the Consumption of Narcotics (Article 233, Criminal Code of Brčko District):

- (1) A person who induces another to consume narcotics, or gives another a narcotic for his or some other person's consumption, or renders available premises for the purpose of consuming narcotics or in another way enables another to consume narcotics, shall be **sentenced to prison from three months to five years**.
- (2) If the offence referred to in Paragraph 1 of this Article has been committed against a child, juvenile or against a number of persons, or if the offence resulted in particularly grave consequences, the perpetrator shall be **sentenced to prison from one to ten years**.
- (4) The narcotics shall be confiscated.

Unauthorized Production and Sale of Narcotic Drugs (Article 224, Criminal Code of Republic of Srpska)

- (1) Whoever, without authorization, produces, processes, sells or offers for sale, or purchases for sale, keeps or transports, or acts as intermediary in a sale or purchase, or otherwise puts into circulation substances or preparations which are declared intoxicating drugs, shall be punished by **imprisonment for a term between three and ten years**.
- (2) If the criminal offence referred to in Paragraph 1 of this Article has been committed by several persons or if the perpetrator has organized a network of dealers or if he has used a child or a minor for the commission of the criminal offence, the perpetrator shall be punished by **imprisonment for a term between five and fifteen years**.
- (3) Whoever, without authorization, produces, procures, possesses or lends equipment, material or substances which he knows are intended for the production of intoxicating drugs, shall be punished by **imprisonment for a term between three and five years**.
- (4) The court may pronounce a less severe punishment or release the perpetrator from punishment if the perpetrator reports his supplier of intoxicating drugs.
- (5) The intoxicating drugs and processing equipment shall be forfeited.

Enabling Another to Enjoy Narcotics (Article 225, Criminal Code of Republic of Srpska):

- (1) Whoever induces another to enjoy intoxicating drugs, or gives to another some intoxicating drugs for his or the use of a third person, or renders available premises for the enjoyment of intoxicating drugs, or otherwise enables another to enjoy intoxicating drugs, shall be punished by **imprisonment for a term between two and ten years**.

- (2) If the offence referred to in Paragraph 1 of this Article has been committed against a child, minor, mentally disturbed person or against a number of persons, or if the offence resulted in particularly serious consequences, the perpetrator shall be punished **by imprisonment for a term between three and ten years.**
- (3) The narcotic drugs shall be forfeited.

The punishment for possession of drugs for personal use was introduced in criminal legislation of Federation of Bosnia and Herzegovina and Brčko District in 2003, and it represented a radical move towards repressive criminal policy in the Federation and Brčko District, since the Criminal Code of Republic of Srpska at the time, did not recognise possession of narcotic drugs for personal use as a criminal offence. However in 2010, the Brčko District made changes in its drug policy, and therefore according to the new criminal law provisions, possession of drugs for personal use is no longer considered a criminal offence in this part of Bosnia and Herzegovina.

Possession of narcotic drugs without authorization in the Republic of Srpska and Brčko District as a misdemeanor offence is punishable by the Law on the Prevention and Combating of the Abuse of Narcotic Drugs in Bosnia and Herzegovina, where it is prescribed that a person who possesses a narcotic drug, a plant or part of a plant from which it may obtain a narcotic drug contrary to this Law, **shall be punished with a fine ranging from 2,000 to 5,000 KM (1000 to 2500€).**

The Criminal Codes of entities and Brčko District do not explicitly proclaim drug addiction as a mitigating or an aggravating circumstance. However, being obliged to consider all relevant facts and circumstances related to the case, the court has to take into account the personal characteristics of the offender, including drug use or drug addiction. Therefore, it is at the discretion of the court to decide if the drug addiction will be used as a mitigating or an aggravating circumstance while imposing a sentence.

Furthermore, Criminal Codes of Entities and District do not provide different penalties depending on whether the offender is a drug addict or not. It is up to the court to decide whether and how to consider the offender's addiction when determining the penalty. However, the court can impose a security measure of Mandatory medical addiction treatment, since this measure is focused on the elimination of conditions that can induce the perpetration of the offence again.

Criminal legislation in Bosnia and Herzegovina does not make a difference between 'soft' and 'hard' drugs in regards to the offences, since there is no legal definition of these terms. The only classification of narcotic drugs is defined in the *Law on the Prevention and Suppression of Drug Abuse in Bosnia and Herzegovina*, which

states that narcotic drugs, psychotropic substances, the plants from which they can get drugs and precursors and their products in the list are grouped in tables I, II, III. and IV, depending on the control measures that are applicable to them. Substances and plants classified { those regarded as narcotic drugs or psychotropic substances and their preparations are classified into one of the following tables} are:

- Table I: Prohibited substances and plants;
- Table II.: Substances and plants under strict control;
- Table III.: Substances and plants under control.
- Precursors are classified in Table IV.

The substances and plants, which are under international control cannot be classified in the table which is subjected to control measures less stringent than those for a particular substance or plant required in accordance with the international conventions on the control of narcotic drugs.

There is no difference in the law between small and big drug dealers. The only provisions which refer to the 'type' of dealer are between those, who are involved in organizing a network of dealers or becoming a member of such a network, or using a child or a minor for the commission of the criminal offence, and those who are not.

For those involved in these activities a higher penalty is prescribed.

Drug related offences fall within the jurisdiction of the general courts in Bosnia and Herzegovina. There are no specialized courts which would deal with these type of offences. However, due to the division of court jurisdiction in Bosnia and Herzegovina, the drug related criminal offence prescribed in the Criminal Code of Bosnia and Herzegovina is prosecuted at the Court of Bosnia and Herzegovina, while the two other incriminations which are prescribed by the Criminal Codes of Entities and Brčko District are prosecuted within the jurisdiction of courts in Entities and District.

The principle of universal jurisdiction can be applied for criminal offences *related to drugs*. This principle is defined in the Criminal Codes of Bosnia and Herzegovina, Entities and Brčko District, where the meaning of this principle arises out of international solidarity and the need to prevent serious offenses against cosmopolitan values . According to the above mentioned Criminal Codes, the criminal legislation of Bosnia and Herzegovina, its Entities and Brčko District, shall apply to an alien who, outside these territories perpetrates a criminal offence against a foreign state or a foreign national which under this legislation carries a punishment of imprisonment for a term of five years or a more severe punishment. These provisions shall apply only if the perpetrator is found in the territory of Bosnia and Herzegovina and is not extradited to another country.

4. Drug Law Enforcement in Practice

In general, police agencies in Bosnia and Herzegovina are focused on developing capacities in the area of the fight against unauthorized production, sale, use and possession of narcotic drugs. Criminal law is used aggressively against drug users in the Federation of Bosnia and Herzegovina, even in the cases of possession and use of small amounts of cannabis. The result of the more repressive policy in the Federation of Bosnia and Herzegovina is that police officers are focused on arresting persons for consuming and possessing drugs for personal use. Such practice has continued to apply, despite the fact that Bosnia and Herzegovina was a signatory of an Action Plan on Drugs between the European Union and Countries of Western Balkans and Candidate Countries (Bulgaria, Romania and Turkey) in 2003,³ where in the area of sentencing policy, the Plan urges for distinction between those who have committed serious offences and addicts.

Police agencies in Bosnia and Herzegovina are using criminal investigation techniques, evidentiary acts and special investigative actions in order to detect cannabis farms and laboratories for the production of other illicit drugs. Cannabis farms are detected in many parts of the country, although the territory of Herzegovina seems to be favorable for the cultivation of cannabis due to the good climatic conditions. The profile of the producers ranges from small scale home-growers to large-scale criminal entrepreneurs.

Police detention and pre-trial detention are not dependent on drug addiction.

The police may deprive a person of liberty if there are grounds for suspicion that he may have committed a criminal offence and if there are any of the reasons for pre-trial detention, but they must immediately, no later than 24 hours, bring that person before the prosecutor. In apprehending the person concerned, the police authority shall notify the prosecutor of the reasons for and time of the deprivation of liberty.

Custody shall be ordered or extended by a decision of the Court issued on the motion of the prosecutor after the court has heard the suspect or the accused regarding the circumstances surrounding the grounds for proposed detention. If there is a grounded suspicion that a person has committed a criminal offence, custody may be ordered against in the following cases: a) if the person hides or if other circumstances exist that suggest a possibility of absconding; b) if there is a justified fear to believe that person will destroy, conceal, alter or falsify evidence or clues important

3. Action Plan on Drugs between the EU and Countries of Western Balkans and Candidate Countries (Bulgaria, Romania and Turkey). 5062/2/03. CORDROGUE 3 COWEB 76.

to the criminal proceedings or if particular circumstances indicate that the person will hinder the inquiry by influencing witnesses, accessories or accomplices; c) if particular circumstances justify a fear that the person will repeat the criminal offence or complete the criminal offence or commit a threatened criminal offence, and for such criminal offences a prison sentence of three years or more may be pronounced; d) in exceptional circumstances, in the case of a criminal offence carrying a prison sentence of ten years or a more severe punishment, which is of particular gravity taking into account the manner of perpetration or the consequences of the criminal offence, if the person's release poses a realistic threat to disturb public order.

The legislation does not regulate the status of drug addicts during the hearing. The perpetrator's dependency does not affect the imposition of pre-trial detention or other actions of the court and law enforcement agencies in the criminal proceedings.

Regarding the issue of police entrapment in Bosnia and Herzegovina, it is prescribed by the Criminal Procedure Codes that, in executing the special investigation actions, police authorities or other persons shall not undertake activities that constitute incitement to commit a crime. If such activities are undertaken, this circumstance excludes prosecution of the incited person for a criminal offence committed in connection with this action. There are no specific rules for the offence of drug trafficking.

There are no available data for the imposed sentences from the courts for drug related crime, and there are no special provisions for drug addicted offenders followed by the courts. Statistical data are currently available for drug related crime offences (number of police reports) according to the database of Ministry of Security of Bosnia and Herzegovina.

Table 1

According to the document of Ministry of Security of Bosnia and Herzegovina under the name Information about the security situation in Bosnia and Herzegovina

No.	Ministries of Internal Affairs of Entities and Brčko District Police	Drug related criminal offences		
		2010	2009	+/-%
1.	Federation of Bosnia and Herzegovina	953	1087	-12,32
2.	Republic of Srpska	213	197	8,12
3.	Brčko District	54	45	20,00
4.	State Border Police	38	52	-26,92
5.	State Investigation and Protection Agency (SIPA)	42	7	500
Total in Bosnia and Herzegovina		1300	1388	-6,34

Table 2
Data of Ministry of Security of Bosnia and Herzegovina

Ministries of Internal Affairs of Entities and Brčko District Police- Reports for drug related criminal offences (2011)	Number of reported offences
Illicit Trafficking in Narcotic Drugs	59
Unauthorized Production and Sale of Narcotic Drugs	528
Possessing and Enabling Enjoyment of Narcotic Drugs	714
Enabling Enjoyment of Narcotic Drugs	44

5. Sentencing Levels and the Prison Situation

There are fifteen prison establishments in Bosnia and Herzegovina. The European Institute for Crime Prevention and Control and United Nations Office on Drugs and Crime reported that in 2007 Bosnia and Herzegovina was among the countries with a lowest prison population rates in Europe (62 per 100,000).⁴ According to the data provided for the OSCE Report on assessment of the human rights situation in penitentiary institutions in Bosnia and Herzegovina (2011), prisons accommodated 2,580 persons in 2009. Therefore, in line with this data, in a country with a population of about 4 million people, the prison population rate is 64,5 per 100,000 and presents a low prison population by European standards.⁵

Apart from the Detention Unit of the Court of Bosnia and Herzegovina, there are 14 prison facilities in Bosnia and Herzegovina: eight in Federation of Bosnia and Herzegovina and six in the Republic of Srpska, where the capacity is largely different. In the Brčko District of Bosnia and Herzegovina there is no prison facility for execution of criminal sanctions, instead sanctions are executed in the entities prisons. The legal basis for this is a Memorandum of Understanding between the Brčko District and the entities. Brčko District of Bosnia and Herzegovina has a detention unit.

The State prison system in Bosnia and Herzegovina is deeply disturbing. During the past years, there has been a constant tendency to increase the number of pri-

4. European Institute for Crime Prevention and Control and United Nations Office on Drugs and Crime (2010). *International Statistics on Crime and Justice*. Helsinki: Author.

5. OSCE Mission to Bosnia and Herzegovina (2011). *Torture, Ill-treatment and Disciplinary Proceedings in Prisons of Bosnia and Herzegovina- An assessment of the human rights situation in penitentiary institutions in Bosnia and Herzegovina*, pp. 3-4. Available at: http://www.oscebih.org/documents/osce_bih_doc_2012031617283531eng.pdf

soners in prisons in the Federation and in the prisons of Republic of Srpska. By the standards of the Council of Europe, the prison population is already 10% above capacity. However, besides the overcrowding, another problem is the unsuitable physical conditions of the buildings. Many prisons are unsuitable for providing a safe environment for prisoners, since some of the buildings were constructed in the 19th century and do not correspond to the modern prison service. The type of residential care accommodation with dormitories is still prevalent, while the number of facilities for the activities of inmates is limited.

There is no available statistical data about the prisoners that are incarcerated for drug-related offences, considering the fact that in Bosnia and Herzegovina there is no electronic database on the recording of such information.

Between 30% and 70% of inmates are addicted to drugs.⁶ Inter-prisoner violence is often related to drug abuse, especially among drug users, who are willing to engage, at the order of other prisoners, in violence and threats in order to obtain illegal substances. Drug addicts present a vulnerable group prone to abuse, in particular those who are under the influence of narcotics or suffering withdrawal symptoms. They are not only victims of physical violence but have also been identified as instigators of violence.⁷

Prisons do not have any special strategies that deal with security measures for addicts. In some places, the search will be carried out in case of suspicion that the inmate smuggled in or is in possession of a narcotic drug. Otherwise, there are detailed inspections and searches of packages to be delivered or sent. More attention is paid to the benefits to users outside the prison (for example, those on temporary leave from prison), and who are likely to attempt to bring drugs into the prison. In cases where drug abuse is discovered, the Ministry of Internal Affairs is notified and the drug is handed in to the police. Disciplinary and criminal charges are filed against the perpetrators. Furthermore, prisons have no regulated training for all employees on issues related to drugs. Only a small number of prisons organizes training for guards in prisons on recognizing drug abuse, effective action, ways to treat drug addicts in prisons and how to recognize when they are under the influence of drugs, and to discover the most common places where drugs are hidden.

6. Godišnji izvještaj o stanju zloupotrebe opojnih droga u BiH za 2010. (Annual Report for State of Drug Abuse in Bosnia and Herzegovina for 2010) Retrieved from: <http://www.msb.gov.ba/dokumenti/strateski/?id=7437>

7. Organization for Security and Co-operation in Europe, Mission to Bosnia and Herzegovina (2011). *Torture, Ill-treatment and Disciplinary Proceedings in Prisons of Bosnia and Herzegovina: An assessment of the human rights situation in penitentiary institutions in Bosnia and Herzegovina*. Available at: http://www.oscebih.org/documents/osce_bih_doc_2012031617283531eng.pdf

This training was conducted by officers of the Ministry of Internal Affairs, the Department of Narcotics.⁸

According to the results of the empirical research (quantitative and qualitative) that was conducted on a sample of the committed disciplinary offences (1811 prisoners) and criminal offences (74) during the execution of sentence that was registered by prison administration in the period 2005-2008,⁹ upon receipt of a prisoner, there is no use of any specialized tests that determine whether a person is suffering from a mental illness or is addicted to alcohol and drugs. This information is retrieved from prisoners if they are willing to provide certain medical records or their voluntary statement that they are addicted to alcohol or drugs (unless such documentation is not part of the court file which was forwarded to the prison). Research also shows that of the total number of committed disciplinary offences for the period 2005-2008, in prisons in Bosnia and Herzegovina, 11.3% prisoners were addicted to alcohol, and up to 16.1% addicted to narcotic drugs. Regarding the offences committed during the execution of the prison sentence, 4.1% of the total number of committed criminal offences constitutes a criminal offense of illicit production and trafficking of narcotic drugs.

In 2010, NGO Viktorija conducted a survey on HIV and HCV prevalence in prisons through the administration of testing to 143 persons in Tunjice prison. Among those tested, 42 were IDUs, 78 other prisoners and 23 were employees. Approximately 50% of IDUs tested positive for HCV. One percent of other (non-IDU) prisoners and none of the employees tested positive for HCV. No case of HIV infection was detected.

The national Strategy for the Prevention and Suppression of Narcotic Drug Abuse for 2009-2013 advocates for improvement of the access to prevention, treatment, rehabilitation and harm reduction programs in detention facilities. The Strategy states that for the implementation of the treatment of drug addicts in the prison system, inmates need treatment for addiction under the same principles and conditions available to the addicts outside prison. It is also prescribed that the minimum standard of harm reduction programs in prison terms are substitution therapy, sociotherapeutic programs and distribution of condoms. Apart from providing

8. Godišnji izvještaj o stanju zloupotrebe opojnih droga u BiH za 2010. (Annual Report for State of Drug Abuse in Bosnia and Herzegovina for 2010) Retrieved from: <http://www.msb.gov.ba/dokumenti/strateski/?id=7437>

9. Marija, Lučić - Ćatić (2012). *Proactive criminal investigation in penitentiary system of Bosnia and Herzegovina*. Ph.D. Thesis, Faculty of Criminal Justice, Criminology and Security Studies, University of Sarajevo.

health care, while in custody, the detoxification methadone treatment should be applied as well as harm reduction.

The Law on Execution of Criminal Sanctions in the Federation of Bosnia and Herzegovina, prescribes the mandatory treatment of addicts and alcoholics imposed with unconditional imprisonment, to be executed in the correctional institution where conditions for such treatment exist or in special medical institutions established only for that purpose, or in a special department of health facilities. However, in the Federation of Bosnia and Herzegovina there is no such medical or correctional institution, therefore, such a measure is hardly applied in the practice. The Law on the Execution of Criminal Sanctions in Republika Srpska, provides that addiction treatment is regulated in a similar way as in the law of the Federation. However, this Law in the Republic of Srpska in Article 108, provides the legal basis for testing for infectious diseases, alcohol and drug use in the prison environment, although the basis is not precise enough.¹⁰ The Law on Execution of Criminal Sanctions in Brčko District prescribes that the security measure of mandatory treatment of addiction, imposed with the unconditional sentence of imprisonment shall be served in the correctional institution in accordance with regulations issued by the Minister of justice of entities. The security measure of mandatory treatment of addiction, imposed with a sentence of probation or community service, is executed in accordance with the Law on Execution of Criminal Sanctions, detention and other measures of the entity on whose territory the health facility is located.

Treatment of prisoners who are drug addicts is carried out on the basis of the court's decision (imposed security measure - treatment of addiction), determined on the basis of diagnosis. The article 73. of the Law on Execution of Criminal Sanctions of Bosnia and Herzegovina stipulates that the prison authorities are responsible for ensuring the necessary conditions for the realization of the right to health care, and there should be a prison doctor. Accommodation of detainees or prisoners in the ambulatory service in the prison is decided by the physician. If there is no possibility of treatment in the prison or specialized treatment, then the person must be taken to a medical institution, as decided by the prison doctor, after consultation with the director of the prison. In terms of article 71. of the Law on Execution of Criminal Sanctions of Bosnia and Herzegovina, detained or sentenced persons during penalty execution or detention in prison, shall enjoy free health care that includes treatment, repair and tooth extraction or hospitalization. This is especially the case if the treatment of certain diseases or surgical intervention or adequate

10. Godišnji izvještaj o stanju zloupotrebe opojnih droga u BiH za 2010. (Annual Report for State of Drug Abuse in Bosnia and Herzegovina for 2010) Retrieved from: <http://www.msb.gov.ba/dokumenti/strateski/?id=7437>

health care and assistance cannot be provided in the prison. In this case, the time spent on treatment is counted as time spent in prison, where one day spent in an appropriate medical facility is equalized as one day in prison.

Detained or convicted persons of impaired physical or mental health can be accommodated separately in the infirmary, where they are under constant supervision of the medical staff of the prison. In accordance with Article 140 of the Law on Execution of Criminal Sanctions of Bosnia and Herzegovina, a prisoner who was, during the execution of penalties, diagnosed with a mental illness or serious mental disorder, can be placed in a medical institution. Placement of prisoners in a medical institution is decided by a Minister of Justice upon the proposal of the prison director, based on a reasoned opinion of an expert team of doctors. The convicted person remains in health care as long as there are reasons for such accommodation, and can last until the expiration of the sentence imposed by the court. The time spent by the detainee in a medical facility is to be reckoned in the time of execution of the sentence.

Drug abuse treatment in prisons in Bosnia and Herzegovina presents a big problem, due to the lack of a consistent state policy in respect to drug-dependent persons. Addicts are placed collectively together with other prisoners. Very little has been done in relation to the treatment of drug addicts in prisons. Medical procedures performed by doctors do not differ from the treatment of other prisoners. They examine the persons, determine appropriate therapy and, if necessary, there is the possibility of changing the treatment. In case of an abstinence crisis of drug addicts, they are usually directed to external institutions for treatment. There are no specific addiction treatment programs, only intensive individual work that includes more counseling with drug addicts than with other inmates.¹¹

Drug treatment in prisons is still not being implemented, although the current national drug strategy advocates for this activity.

Harm reduction services that are available in prisons include training for prison staff and providing education and information for inmates regarding the prevention of HIV and other blood transmitted infections, and improving the health of prisoners. It should also be mentioned that Bosnia and Herzegovina adopted a *Strategy for Response to HIV and AIDS in Bosnia and Herzegovina for 2011-2016*, which identifies persons in prison as a risk population.

11. Godišnji izvještaj o stanju zloupotrebe opojnih droga u BiH za 2010. (Annual Report for State of Drug Abuse in Bosnia and Herzegovina for 2010) Retrieved from: <http://www.msb.gov.ba/dokumenti/strateski/?id=7437>

NGO »Victorija« conducts outreach programs for injecting drug users and prisoners in five towns in Republika Srpska, namely Banja Luka, Doboј, Prijedor, Foča and Gradiška, that include consulting and information about HIV, distribution of condoms and lubricants, promotional material, referral to free anonymous HIV testing, and so on. The project began in July 2007 and continues to this day.¹²

In 2012, representatives of the Association for Sexual and Reproductive Health XY and six representatives of correctional institutions in the Federation of Bosnia and Herzegovina signed the agreement to continue cooperation in the project »Maximizing coverage of effective HIV prevention and care among populations at greatest risk.« The project is part of a government program called »Coordinated National Response to HIV / AIDS and tuberculosis in the war-torn and highly stigmatized environment« whose signatories are relevant institutions in Bosnia and Herzegovina. One of the target groups covered by the project are all convicts in the penitentiaries of the Federation, as the convicted persons living under very specific conditions are at higher risk of developing a transmitted infection. In 2011, about 600 convicts were educated. Margina is the other non-governmental organization which provides services to reduce harm in prisons of Bosnia and Herzegovina. It was chosen by the UNDP as a beneficiary of the funds from the Global Fund for HIV / AIDS, tuberculosis and malaria with the aim of maintaining the current prevalence of HIV. Methadone treatment is not available in all prisons, and this depends on the health system of the area where the prison is located.

For drug addicts who have committed criminal offences, the court is able to impose compulsory treatment in a psychiatric facility or therapeutic community. Apart from this, there are no other mechanisms for the diversion of drug users from prison into community based treatment. However, the imposed measure is often inadequately implemented or not implemented at all, or does not fulfill its primary role of an appropriate and effective treatment that would give satisfactory results in terms of preventing repetition of the crime after a person's release from prison.

Laws on misdemeanor offences in Federation of Bosnia and Herzegovina, Republic of Srpska and Brčko District prescribe a security measure of Outpatient treatment of addiction. This implies that suspended or reduced sanctions may be imposed on the defendant who has committed an offence under the decisive influence of addiction to alcohol or drugs, on condition that he undergo outpatient treatment for alcohol and drug use within a specified period, or until it is established that there is no need for further treatment of the defendant, based on the opinion

12. Godišnji izvještaj o stanju zloupotrebe opojnih droga u BiH za 2010. (Annual Report for State of Drug Abuse in Bosnia and Herzegovina for 2010) Retrieved from: <http://www.msb.gov.ba/dokumenti/strateski/?id=7437>

of specialists in charge of the treatment, provided that the duration of treatment is not more than one year. The court shall revoke a suspended or reduced sentence if the defendant fails to undergo certain outpatient settings.

Generally, courts in Bosnia and Herzegovina are able to impose a penalty of community work instead of prison, suspended sentence and judicial admonition if the requirements prescribed by the Criminal Codes are met. Also in the Federation of Bosnia and Herzegovina, persons sentenced to imprisonment of up to one year, with their consent, can serve the sentence under house imprisonment with electronic monitoring, where the convicted person is not allowed to leave the room in that house except in cases prescribed by law governing the enforcement of criminal sanctions.

Bosnia and Herzegovina does not have a comprehensive strategy for social reintegration of offenders following the execution of their sentence. However, the Strategy for the Prevention and Suppression of Narcotic Drugs Abuse for 2009-2013, includes resocialisation and social integration of drug addicts as one of its aims. In terms of this, the following priorities are determined in the Strategy:

- providing assistance in completing primary and secondary education or retraining;
- stimulation of employment and self-employment of drug addicts who have completed rehabilitation programs in therapeutic communities, prison units, correctional homes or who are on maintenance therapy.
- reintegrating addicts into society groups who are unable or unwilling to stop using drugs, providing adequate facilities and hospices.
- The establishment of a network of institutions to support drug addicts in resocialization. Connection and cooperation of all relevant entities involved in the process of socialization of addicts (centers for social work, therapeutic communities, medical and educational institutions, employment institutions, associations, etc.).

Furthermore, social reintegration is included in the National Action Plan against drug abuse in Bosnia and Herzegovina for the period 2009- 2013, as part of the strategic area of treatment and social reintegration. It includes a variety of measures aimed at the provision of housing, employment, education and social reintegration after release from prison or treatment. Special attention is given to youth and minors. Recently, the Institute for Employment of Sarajevo Canton started a pilot program for the employment of disadvantaged groups, including drug users.¹³

13. Godišnji izvještaj o stanju zloupotrebe opojnih droga u BiH za 2010. (Annual Report for State of Drug Abuse in Bosnia and Herzegovina for 2010) Retrieved from: <http://www.msb.gov.ba/dokumenti/strateski/?id=7437>

There are no available statistical data for recidivism of the offenders sentenced for drug-related crimes.

II. Initiatives for drug law reform undertaken by the government and/or the parliament in the last 10 years

The adoption of the most important legal acts in the field of drugs on the state level was influenced by a number of reasons: old and fragmented legislation; disparity between the laws of the Entities and District Brčko; uncoordinated activities of the institutions charged with preventing and suppressing drug use; and the pressure of the international community on the Parliament of Bosnia and Herzegovina to urgently adopt drug legislation to address the problem.¹⁴

The Law on Prevention and Suppression of Narcotic Drugs was passed by the Bosnian parliament in 2006, and it serves as the foundation for bringing under its umbrella all laws and regulations in Entities and Brčko District on issues of growing plants, manufacturing, possession and trafficking of drugs, other substances used for making drugs, precursors, and the cultivation of plants used for drug manufacturing. The Law also includes provisions on development of an information system in the field of drugs, drug demand and supply reduction programmes, national and international coordination, and research activities. However, a very important part of this Law are provisions that anticipate the adoption of a National Strategy and Action Plan on Drugs, as well as formation of a Commission on Narcotic Drugs and State Office on Narcotic Drugs.

Although this Law constitutes an important framework of drug policy in Bosnia and Herzegovina, unfortunately, the implementation of the Law on Prevention and Suppression of Narcotic Drugs presents a very slow process. Certainly, one of the main reasons for such a situation seems to be the political will of Bosnian politicians, followed further by the fact that policy implementation in Bosnia and Herzegovina has been significantly shaped by domestic institutional delays and by the diverging political interests within the two Entities. For that reason, the adoption of the National Strategy on Drugs was delayed for three years after passing the Law on Prevention and Suppression of Narcotic Drugs.

With the reform of criminal legislation of Bosnia and Herzegovina in 2003, and in accordance with the delineation of the responsibilities of Bosnia and Herzegovina, its Entities and the District in all areas, legal protection in the field of drugs is regulated differently in the Criminal Code of Bosnia and Herzegovina and

14. International Narcotics Control Board (2005). *Report of the INCB for 2005*.

the Criminal Codes of the Entities and Brčko District. Thus, the Criminal Code of Bosnia and Herzegovina criminalizes certain forms of illicit trafficking in narcotic drugs, which have an international dimension, while the integrity of the criminal protection of the various forms of drug abuse is ensured by prescribing offences in Criminal Codes of Entities and the Criminal Code of Brčko District.

According to the *European Commission Bosnia-Herzegovina 2011 Progress Report*, Bosnia and Herzegovina made little progress in the fight to combat narcotic drugs trafficking and, as such, stands as one of the central routes of international narcotic drugs trafficking in this part of Europe.¹⁵

Furthermore, according to the *Monitoring of the Bosnia and Herzegovina European Integration Processes-Annual report 2011*, problems are evident in implementing the Strategy for the Prevention and Suppression of Narcotic Drugs Abuse for 2009.-2013 and its action plan, due to the the lack of a corresponding, co-ordinating body at the state level, such as the Office for Drugs, whose establishment was planned in this document. As stated in this Report, in order for the Office to be established, it crucial to enforce The Draft Law on Amendments to the Law on Prevention and Combat of Abuse of Narcotic Drugs. However, this seems to be a very complex task because of the different political views in Bosnia and Herzegovina and opposing tendencies towards reinforcing the state government policies and establishing new institutions at the state level.

Another problem regarding the implementation of the Strategy is the database on perpetrators of drug related offences in Bosnia and Herzegovina. The database has been established, but, its functional value is ultimately relative since not all police agencies in the country are using it. The police in Federation and the majority of Cantons in the Federation, make use of the database whereas the police in Republic of Srpska are not connected to the same network and are using a separate drug-user database that involves the existing registries from rehabilitation centres.¹⁶

The Rulebook on Confiscated Narcotics has been adopted by all the relevant bodies at both the state and entity level, as well as by Brčko District. However, due to

15. Foreign Policy Initiative BH (2012). Monitoring of the Bosnia and Herzegovina European Integration Processes-Annual report 2011. Author. Available at: http://www.vpi.ba/eng/content/documents/Monitoring_of_The_BiH_European_Integration_Process_2011_Annual_Report.pdf

16. Foreign Policy Initiative BH (2012). Monitoring of the Bosnia and Herzegovina European Integration Processes-Annual report 2011. Author. Available at: http://www.vpi.ba/eng/content/documents/Monitoring_of_The_BiH_European_Integration_Process_2011_Annual_Report.pdf

the lack of sufficient finance to support the implementation of this document, large amounts of illicit substances, confiscated after the Law on the Prevention and Combat of the Abuse of Narcotic Drugs was adopted are still waiting to be destroyed.¹⁷

The *European Commission Bosnia-Herzegovina 2011 Progress Report*¹⁸ for Bosnia and Herzegovina also states that there is a lack of active co-ordination among existing police agencies, which is followed by a lack of results achieved in suppressing narcotic drugs trafficking.

The Council of Ministers of Bosnia and Herzegovina adopted the Draft Law on Amendments to the Law on the Prevention and Combat of the Abuse of Narcotic Drugs on July 17th 2011, which was drafted in co-operation with European Commission experts. The Draft Law has been submitted for regular Parliamentary procedure. However it is uncertain when it will be adopted.¹⁹

Regarding the implementation of the national Action Plan to Combat Drug Abuse in Bosnia and Herzegovina (2009-2013), the governments of the entities and the Brčko District were supposed

to adopt their own action plans (within 90 days from the publication of the Action Plan in the Official Gazette of Bosnia and Herzegovina), which are in full compliance with the national Action Plan for the fight against illicit drugs in Bosnia and Herzegovina. In accordance with this task, the Federation of Bosnia and Herzegovina adopted its Action Plan in 2012, while the Republic of Srpska is implementing its Action Plan (2010-2012), founded on the **Strategy for Monitoring of Opiate Drugs and Containment of Opiate Drug Abuse in the Republic of Srpska** (2008-2012).

The **Strategy for Monitoring of Opiate Drugs and Containment of Opiate Drug Abuse in the Republic of Srpska** was adopted by the National Assembly of the Republic of Srpska, for a five-year period (2008 -2012), and deals with opiate drugs

17. Foreign Policy Initiative BH (2012). Monitoring of the Bosnia and Herzegovina European Integration Processes-Annual report 2011. Author. Available at: http://www.vpi.ba/eng/content/documents/Monitoring_of_The_BiH_European_Integration_Process_2011_Annual_Report.pdf

18. European Commission (2011). Bosnia-Herzegovina 2011 Progress Report. Brussels:Author. Available at: http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ba_rapport_2011_en.pdf

19. Foreign Policy Initiative BH (2012). Monitoring of the Bosnia and Herzegovina European Integration Processes-Annual report 2011. Author. Available at: http://www.vpi.ba/eng/content/documents/Monitoring_of_The_BiH_European_Integration_Process_2011_Annual_Report.pdf

monitoring, opiate drug abuse containment and assistance to opiate drug addicts. The Government of the Republic of Srpska passed the Action Plan (2010-2012) for the implementation of the Strategy, following a proposal by the Commission for Containment of Opiate Drug Abuse in the Republic of Srpska. This Strategy is aligned with the EU drugs strategy, provisions of the Council of Europe, UN conventions, international law and other covenants on different forms of inter-state cooperation in the area of resolving problems caused by opiate drug abuse, as well as with strategies of the neighbouring countries.

In accordance with the national Action Plan, the Federation of Bosnia and Herzegovina at the meeting held on 18th January 2012 adopted an *Action Plan for the Fight Against Illicit Drugs in the Federation of Bosnia and Herzegovina 2012-2013*, where the Government of the Federation of Bosnia and Herzegovina is responsible for its coordination. The framework for designing a Federal Action Plan were the main strategic objectives outlined in the national Strategy. Some of the indicators of implementing activities that are foreseen by the Action plan should be: Reducing the number of criminal offences through a preventive approach in working cooperation of cantonal ministry's and Federal Administration of Police on the entire territory of Federation of Bosnia and Herzegovina; Periodic reports on the number of submitted official reports for drug offences, the number of registered persons, and the types and quantities of drugs seized; The establishment of the Department for combating abuse of narcotic drugs in the cantonal Ministries of Internal Affairs, in which it still has not been done; Innovative educational programs for training and implementation of courses for uniformed police officers on knowledge about illegal drug markets and ways of abusing drugs for members of all police agencies in the Federation of Bosnia and Herzegovina; Creation of a proposal of the Protocol for insurance of mechanisms for information exchange and coordination between correctional institutions, ministries of justice and police agencies.

At the moment there is no Action Plan for the Fight Against Illicit Drugs in the Brčko District.

III. Standpoints of relevant stakeholders on drug law reform and proposals and recommendations for further research and advocacy work

Ministry of Health (Federation of Bosnia and Herzegovina)

- Strategy presents a comprehensive document in which the elements to reduce drug demand and supply are balanced. However, there are difficulties in implementing the Strategy and Action Plan, due to lack of budgetary resources.

- Currently, the Ministry of Security of Bosnia and Herzegovina is managing the process of setting standards for the therapeutic community, through a document that establishes therapeutic guidelines for the treatment of opiate users.
- Specific programs aimed at reducing the harm of injecting users are being implemented.
- In terms of substitution treatment, every region in the country has the freedom to choose the type of therapy, such as methadone or suboxone.
- Methadone substitution treatment is conducted through the offices for substance addiction, mental health centers and psychiatric clinics in Sarajevo, Zenica, Mostar, Sanski Most and Bugojno, while suboxon therapy is used in Tuzla.
- Hospital detoxification is conducted in Sarajevo, Zenica, Mostar, Banja Luka, Doboj, Prijedor and Bijeljina.
- The problem exists in the treatment of the prison population because there were no organized activities in this field, with the exception of activities related to education. Namely, the education of prisoners was conducted on the prevention of HIV, sexually transmitted diseases, tuberculosis and drug addiction.
- Problems are present regarding the implementation of the therapy in prisons for drug addicts, given the fact that the prison system and staff who work there, is not part of the health sector, but justice.
- In order to implement part of the Strategy which refers to the prison population, methadone substitution treatment must be introduced in prisons.
- The best cooperation when it comes to the implementation of preventive programs exist with the Ministry of Education and Science, because the school system introduces an element of education about healthy lifestyle and addiction problems.
- Harm reduction programs are implemented in cooperation with the NGO sector, which is primarily engaged in programs of exchange of syringes and needles. These programs are at the time mostly funded by Global Fund.
- There is an issue of sustainability of implementing drug related programs due to the decentralized institutional system in the Federation.
- It is necessary to define what is the smallest amount of drug that constitutes a criminal offence.

Illicit Drugs Section (Ministry of Interior- Canton Sarajevo):

- It is necessary to increase the upper limit of punishment for a criminal offence of illicit manufacturing and trafficking in narcotic drugs.

- There should be an influence in the courts to impose punishment for drug related crimes by the upper bound of prescribed criminal sanction.
- Possession of drugs should be a misdemeanor offence instead of criminal.
- The provisions of the Criminal Code should be amended in a way that using a child or a minor for the commission of the criminal offence of production and sale of narcotic drugs, presents an aggravating circumstance for the punishment of a perpetrator.
- There shouldn't be a classification of amounts of drugs, because it is considered that drug dealers can resell even small amounts of drugs.
- Proposal to make changes to the Criminal Procedure Act, that seized drug assets (i.e. vehicles, real estate, firearms and other property) should be entrusted to law enforcement agencies or sold.
- Proposal that 75% of seized drug money should be put into the budget of police agencies.
- It is necessary to introduce a new special investigative action »simulated sale« because current law only recognizes simulated and controlled purchase of certain objects and simulated bribery.
- There is a big problem with the deposit of confiscated drugs. Although the Rulebook on the destruction of narcotic drugs was adopted, the established Commission responsible for the destruction of the narcotic drugs, has not yet started to work.
- State database for drug addicts and persons who committ drug related crimes is not operative. Specifically, the database was established, but it is not functional because it can not deliver data from all the ministries of the interior (especially from RS).
- Addicts have no special treatment during investigations, except that they can be provided with medical treatment.
- It is necessary to improve procedures for examining narcotic drugs, because the current equipment is not adequately expert for precursors. Also better toxicological analysis should be provided.
- Lately, there has been a trend for cannabis production in enclosed spaces.
- It is necessary to improve the equipment for field work, because at the moment there are no conditions for the proper conduct of special investigations.

- It is necessary to improve cooperation with the ministries of education and health, in order to implement prevention programs.
- There should be continual education and training of police officers, and employment of new officers with appropriate educational qualifications.
- It is necessary to form a unit for drugs at the state level, which would have their own departments in the entire country, in order to ensure an effective system of vertical command and better monitoring in the area of drugs.
- Currently, the major problem is the decentralization of the police agencies, which causes a very slow flow of information and coordination of activities.

Non-governmental organization (UG-PROI)²⁰

- NGOs have participated in developing the Strategy for the Prevention and Suppression of Narcotic Drug Abuse for 2009.-2013 and the National Action Plan to Combat Drug Abuse in Bosnia and Herzegovina for 2009-2013, and believes that Strategy presents a comprehensive document when it comes to the drugs problem. However, problems are apparent with the implementation of the Strategy.
- The biggest disappointment is present regarding the National Action Plan to Combat Drug Abuse in Bosnia and Herzegovina for 2009-2013 that accompanies the Strategy. Namely, it is considered that the Plan is unenforceable because it is not in line with the real social possibilities of the country, particularly those related to the mechanism of state monitoring and the implementation of this document.
- NGOs state that in their work absolutely nothing has changed with the adoption of the Strategy and Action Plan in the context of improving their working conditions and activities. In other words, progress is not evident regarding the role of NGOs in drug rehabilitation programs and activities of the therapeutic community run by this organization.
- There is still no national system of control and certification of therapeutic communities and individuals who participate in the implementation of therapeutic programs, as required by the Strategy.

20. The mission of PROI Association is to support, develop and advocate for an integrated approach in the field of drugs, HIV, public health and social exclusion by following the principles of humanism, gender equality, tolerance, partnership and respect for human rights and freedoms. On the territory of Bosnia and Herzegovina, PROI provides a wide range of services to the most vulnerable populations in resolving problems related to drug dependence, risky sexual behavior and psychosocial development. PROI Association is actively engaged in implementing harm reduction programs in the field of drugs.

- The big problem is the fact that there is no standardization in terms of the amount of drug that is for personal use, sale and trafficking.
- Given the fact that NGOs are implementing activities of harm reduction programs, which include collection of used injection material via Drop-in-centres and other actions in this field, this aspect of their activity appears to be illegal. Specifically, although the Law and Strategy clearly stipulate the implementation of harm reduction programs, this is extremely difficult, because this type of activity presents criminal conduct in accordance with the provisions of drug related criminal offences prescribed by the Criminal Code. In this case, there is a paradoxical situation that the NGO representatives who collect such materials, may be charged with the possession of narcotic drugs, given that the police are taking as evidence presence of drugs in already-used needles or other material that is used in the process of injecting drugs. Therefore, the implementation of harm reduction programs is in jeopardy because of the Criminal Code provisions. Current activities in this regard are carried out based on the acquiescence and tolerance of police.
- Although NGOs participated in drafting the regulations on minimum conditions for implementing harm reduction programs, the Rulebook has not received approval from the Ministry of Environment and Tourism.
- NGOs support the idea of establishing safe injection rooms, however, it does not even try to put the idea into practice, since it represents a criminal offence of enabling consumption of narcotic drugs according to the current criminal legislation.
- Recently, there has been excellent cooperation with the Ministry of Interior of Canton Sarajevo, with whom they are currently working on the implementation of the Program of respecting human rights of vulnerable and marginalized population, which also applies to drug addicts. Cooperation with other state institutions is insufficient.
- In its work, NGOs do not have any programmatic and financial support from the state.
- NGOs believe that the legalization/decriminalization of certain drugs could improve the condition of society when it comes to the drug abuse problem.
- NGOs believe that the criminal policy towards drug addicts should be different, that is, prison sentence should not be imposed for drug addicts, but a security measure of mandatory treatment.
- NGOs stand for the idea of the establishment of Drug courts.

Non-governmental organization (UG-Viktorija)²¹

- As to the mechanisms related to the prevention of drug abuse in the Republic of Srpska, governmental agencies were established due to the implementation of the Strategy for Monitoring of Opiate Drugs and Containment of Opiate Drug Abuse in the Republic of Srpska (2008 -2012) and its Action Plan (2010-2012).
- Accordingly, in 2009 the Commission for Containment of Opiate Drugs Abuse in the Republic of Srpska was constituted as a government body, which has thirteen (13) members, and a Strategy Implementation Department, which is formed within the Ministry of Internal Affairs of the Republic of Srpska, whose task is to provide administrative, technical and professional assistance to the Commission.
- Representative of civil society is a member of the Commission. All decisions are made by consensus, and as such are being implemented.
- The Commission is authorized for the formulation of policy, drawing conclusions, writing reports and other correspondence concerning the prevention of drug abuse in the Republic of Srpska.
- In this respect, a model of cooperation and implementation of activities related to the prevention and control of drug abuse in the Republic of Srpska, is one of the good examples for the region.

IV. Proposals and recommendations for further research and advocacy work

Findings from analysis of drug related legislation and practices, as well as from conducted interviews, show that Bosnia and Herzegovina is experiencing major problems with the implementation of its drug legislation and strategies. Although there are many problematic issues regarding the implementation of drug policy in Bosnia and Herzegovina, future advocating work should definitely be focused on establishment and functioning of the State Office on Drugs, establishment of Departments for combating drug abuse within all police agencies, changing criminal policy for drug addicts, introducing a larger number of harm reduction programs, providing better health assistance to drug addicts generally and especially for those who are in prisons as well as collection of standardised statistical data.

21. NGO Viktorija in recent years has actively taken part in preventive work in the field of combating drug addiction. This NGO has launched an initiative to establish a coalition of non-governmental organizations of Bosnia and Herzegovina in order to ensure more active and more organized appearance towards drug addicts and the authorities in order to develop an adequate network of help in the country.

Country Report Bulgaria

Country Report Bulgaria

by Atanas Rusev¹
Dimitar Markov²

I. The current national drug strategy and drug legislation in Bulgaria

1. National Strategy on Drugs

The recent Bulgarian drug strategy was adopted in 2009 and was accompanied by a National Drug Action Plan. Both of these cover the period 2009-2013.

The overall responsibility for the coordination and the implementation of the national drug policies is carried out by the **National Drug Council (NDC)**, which is an interdepartmental body established under the Act on Control of Narcotic Substances and Precursors. The council is chaired by the Minister of Health and his deputies are the General Secretary of the Ministry of Interior, the Deputy Chairman of the State Agency 'National Security' and the deputy Minister of Justice. The other members of NDC are representatives of the Presidency of the Republic of Bulgaria; the Supreme Cassation Court; the Supreme Administrative Court; the Supreme Cassation Prosecution Office; the National Investigation Service, as well as all other concerned Ministries and institutions. NDC has established 27 Regional Drug councils, which are responsible for the coordination and implementation of the drug policy at a regional level.

The **National Drug Addictions Centre** is a body responsible for coordinating and providing methodical guidance on prevention, treatment, reduction of medical harm and rehabilitation of drug users and addicts. The Centre acts as a body exercising specialized control of treatment and as a drug addictions expert body. It is also designated as a **National Focal Point on Drugs and Drug Addictions**, which reports to the European Monitoring Centre for Drugs and Drug Addictions.

The national competent body for control over all drug-related activities for medical and other purposes and in compliance with regulatory regimes listed in Appen-

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dices 1, 2 and 3 of the Law for Control of Drugs and Precursors and the relevant international conventions is the **Directorate of Narcotic Substances within the Ministry of Health**.

The control of chemical substances (precursors of narcotic substances) used for illegal production of drugs is exercised by an **Interdepartmental Committee for Precursor Control attached to the Ministry of Economy, Activities and Tourism**. The Committee is the national body responsible for control over all precursor-related activities in compliance with Art. 12 the 1988 UN Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

The **Ministry of Interior** is one of the law enforcement bodies responsible for fighting illegal drug trafficking and drug distribution in Bulgaria. The specific tasks of the Ministry of Interior are assigned for implementation of the following General Directorates:

- General Directorate Countering Organized Crime - performs operational and investigative services, as well as information and organizational activities for counteracting organized crime activities related to illegal trafficking, production and dealing in drugs and substances used for the production of drugs;
- General Directorate Criminal Police - conducts operational and investigation activities related to reduction, detection, counteraction and prevention of drug related crimes;
- General Directorate Border Police - responsible for guarding the national borders, as well as for preventing, detecting and participating in investigation of crimes related to illegal trafficking of generally dangerous materials in the border zone, border check points, international airports and ports.

The Bulgarian Customs Agency, in compliance with its powers, also organises and carries out activities for the prevention and detection of illegal trafficking of drugs and precursors.

The State Agency National Security is responsible for surveillance, investigation, countering and prevention of activities against national security (including Ministry of Defense and the Bulgarian Army) related to illegal production, storage, and distribution of generally dangerous equipment, products or dual-use technologies, narcotic drugs and precursors, when these pose a threat for the normal functioning of the state authorities or cause risks for national security.

Bulgaria has ratified the 1961 Single Convention on Narcotic Drugs as well as the Protocol of 1972 amending it, the 1971 UN Convention on Psychotropic Substances, the 1988 UN Convention Against the Illicit Traffic in Narcotic Drugs and Psy-

chotropic Substances as well as to the Council of Europe Convention on Money Laundering, Search, Seizure and Confiscation of the Proceeds of Crime.

Moving on to development and provision of social aid services to drug users and involvement of NGOs in this area, there is an objective under the National Drug Strategy, which specifically indicates these as a priority:

Strategy objective 6: Development of programs and services for social rehabilitation and reintegration in community.

The Drug action plan accompanying the National Drug Strategy provides that the NGOs will be involved in establishing shelters for drug addicts, who are undergoing treatment or resocialisation. Drug addicts are also identified as a target group of the Human Resources Development Operational Programme, which is co-financed by the European Social Fund and managed by the Ministry of Labour and Social Policy. The Program provides opportunities for NGOs to apply for financing of social services for drug addicts. Despite the existing policy framework, no such services have been supported by the Operational Programme in the last years.

The Bulgarian National Drug Strategy and National Drug Action Plan follow the objectives set in the EU Drug Strategy 2005-2012, so there aren't major important issues missing in them. Their major shortcoming stems from the lack of effective institutional commitment and sustainable mechanisms for financing the implementation of the set objectives and activities.

2. National Substantive Criminal Law

Bulgarian criminal law does not make a distinction between misdemeanors and felonies. There are, however, two other distinctions between crimes in Bulgaria.

- Some offences are regarded as 'serious offences'. According to the Penal Code (Art. 93), a 'serious offence' is a criminal offence for which the law envisages a penalty of imprisonment for more than five years, life imprisonment or life imprisonment without parole. Some provisions apply only to serious offences (e.g. use of special intelligence means) while some concepts are not applicable for such offences (e.g. plea bargaining).
- Also, there are several minor offences (e.g. defamation or insult) for which the criminal prosecution is not initiated and performed by the public prosecutor but by the victim. For crimes prosecuted by the victim there is no pre-trial investigation.

Bulgarian Penal Code envisages eleven types of criminal sanctions. For each criminal offence the law provides for both the type and the amount (or length) of the applicable sanction. The penalties are as follows:

- imprisonment;
- life imprisonment;
- life imprisonment without parole;
- probation;
- confiscation of property;
- fine;
- deprivation of right to occupy a certain state or public position;
- deprivation of right to exercise certain professions or activities;
- disqualification from the received orders, honorary titles and distinctions;
- deprivation of military rank;
- public reprimand.

Custodial sentences are served in prisons according to the rules and procedures specified in the Law on Execution of Penal Sanctions and Detention in Custody.

Probation is a separate penalty and can be imposed by the court if it is among the sanctions provided for the specific offence. For some offences probation and imprisonment are provided for in the law as alternatives and it is up to the court to decide which one to impose. In exceptional cases, where there are multiple mitigating circumstances, the court can **substitute imprisonment with probation** even if probation is not provided for the committed offence. This can be done only for offences for which the law does not specify the minimum length of imprisonment. Once imposed through an enforceable sentence, the penalty can no longer be changed.

When imposing the penalty of imprisonment the court can issue the so-called '**suspended sentence**'. Suspended sentence means that the offender is sentenced to imprisonment but does not go to prison directly. Instead, the court suspends the sentence for a certain period of time (called 'probation period') during which the offender is obliged to study, work or undergo medical treatment (depending on the case). If the offender does not commit another crime punishable by imprisonment during the probation period he or she does not go to prison. If the offender commits another offence during that time he or she has to serve both sentences. Suspended sentences apply only if: (1) the offender is sentenced to imprisonment of up to three years; (2) the offender has not been sentenced to imprisonment before; and (3) if the court believes that to achieve the objectives of the penalty in general and the re-education of the offender in particular the latter does not need to serve the sentence. Suspended sentences, however, are entered in the criminal record of the convicted person in the same way as effective custodial sentences.

An offender serving a prison sentence could be released from prison earlier. This is called '**conditional release**' and is possible only if the offender has already served at least half of the penalty and has demonstrated his or her correction through exemplary conduct and honest attitude to work. Conditional release applies to recidivists as well provided that they have served at least two-thirds of their sentences and the remaining time is not more than three years. Conditional release can be applied only once. Offenders granted conditional release are given a probation period (equal to the remaining time of their sentence but not shorter than six months) during which they have to perform certain obligations and refrain from committing another crime. If they fail to do this they have to go to prison for the period they have been conditionally released for.

In certain cases the offender can be sanctioned by an **administrative penalty (fine) instead of a criminal sanction**. This option applies if: (1) the penalty envisaged for the crime is imprisonment of up to three years or a less severe penalty (for intentional offences) or imprisonment of up to five years or a less severe penalty (for negligent offences); (2) the offender has not been sentenced for an offence prosecuted ex officio and has not been released from criminal responsibility through this procedure before; and (3) pecuniary damages caused by the crime have been fully compensated.

3. National Drug Laws and Institutions

Cultivation, production and trade of drugs, if committed without the necessary permission, are considered **criminal offences**. Permits are issued according to the terms and procedures described in the Law on Control of Narcotic Substances and Precursors. Drugs are divided into three groups: (1) plants and substances with a high degree of risk to public health from the harmful effects of abuse, banned from use in human and veterinary medicine; (2) substances with a high degree of risk that can be used in human and veterinary medicine; and (3) risk substances. The cultivation, production and trade of drugs from the first group are forbidden and are always criminal offences. The cultivation, production and trade of drugs from the second and third group are legal if conducted based on a permit (license) issued by the Minister of Health or, if these substances are to be used in veterinary medicine, by the Minister of Agriculture and Food. The lack of permit (license) makes each of these activities a criminal offence.

Drug use as such is not penalized. However, the possession of drugs, irrespective of the quantity (i.e. even a single dose for personal use) is considered a criminal offence and is subject to criminal prosecution.

The Penal Code does not explicitly proclaim drug addiction as a mitigating or an aggravating circumstance. However, being obliged to consider all relevant facts and circumstances related to the case, the court has to take into account the personal characteristics of the offender, including drug use or drug addiction. Case law in this regard, however, is incoherent, with some sentences considering drug addiction as a mitigating circumstance while others regarding it as irrelevant to the sentence.

Bulgarian Penal Code does not provide for different penalties depending on whether the offender is a drug addict or not. Offences associated with 'cravings for use' are prosecuted in the same manner as ordinary offences that are not related to drugs. It is up to the court to decide whether and how to consider the offender's addiction when determining the penalty.

At the same time, existing case law on this issue is not coherent. There are sentences that regard the offender's addiction as a mitigating circumstance, but there are also sentences, which explicitly exclude the offender's addiction from the scope of mitigating circumstances.

There is a difference between 'high-risk' and 'risk' narcotic substances. The penalties for the risk narcotic substances are less severe.

There is no legal definition of what is a high-risk or a risk narcotic substance. The classification is done through special lists enumerating the different substances. Until 2011 these lists were annexes to the Law on Control of Narcotic Substances and Precursors meaning that the classification was done by parliament. Since 10 November 2011 the lists are annexed to the Ordinance for the Procedure for Classification of Plants and Substances as Narcotic, adopted by the Council of Ministers. There are three different lists annexed to the ordinance: the first one enumerates the absolutely forbidden high-risk drugs, the second one lists the high-risk substances that can be used in medicine upon permission and the third one lists the risk drugs.

The Penal Code incriminates several groups of drug related offences.

- **Distribution of drugs:** This group includes the unauthorized production, processing, acquisition or holding of narcotic drugs or analogues thereof for the purpose of distribution, as well as the actual distribution of such drugs. For high-risk narcotic drugs or analogues thereof, the penalty is imprisonment for a term of two to eight years and a fine ranging from BGN 5,000 to BGN 20,000; for risk narcotic drugs or analogues thereof, the sanction is imprisonment for a term of one to six years and a fine ranging from BGN 2,000 to BGN 10,000; and for precursors and facilities or mate-

rials for the production of narcotic drugs or analogues thereof, the sanction is imprisonment for a term of three to twelve years and a fine ranging from BGN 20,000 to BGN 100,000 (Article 354a (1) of the Penal Code). Where the narcotic drugs or the analogues thereof are in large quantities, the penal sanction is imprisonment for a term of three to twelve years and a fine ranging from BGN 10,000 to BGN 50,000, and when they are in particularly large quantities, the sanction is imprisonment for a term of five to fifteen years and a fine ranging from BGN 20,000 to BGN 100,000 (Article 354a (2) of the Penal Code). If the offence is committed in a public place, or by a person hired by, or implementing a decision of, an organized criminal group, by a physician or a pharmacist, by a cover supervisor, teacher or headmaster of an educational establishment, or by an official in the course of or in connection with the discharge of his or her official duties, as well as by a person acting under conditions of dangerous recidivism the penalty is imprisonment for a term of five to fifteen years and a fine ranging from BGN 20,000 to BGN 100,000.

- **Unauthorized acquisition or holding of narcotic drugs and analogues thereof:** These are the cases of possession of drugs for personal use and not for the purpose of distribution. The penalty is imprisonment for a term of one to six years and a fine ranging from BGN 2,000 to BGN 10,000 for high-risk narcotic drugs or analogues thereof; imprisonment for a maximum term of one year and a fine ranging from BGN 1,000 to BGN 5,000 for risk narcotic drugs or analogues thereof (Article 354a (3) of the Penal Code); and a maximum fine of BGN 1,000 if the offence constitutes a minor case (Article 354a (5) of the Penal Code).
- **Breach of rules established for the handling of narcotic drugs:** This group covers the breach of rules established for the producing, acquiring, safekeeping, accounting for, dispensing, transporting or carrying of narcotic drugs. The penalty is imprisonment for up to five years, a maximum fine of BGN 5,000 and, at the discretion of the court, disqualification of the offender from holding a particular government or public office, from practicing a particular profession or from carrying out a particular activity (Article 354a (4) of the Penal Code). If the offence constitutes a minor case, the sanction is a fine of up to BGN 1,000 (Article 354a (5) of the Penal Code). A physician who, in breach of the established procedure, knowingly prescribes any narcotic drugs or analogues thereof or any medicines, which contain such substances, is guilty of an offence, which, too, can be subsumed under this heading. This offence is punishable by imprisonment for a maximum term of five years and a fine of up to BGN 3,000 or, for a

repeat offence, imprisonment for a term of one to six years and a fine of up to BGN 5,000. The court may or, in case of a repeat offence, must, furthermore disqualify the offender from holding a particular government or public office, from practicing a particular profession or from carrying out a particular activity (Article 354b (5) and (6) of the Penal Code).

- **Encouragement of others to use drugs:** Inducing or aiding another person to use narcotic drugs or analogues thereof falls under this group and is punishable by imprisonment for a term of one to eight years and a fine ranging from BGN 5,000 to BGN 10,000. A heavier sanction (imprisonment for a term of three to ten years and a fine ranging from BGN 20,000 to BGN 50,000) is provided for the cases where the act was committed against an infant, a minor or a mentally retarded person; against more than two persons; by a physician, pharmacist, cover supervisor, teacher or headmaster of an educational establishment, or an official at a penitentiary facility in the course of or in connection with the discharge of his or her official duties (in such case, the sanction is complemented by disqualification from holding a particular government or public office, from practicing a particular profession or from carrying out a particular activity); in a public place; through the mass communication media; under conditions of dangerous recidivism (Article 354b (2) of the Penal Code). Inducing or forcing another to use narcotic drugs or analogues thereof for the purpose of prostitution, copulation, molestation, or engaging in sexual intercourse or acts of sexual gratification with a person of the same sex, is also an offence and is punishable by imprisonment for a term of five to fifteen years and a fine ranging from BGN 10,000 to BGN 50,000; or by imprisonment for a term of ten to twenty years and a fine ranging from BGN 100,000 to BGN 300,000) if the act was committed: by a person hired by, or implementing a decision of, an organized criminal group; against a person who has not attained the age of 18 years, or a mentally retarded person; against two or more persons; as a repeat offence; or under conditions of dangerous recidivism.
- **Giving a lethal dose of a narcotic drug:** The offence is defined as giving another person a narcotic drug or an analogue thereof “in quantities likely to cause death and death ensues”. The penalty is imprisonment for a term of fifteen to twenty years and a fine ranging from BGN 100,000 to BGN 300,000 (Article 354b (3) of the Penal Code).
- **Creation of conditions for use of narcotic drugs:** This group comprises two acts: systematically providing a premise to various persons for the use of narcotic drugs, and organizing the use of such drugs. The applicable

penalty is imprisonment for a term of one to ten years and a fine ranging from BGN 5,000 to BGN 20,000 (Article 354b (4) of the Penal Code).

- **Cultivation of plants for the purpose of production of narcotic drugs:** This includes the planting or growing of opium poppy and coca bush plants or plants of the genus Cannabis in breach of the rules established in the Law on Control of Narcotic Substances and Precursors. The applicable penalty is imprisonment for a term of two to five years and a fine ranging from BGN 5,000 to BGN 10,000 (Article 354c (1) of the Penal Code) or, if the offence constitutes a minor case, imprisonment for a maximum term of one year and a fine of up to BGN 1,000 (Article 354c (5) of the Penal Code). Any person who organizes, leads or finances an organized criminal group for the cultivation of such plants or for the manufacture, production or processing of narcotic drugs is criminally liable as well, and the penal sanction is imprisonment for a term of ten to twenty years and a fine ranging from BGN 50,000 to BGN 200,000 (Article 354c (2) of the Penal Code). Participation in such a group is punishable by imprisonment for a term of three to ten years and a fine ranging from BGN 5,000 to BGN 10,000, and the law exempts from prosecution any member of the group who has voluntarily disclosed to the authorities all facts and circumstances about the activity of the organized criminal group which are known there-to (Article 354c (3) and (4) of the Penal Code).
- **Trafficking in narcotic drugs:** The principal elements of these offences are carrying narcotic drugs across the border of Bulgaria without due authorization. Penalties vary according to the object involved in the offence: for high-risk narcotic drugs and/or analogues thereof, it is imprisonment for a term of ten to fifteen years and a fine ranging from BGN 100,000 and BGN 200,000; for risk narcotic drugs and/or analogues thereof, the sanction is imprisonment for a term of three to fifteen years and a fine ranging from BGN 10,000 to BGN 100,000; and for precursors or facilities and materials for the production of narcotic drugs, the sanction is imprisonment for a term of two to ten years and a fine ranging from BGN 50,000 to BGN 100,000 (Article 242 (2) and (3) of the Penal Code). When the narcotic drugs trafficked are in particularly large quantities and the offence constitutes a particularly grave case, the penal sanction is imprisonment for a term of fifteen to twenty years and a fine ranging from BGN 200,000 to BGN 300,000 (Article 242 (4) of the Penal Code), and if the offence constitutes a minor case, a maximum fine of BGN 1,000 is imposed according to an administrative procedure (Article 242 (6) of the Penal Code). The law gives the court an option to impose confiscation of all or part of the of-

fender's property in lieu of a fine (Article 242 (5) of the Penal Code). Preparation for trafficking in narcotic drugs is also punishable, by imprisonment for a maximum term of five years (Article 242 (9) of the Penal Code).

In most cases discussed above, the object of the offence and the instruments of crime are subject to forfeiture (Article 354a (6) of the Penal Code).

The penalties provided for drug related offences are relatively severe combining long terms of imprisonment and substantial fines. For example, aggravated cases of drug distribution are punishable by imprisonment for a term of five to fifteen years and a fine ranging from BGN 20,000 to BGN 100,000, which is close to the penalty for murder (imprisonment for a term of ten to twenty years). In the same time, Bulgaria's penal policy on drug related crime is exclusively focused on imprisonment and financial penalties and entirely ignores probation as a non-custodial measure. Probation is not provided for as a penalty for any of the drug-related offences, including minor offences, such as the holding of narcotic drugs without the purpose of distribution (for personal use). This situation clearly indicates that the Bulgarian legislator perceives imprisonment as the most effective method for the correction and re-education of the perpetrators of any drug-related offences, regardless of the specifics of each particular case.³

Compared to the general sentencing level in Bulgaria treatment of offenders for drug related crime is less strict. There is a substantial discrepancy between the sanctions provided for in the law and the actual sanctions imposed by the courts. Despite the severe sanctions provided for *de jure*, Bulgarian courts frequently pass suspended sentences or give penalties below the statutory minimum. Over the last years, in the cases instituted in connection with drug-related offences, suspended sentences have outnumbered effective custodial sentences, with nearly half of such cases being concluded without an effective custodial sentence. In addition to the large number of suspended sentences, in cases instituted in connection with drug-related offences the court very often imposes a penal sanction below the statutory minimum or replaces imprisonment with probation, even though probation is not among the penal sanctions provided for the respective type of offence. This is done on the grounds of the possibilities provided for in the law to impose a penal sanction below the lower limit or to replace the penal sanction provided for by a penal sanction of a lighter type.

3. Penitentiary Policy and System in the Republic of Bulgaria, Center for the Study of Democracy, Sofia, 2011, 70-74. Online at: <http://www.csd.bg/artShow.php?id=15567>, accessed 29 May 2012.

Despite the comparatively severe penal sanctions provided for in the Penal Code, the courts have imposed imprisonment for a term exceeding five years on relatively rare occasions. Imprisonment is most often decreed for terms up to three years.⁴

For some drug related offences the Penal Code provides for heavier penalties if the drugs are ‘in large quantities’ or ‘in particularly large quantities’. These offences are the unauthorized production, processing, acquisition or holding of narcotic drugs or analogues thereof for the purpose of distribution and the actual distribution of such drugs (aggravated cases for both large and particularly large quantities) as well as drug trafficking (aggravated cases only for particularly large quantities). The terms ‘large quantities’ and ‘particularly large quantities’ are not defined in the law but are clarified by a decision of the Supreme Court of Cassation. According to Interpretative Decision No 1 of 1998 of the Supreme Court of Cassation the subject of the crime is in large quantities or in particularly large quantities when its monetary equivalent exceeds 70 times or 140 times respectively the minimum salary specified by the government. Since 1 January 2013 the minimum salary has been fixed to BGN 310 (approximately EUR 155).

In principle, drug related offences fall within the jurisdiction of the general courts. The **district courts** (second level in the court system) hear the cases for the majority of drug related offences. The **regional courts** (first and lowest level in the court system) hear the cases for the less serious offences (unauthorized acquisition or holding of narcotic drugs and analogues thereof without the purpose of distribution and breach of rules established for the handling of narcotic drugs). Finally, the cases for giving a lethal dose of a narcotic drug and for the creation of conditions for use of narcotic drugs, the aggravated cases of encouragement of others to use drugs, the cases for organizing, leading, financing or participating in an organized criminal group for the cultivation of opium poppy and coca bush plants or plants of the genus Cannabis or for the manufacture, production or processing of narcotic drugs fall within the jurisdiction of the newly established **Specialized Criminal Court**, which is also authorized to hear all cases for drug related offences committed upon assignment by or in execution of a decision of an organized criminal group. The Specialized Criminal Court is one for the entire territory of the country and is equal in rank to a district court.

The principle of universal jurisdiction is not applied to any drug related crimes. Bulgarian courts can hear a case for a drug related crime only if the offence has been committed on the territory of Bulgaria or by a Bulgarian citizen abroad. Bul-

4. Penitentiary Policy and System in the Republic of Bulgaria, Center for the Study of Democracy, Sofia, 2011, 70-74. Online at: <http://www.csd.bg/artShow.php?id=15567>, accessed 29 May 2012.

garian courts may also hear a case for a crime committed by a foreigner abroad but only if the offence has affected the interests of Bulgaria or of a Bulgarian citizen.

The prior conviction for the same offence in another country has no specific consequences. If the offender has been convicted in another country for a similar offence the court will evaluate this circumstance together with all other facts relevant to the case. The draft of the new Penal Code, currently discussed at the Ministry of Justice, includes a provision on the relevance of prior convictions in other EU Member States, but the draft has not yet been submitted to the parliament.

4. Drug Law Enforcement in Practice

Police practice towards heroin users includes regular stop-and-search, arrests and harassment, which is often motivated by the fact that heroin users are involved in petty crimes in order to support their daily use. Policing practice towards cannabis users varies, as most often the police harasses occasional users, who consume in public. Regular cannabis users have different patterns and habits of use - they usually avoid consumption in public and therefore are rarely stop-and-searched by the police.

The main illicitly cultivated plants in Bulgaria are of Cannabis genus. The major growing region is the south-west part of the country in the Ograzhden and Belasitsa Mountains. The local producers are regularly targeted by the police in the season when the plants are harvested. Despite the big seizures reported every year the effectiveness is questionable, because there are no estimations of areas under cannabis cultivation and therefore volume of annual illicit production.

Besides the big-scale outdoor cultivation a relatively new trend is the boom of clandestine indoor cultivation. The profile of the in-door producers is diverse - from small scale home-growers to large-scale criminal entrepreneurs. There are 6 'growth' shops in Sofia and 11 in the country. The bulk of their customers are growing cannabis plants in order to support their own use and provide for a small circle of friends. There are few complaints for harassment from the police or specific targeting of law enforcement efforts to this group of small-scale producers. The big-scale producers are more often targeted by the police within police investigations and operations against organized crime groups.

Pre-trial detention does not depend on the drug addiction of the offender. It is implemented upon decision of the court when a justified assumption can be made that the accused individual has committed a crime punishable by imprisonment or a heavier penalty and when the evidence shows that there is an actual risk of the accused individual hiding or committing another crime. Pre-trial detention can be replaced only by one of the other measures provided for in the law, i.e. by recognition not to leave, bail or house arrest. Mandatory treatment cannot

be imposed by the court at the pre-trial stage, while voluntary treatment can in principle be taken into account by the public prosecutor when filing the request for the imposition of a measure of remand by the court when making a decision on the request.

The Penal Code does not explicitly proclaim drug addiction as a mitigating or an aggravating circumstance. Pre-trial detention also does not depend on the drug addiction of the offender. This is why there is no legal obligation to establish substance dependence during interrogation and no such evaluations are carried out.

In Bulgaria, there are neither general provisions dealing with the issue of police entrapment nor specific rules for the offence of drug trafficking.

Separate statistical data are available for all drug related crime without trafficking. The available data for trafficking are aggregated, i.e. they cover both drug trafficking and smuggling in goods.

Table 1
 Number of convictions and convicted persons of drug related crime
 for the period 2004 - 2010

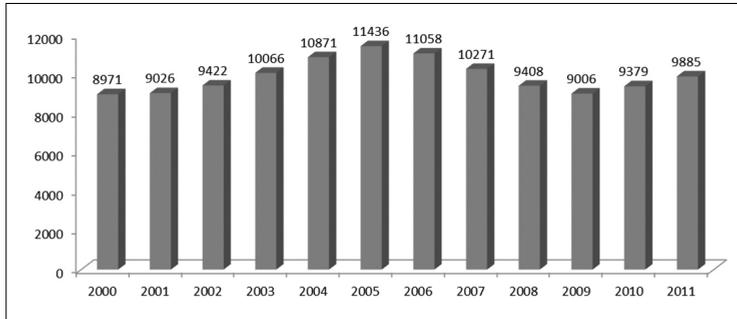
Year	Completed cases	Convictions	Suspended convictions	Acquittals	Terminated proceedings	Release from criminal responsibility
2004	787	235	463	65	3	21
2005	1010	282	573	134	1	20
2006	1826	499	961	346	13	7
2007	1211	569	434	199	5	4
2008	1055	558	375	68	11	43
2009	1372	722	607	33	9	1
2010	1565	809	713	40	3	-

Source: National Statistical Institute

5. Sentencing Levels and the Prison Situation

According to Chief Directorate Execution of Penalties (CDEP) data in 2011 there are 9,885 detained persons in prisons (134.2 prisoners per 100.000 of total population)

Figure 1
Number of detained persons in Bulgarian prisons

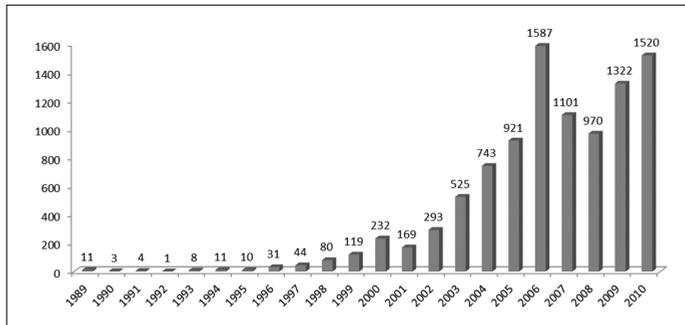


Source: Chief Directorate Execution of Penalties⁵

There are 11 prisons for male offenders, 1 prison for female offenders, 1 reformatory for male juvenile offenders and 1 reformatory for female juvenile offenders.

The persons convicted for drug related offences in Bulgaria have been steadily growing in the last 20 years:

Figure 2
Persons convicted of drug-related offences 1989-2009



Source: National Statistics Institute

5. Cited in: Human Rights in Bulgaria in 2011, Bulgarian Helsinki Committee, Sofia, 2011. On-line at: <http://humanrightsbulgaria.wordpress.com/>, accessed 01st of May 2012.

Table 2

Number of persons sentenced to imprisonment in Bulgaria 2004-2010

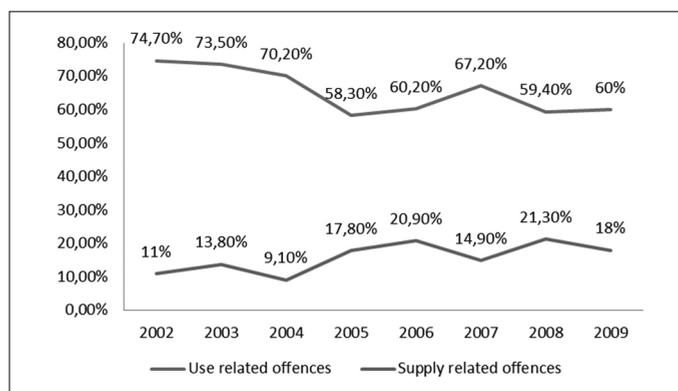
Number of persons sentenced to imprisonment	2004	2005	2006	2007	2008	2009	2010
Imprisoned for drug-related offences	723	893	1481	823	688	977	1155
Imprisoned overall	18219	18452	18847	16814	18464	20823	22411
Share of drug-related imprisonments	3,97%	4,84%	7,86%	4,89%	3,73%	4,69%	5,15%

Source: National Statistics Institute

The EMCDDA statistics for the period 2002-2009⁶ indicate, that the majority of drug-related offences in Bulgaria are related to drug use or possession for use. On average 65% of all offences are related to drug use or possession for use while supply related offences account for 16%. There is also a considerable share of offences - which are related both to use and supply (19% of all offences).

Figure 3

Offence types in reports for drug law offences, Bulgaria (2002-2009)



Source: Statistical bulletin 2011, EMCDDA

6. Statistical bulletin 2011, EMCDDA. Available online at: <http://www.emcdda.europa.eu/stats11>

Overcrowding in Bulgarian prisons is an old issue documented in a number of human rights reports - e.g. the issue is regularly addressed in the annual reports on the human rights situation in Bulgaria of the Bulgarian Helsinki Committee⁷. The recently adopted Law on Execution of Penal Sanctions and Detention in Custody (LEPSDC), effective as from 1 June 2009 introduced minimum requirements regarding material conditions. These requirements provide that a minimum living floor space of 4 sq. m. should be available for each imprisoned person. Before the passage of the LEPSDC, at the end of 2008 the Council of Ministers adopted a Strategy for Development of the Places of Deprivation of Liberty (2009 - 2015) and an Investment Program for Construction, in accordance with which overhauls and redevelopments are performed.

The economic downturn and the following budget cuts deprived the strategy of appropriate financing and as a result very little progress in the improvement of the conditions has been observed. In the beginning of 2010 the overall occupancy level in Bulgarian prisons was 113.2 persons held per 100 places available⁸:

Table 3
Capacity of penitentiary facilities at 1 January 2010

Penitentiary facility	Number of places available, based on surface area of 4 sq m per prisoner	Number of sentenced persons, defendants and accused held	Occupancy level (number of persons held per 100 places available)
Burgas Prison	442	990	223.0
Varna Prison	700	923	131.9
Vratsa Prison	607	560	92.3
Lovech Prison	964	985	102.2
Pazardzhik Prison	731	620	84.8
Plovdiv Prison	578	1,087	188.1
Sliven Prison	542	263	48.5
Sofia Prison	1,418	1,787	126.0
Stara Zagora Prison	891	948	106.4
Bobov Dol Prison	526	510	97.0

7. <http://www.bghelsinki.org>

8. Penitentiary Policy and System in the Republic of Bulgaria. CSD, Sofia, 2011: p. 42.

Penitentiary facility	Number of places available, based on surface area of 4 sq m per prisoner	Number of sentenced persons, defendants and accused held	Occupancy level (number of persons held per 100 places available)
Boychinovtzi Reformatory	358	72	20.1
Pleven Prison	416	567	136.3
Belene Prison	567	584	103.0
Total	8,740	9,896	113.2

The last report⁹ of the Bulgarian Helsinki Committee marks again that the problem with overcrowding and the poor living conditions in Bulgarian prisons persists.

According to publicly available data in 2010 the Chief Directorate Execution of Penalties (CDEP) registered as drug addicts 1100 - 1200 offenders serving sentence in the penitentiary system¹⁰. In 2009 the number of registered drug addicts was 1038 offenders, in 2008 - 1 542, in 2007 - 1 143¹¹. According to EMCDDA data in 2009 17 per cent of the imprisoned persons in Bulgaria reported lifetime drug use prior to imprisonment¹², and in 2008 - 4 per cent reported on admission drug use within the last year in prison¹³. The most commonly used drugs in the last year were heroin and amphetamines, followed by cannabis and cocaine.

In addition to that, CDEP has provided information about 133 cases of attempts for smuggling of drugs in prisons (67 cases with heroin; 7 cases with cocaine; 27 cases with amphetamine; 32 cases with cannabis). For 2009 CDEP has reported 34 cases of attempts for smuggling of drugs. Drug use in prisons, including injecting

9. Human Rights in Bulgaria in 2011, Bulgarian Helsinki Committee, Sofia, 2011. Online at: <http://humanrightsbulgaria.wordpress.com/>, accessed 01st of May 2012.

10. Information on provided by National Focal Point on Drugs and Drug Addictions: http://drugs-news.dir.bg/_wm/library/item.php?did=540123&df=8&dfid=3, accessed 01st of May 2012.

11. Annual report on drugs and drug addictions in Bulgaria. National Focal Point on Drugs and Drug Addictions (2010).

12. 2009 national survey in 17 remand prisons among all convicted, defendant adults and detained persons in prison and remand arrest during the year (n= 5776) cited in EMCDDA Statistical bulletin 2011. Online at: <http://www.emcdda.europa.eu/stats11/duptab1>, accessed on 2nd of May 2012.

13. 2008 national survey in 17 remand prisons among all convicted, defendant adults and detained persons in prison and remand arrest during the year (n= 9983) cited in EMCDDA Statistical bulletin 2011. Online at: <http://www.emcdda.europa.eu/stats11/duptab3>, accessed on 2nd of May 2012.

drug use is also reported by social workers from NGOs working with imprisoned persons.

A study presented at the XVIII International AIDS Conference in Vienna reports that every tenth of a prison's population (11.7%) had at least once injected drugs and 16.7% of those, who had ever injected drugs, did so in prison¹⁴. According to the last national progress report to UNGASS in 2009 1.56% of prisoners in Bulgaria were infected with HIV¹⁵. In comparison the prevalence was 0% in 2006 and 0.5% in 2007. Data from a recent bio-behavioural study among prison inmates shows that overall rate of antibody positivity for anti-HIV was 74%, anti-HBc 59%, anti-HCV -25% and anti-HDV - 46.9%¹⁶. The authors attributed the huge number of prisoners with viral hepatitis B and C to intravenous injecting of drugs, unprotected sexual contacts, tattoo and other manipulations with skin and mucosa lesions.

There are no reports on drug market violence in Bulgarian prisons.

The National Drug Strategy 2009-2013 under *Objective 5* provides for improvement of the access to prevention, treatment, rehabilitation and harm reduction programs in detention facilities. Several specific actions are planned for the implementation of this strategic task, and they are described in detail in the Action Plan for Implementation of the National Anti-Drug Strategy 2009 - 2013. The measures intended include increase of the methadone treatment programs in all prisons countrywide, as well as optimizing the detoxification of drug dependents admitted to prison hospitals and medical centres.

In addition to that the Penal Code provides that sentenced persons who are dependent on narcotic drugs are supposed to receive appropriate medical care (Article 40 (2) of the Penal Code). The provision is part of the framework of execution of the penal sanction of imprisonment. The Penal Code also provides that when the perpetrator of the offence suffers from alcoholism or another addiction, the court may, along with the penal sanction, also order the so-called "compulsory treatment" (Article 92 (1) of the Penal Code). This is a coercive measure which the court decrees by the sentence. It does not replace the penal sanction but is applied

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14. HIV prevalence and risk behaviour among prisoners in Bulgaria, 2006-2007. T. Varleva, V. Georgieva, E. Naseva, T. Yakimova, Choudhri, H. Taskov. XVIII International AIDS Conference, 2010, Vienna, Austria.
 15. Bulgaria Country Progress Report. UNGASS (2012).
 16. Prevalence of viral hepatitis among inmates of Bulgarian prisons. Popov G., Plochev K., Ramshev K., Ramsheva Z., 2010, 20th European Congress of Clinical Microbiology and Infectious Diseases.

together with the sanction. The court also usually assigns the duration of the compulsory treatment, as well as the type of medical facility where it should be carried out (e.g. compulsory treatment for a term of eight months at a medical facility specialized in the treatment of alcoholism and addictions). Delivery of compulsory treatment varies with the type of penal sanction imposed. Where a non-custodial measure is imposed, compulsory treatment is implemented at “medical facilities with a special therapeutic and work regime”. Where the person has been sentenced to imprisonment, compulsory treatment is delivered during execution of the penal sanction, and the duration of the treatment is deducted from the term of imprisonment (Article 92 (2) and (3) of the Penal Code).

Persons sentenced to imprisonment, for whom the court has ordered compulsory treatment by reason of drug dependence, are transferred to the Lovech Prison and are committed for treatment at the Specialized Hospital for Active Treatment of Persons Deprived of their Liberty, which is located in that prison (Article 31 (1) of the Ordinance on the Terms and Procedure for Medical Services at the Places of Deprivation of Liberty)¹⁷. This is the only facility within the Chief Directorate Execution of Penalties, which provides for treatment of drug dependence. The principal problem of the delivery of treatment of sentenced persons suffering from drug dependence is that it is delivered at psychiatric establishments which are not specialized in the treatment of dependents. The same applies to the specialized hospital with the Lovech Prison where, moreover, the drug-dependent persons are not accommodated separately from the rest of the prisoners.

One major problem related to medical services to inmates who suffer from drug dependence is the fact that, in practice, a very small part of them submits to specialized treatment during the service of their sentences. According to data of the Chief Directorate Execution of Penalties, in 2009 53 prisoners were treated for drug dependence at the Specialized Hospital for Active Treatment of Persons Deprived of their Liberty within the Lovech Prison and another 30 inmates received methadone therapy (out of a total of 1,038 drug-dependent prisoners according to official statistics). By comparison in 2008, out of 1,542 drug dependant prison inmates - 40 persons received treatment in the specialized psychiatric ward in Lovech prison and 61 received methadone treatment¹⁸. This ranks Bulgaria among

17. Prisoners suffering from drug dependence, in respect of whom the court has not ordered compulsory treatment, may be transferred for treatment to the specialized hospital with the Lovech Prison at their express request (Article 31 (2) of the OTPMSPDL).

18. 2010 National report (2009 data) to the EMCDDA, National Focal Point on Drugs and Drug Addictions, Sofia, 2011: p. 86.

the Member States of the European Union with the lowest proportion of the prison population receiving substitution treatment.

The problem with the shortage of specialized medical therapies is also confirmed by sociological surveys among prisoners. In a survey conducted in 2006 - 2007, the Bulgarian Helsinki Committee found that 28.3 per cent of the drug-dependent prisoners surveyed reported that they had not received any specialized therapy in prison, 5.2 per cent had seen a psychologist only once, 3.1 per cent had participated in a therapeutic group, 1.2 per cent had received a medical prescription for other medicines, and just 0.4 per cent had participated in a methadone program. Overall, a mere one-fifth of the respondents were pleased with the measures and therapies in which they had participated¹⁹.

Unsatisfactory medical services to inmates who suffer from drug dependence are due to the lack of a consistent state policy in respect of drug-dependent persons. Specialized treatment, if at all available, is in practice the result of isolated initiatives on the part of the administration of individual prisons or of non-governmental organizations. The lack of a comprehensive policy addressing drug dependence among prisoners is compounded by a shortage of financial and human resources. Specialists adequately trained to work with drug-dependent persons are scarce at prison facilities.

There are only a few harm reduction services, which are available in Bulgarian prisons. Among these are voluntary counselling and testing for HIV, as well as screening and testing for tuberculosis. According to Article 34 of the OTPMSPDL²⁰ imprisoned persons, who abuse narcotic drugs, are subject to an HIV screening test because they are among the groups facing a higher risk of HIV infection. HIV tests, however, are conducted respecting the principles of voluntary compliance and informed consent, which means that the inmates may be tested only if they have given their advance consent after being informed, in a language which they understand, of the essence, objectives and manner of conduct of the test. Intravenous drug-using prisoners are furthermore subject to a microscopic and culture test of sputum (Article 36 of the OTPMSPDL). VCT services for HIV, hepatitis and tuberculosis at prisons are implemented as a part of the National Program 'Prevention and control of HIV/AIDS' and National Program 'Prevention and control

19. Drugs, Crimes and Punishments, Bulgarian Helsinki Committee, Sofia, 2007: p. 72 (available in Bulgarian only).

20. Ordinance on the Terms and Procedure for Medical Services at the Places of Deprivation of Liberty.

of tuberculosis', which are funded by the Global fund to Fight AIDS, Tuberculosis and Malaria.

Needle exchange programs are not allowed in Bulgarian prisons, as well as provision of bleach and disinfectants, though condom distribution is available. Some non-governmental organisations like *Initiative for Health Foundation* in Sofia, *Mothers against Drugs Foundation* in Plovdiv and *Dose of Love Association* in Burgas in cooperation with the prison administrations organise and implement health education courses. Administration in other detention places has also organised and implemented short term health education trainings and CDEP reports that in 2009, 352 prisoners were involved in such programs²¹.

The alternative to imprisonment in Bulgaria is the sentence to probation. Where a drug-dependent person is sentenced to probation, the penal sanction may include, as a probation measure, inclusion of the sentenced person in a special program for drug-dependent persons. The Penal Code expressly provides, as a possible probation measure, the inclusion of the sentenced person in a social intervention program (Item 4 of Article 42a (2) of the PC), and the Law on Execution of Penal Sanctions and Detention in Custody specifies that these programs may be developmental and correctional, and the correctional programs may target overcoming dependencies (Article 217 (1) to (3) of the LEPSDC). Social intervention programs are supposed to be organized and paid for by the regional probation service and the law makes it possible to recruit non-governmental organizations and volunteers upon their elaboration and arrangement, as well as to resort to specialized services of natural and legal persons for work with sentenced persons (Article 218 (1) to (3) of the LEPSDC). When the court has not assigned inclusion in a social intervention program as a probation measure, the sentenced person may request inclusion in such a program on his or her own initiative by submitting a declaration in writing to the probation service (Article 251 (3) of the LEPSDC). Probation services face a serious problem in the execution of the penal sanction of probation in respect of drug-dependent persons due to the lack of sufficient human and financial resources for the elaboration and implementation of programs for drug dependents. In practice, there are no organisations providing community based treatment to drug dependant offenders serving probation sentences. Development of such programs requires not only allocating the needed financial resources, but also building capacity for such services in terms of development and establishment of such programs and the training of specialised personnel.

21. 2010 National report (2009 data) to the EMCDDA, National Focal Point on Drugs and Drug Addictions, Sofia, 2011: p. 88.

Currently, there is no specific strategy for social reintegration of drug dependent offenders. The social reintegration of the offenders is included among the activities for meeting the objectives of the National Strategy for Crime Prevention (2012-2020) and specifically - the activities under *Objective 9, Prevention of individuals and groups in risk of criminalization*.

In 2004 and 2005 the National Employment Agency through its regional Bureaus for Employment implemented Programs for re-socialization of individuals released from the penitentiary system. Similar national projects for re-socialization were carried out by the National Employment Agency in collaboration with the Chief Directorate Execution of Penalties in 2009 and in 2010. There are 2 NGOs - Association for Re-Integration of Sentenced Prisoners, based in Sofia (www.ar-spbg.org) and Crime Prevention Fund IGA, based in Pazardjik, which implement projects for social reintegration and re-socialization of offenders following the execution of their sentence. Yet, both of the organisations were not funded from the national budget, but rather from external donors. There is no data available for recidivism of the offenders sentenced for drug-related crimes

II. Initiatives for drug law reform undertaken by the government and/or the parliament in the last 10 years

The last major drug law reforms undertaken in Bulgaria in the last 10 years were related to the criminalization of the possession of drugs. In 2000 the penal code was amended and new acts were criminalized such as producing, processing and distributing narcotic drugs, giving another person a narcotic drug or an analogue thereof in quantities likely to cause death and death ensues, organizing, leading, financing and/or participating in a criminal group for cultivation of plants such as opium poppy, cannabis plants, etc. New harsher penalties were also introduced in terms of lengths and amounts of penal sanctions. Yet, along with this, new provisions were introduced, which provided that if a person is dependent on narcotic drugs and the quantity of drug found on him indicates that the said quantity is for personal use he is not to be prosecuted²². The last became popular as decriminalization of the 'single dose' and it was intended to decriminalise drug use itself and shift police pressure to producers, traffickers and distributors of narcotic substance.

There were several controversial court cases, where the 'single dose' amendment was used as an argument to release drug dealers apprehended with considerable

22. Penal Code, Paragraph 3 of Art 354a: Punishment shall not be imposed on a person dependent on narcotic drugs or analogues thereof, provided the quantity such person acquires, stores, keeps or carries, is such that reveals intention of personal use., repealed on 4th March 2004.

amounts of narcotic substances upon the claim that the amount was intended for personal use. This led to public discontent and eventually in the beginning of 2004 to re-criminalization of all drug related crimes. The amendment was passed by parliament despite the criticisms of experts and civil society organizations, as it kept the harsh sanctions introduced with the amendments of the Penal Code in 2000 and extended their applicability to the cases with possession of small quantities of narcotic substances. In this way the distinction between penal sanction for distribution of drugs and the sanction for possession of drugs became one and the same - imprisonment for up to ten years. The bill was adopted with the assumption that it will bring down the producers and distributors of drugs, as well as curb the levels of drug use in the country.

The negative results soon followed and the number of imprisonments for drug related offences tripled in just 3 years - from 525 at the end of 2003 up to 1,587 at the end of 2006. An impact evaluation study carried out by Open Society Institute and Initiative for Health Foundation in 2005 indicated even worse effects²³. Two years after the introduction of the amendment, risky injecting practices and cases of overdosing increased. In addition to that there was no reduction in drug use - the number of new starters remained the same, but access to harm reduction services worsened and use became more concealed. Access for drug treatment services also remained inadequate, as the state did nothing to alleviate admission to methadone programs or any other specialised treatment programs.

The growing concern of experts and civil society against the criminalisation of the 'personal dose' compelled the legislator to amend the Penal Code again and in 2006 the distinction between distribution and personal use was reintroduced. The new amendment provided for a light penalty (maximum fine of BGN 1,000) in minor cases. Yet, this provision did not decriminalise possession of drugs, but rather relaxed the sanctions for it. All other consequences arising from the penal sanction, however, are retained, including the impact of sentencing on the conviction status of the sentenced person. In the light that problem drug users (e.g. heroin addicts) are arrested more than one time for possession of narcotic substances, many of them still end up in prison as the second time the court cannot apply the same exemption for a minor case, but rather treats it as recidivism.

Apart from the long disputed criminalization of the possession of drugs, there were also other important initiatives related to drug policy. The most important among these are the following:

23. Heroin users in Bulgaria, one year after outlawing the dose for 'personal use', Bezlov, T., Sofia 2005, Initiative for Health Foundation & Open Society Institute.

- The development and adoption of the 2 National Drug Strategies, which have set the main policy priorities in the field, as well as the needed organisational and institutional framework for their implementation.
- The development and adoption of the National Programme for the Development of a System of Methadone Maintenance Programmes in the Republic of Bulgaria for the period 2006-2008. As a consequence, in recent years there has been an increase in the number of specialised medical centres providing opioid substitution treatment. While in 2005 there were only 5 OST programs in the country with a capacity for 770 patients, by the end of 2011 31 OST programs had been established with a capacity for 5,196 patients.
- The establishment of the National Focal Point on Drugs and Drug Addictions in 2003. The unit carries out informational, analytical and scientific research, expert-consultative, and publishing activities and is the official partner of the European Monitoring Centre for Drugs and Drug Addictions (EMCDDA) on behalf of the Republic of Bulgaria, as well as a participant in the European Network for Information in the field of drug addictions (REITOX). On the other hand, the expertise of NFP is rarely used by the national institutions for development and shaping of the national policies in the field or for introducing evidence based approaches.
- The amendment of the Narcotic Substances and Precursors Control Act in 2011 as a response to the increased number of new synthetic drugs (so called 'legal highs') appearing on the market at high rate. The amendment provides for more easy and speedy listing of the substances under the list of controlled substances. The amendment contributed to preserving the low prevalence of the use of such substances in the country.
- The amendment of the Narcotic Substances and Precursors Control Act in 2011, which introduced a new legal framework for the establishment and functioning of harm reduction programs and psycho-social services in the country. The amendment was developed as a result of a close collaboration between the National Centre for Addictions and the service providers, though it is still not fully implemented and its effects cannot be evaluated.

III. Standpoints of relevant stakeholders on drug law reform

The National Drug Addictions Centre, which is the body responsible for coordinating and providing methodical guidance on prevention, treatment, reduction of medical harms and rehabilitation of drug users and addicts, officially supports the following drug policy reforms:

1. Assuring adequate and sustainable financing of programs for prevention and treatment of drug addictions through establishment of a National Fund for prevention, treatment, rehabilitation and re-socialization of drug addicts, which should accumulate 1% of collected excise taxes on tobacco and alcohol products as per Article 53 of the Bulgarian Healthcare Act. The initiative for this drug policy reform was started by the largest patient organisation in the country - *Protection of Health Confederation as well as New Beginning Community Foundation*. The reform was also officially supported by the *Deputy Healthcare minister and the Parliamentary Healthcare Committee*. *The Blue Coalition parliamentary group*²⁴ also developed and submitted in 2011 a bill for establishment of such a fund, which was supposed to accumulate all taxes and fees collected under the Narcotic Substances and Precursors Control Act. The bill was rejected by the Bulgarian Parliament.
2. Amendment of the Bulgarian Penal Code and introduction of the enrolment in drug treatment as an alternative measure to imprisonment for offenders with drug addiction. The amendment should be accompanied with measures for development of the organizational and human resources capacity in the country for the implementation of such measures.
3. Expanding of the geographical coverage and further development of the harm reduction programs in the country.
4. Improving the control over the provision and the adherence to the quality standards in prevention, treatment and psycho-social programs.

The Bulgarian Addictions Institute is an independent non-governmental organization carrying out research in the field of drugs and drug addictions. Their standpoints for drug law reform are summarized below:

1. Decriminalization of the possession of drugs for personal use, based on precise legal definitions and provisions, as well as careful monitoring of the procedural and judicial practices.
2. Introduction of enrolment in drug treatment as an alternative measure to imprisonment for offenders with drug addiction. The reform should be accompanied with assurances of adequate financing, strengthening the organizational capacity and the coordination between the institutions involved.

24. Blue coalition is one of the small parliamentary groups in the 41st National Assembly of the Republic of Bulgaria, which is composed of MPs from several small Christian Democrats Parties.

'Promena movement' association is a non-governmental and not-for-profit organization, which advocates for the rights of drug users in Bulgaria. They are advocating for:

1. Decriminalization of the possession of drugs for personal use, provided that the person is adult and the quantity carried is not bigger than a certain amount clearly specified in the law. They propose that the allowed quantities should be defined accounting for the specifics of the patterns for use of the different drug substances.
2. Decriminalization of the growing of Cannabis Sativa plant, provided that the yield from it also indicates that it is intended for personal use.
3. Legalisation of the prescription of marijuana for medicinal purposes.

Initiative for Health Foundation is a non-governmental and not-for-profit organization, which is managing the first harm reduction program in Bulgaria. Recently they have established a civil society platform - Policy Zone - involving 8 non-governmental organizations, experts, journalists and activists, which are advocating for a reform of the drug legislation in Bulgaria. Their official policy reform objectives are in line with the 'Count the Costs' campaign of the International Drug Policy Consortium and are summarized in a public statement available at the Policy Zone's website (<http://www.policyzone.info>):

1. Reclassification of the psychoactive substances listed in the Act for control of narcotic substances and precursors according to the best European practices and the existing scientific evidence in order to differentiate the levels of risk associated with the different substances
2. Decriminalization of the possession of drugs for personal use, provided that the quantities are not bigger than a certain amount defined in the law and differentiation of the penalties imposed according to the real risk to public safety
3. Introduction of drug treatment and psycho-social rehabilitation as an integral part of the probation measures for drug dependant offenders and turning these measures into practical alternatives to imprisonment
4. Establishment of a sustainable state financing mechanism for support of the programs for prevention, treatment and psycho-social rehabilitation for drug users.
5. Establishment of a quota for civil society organizations in the National Drugs Council, which is the national coordinating body in the field of drug policy.

IV. Proposals and recommendations for further research and advocacy work

One of the issues, which emerged within the conducted interviews with experts, was the need for advocating about the development and establishment of supervised injection sites or the so called ‘drug injecting rooms’. The arguments were that there has been a steady trend in the increase of HIV cases among drug users in the last 5 years, which is coupled with the marginalisation of the injecting drug users and low tolerance of the society towards the outdoor injecting sites in the big cities.

Country Report Croatia

Country Report Croatia

by Dalida Rittossa¹

I. The current national drug strategy and drug legislation in Croatia

1. National Strategy on Drugs

The National Drug Control Strategy in the Republic of Croatia is a basic legal document adopted to formulate national drugs policy in Croatia for the period 2006-2012.² It has been used as a framework for shaping the Action Plan for the Suppression of Drugs Abuse on a three-year basis. The last Action Plan covered the period 2009-2012.³

On 21st February 2002 the Croatian Government established **the Office for Combating Narcotic Drug Abuse (OCDA)**. Together with **the National Commission for the Prevention of Drug Abuse**, the OCDA coordinates implementation of the above mentioned national strategy on drugs and action plan.⁴ As an expert service,

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 2. National Drug Control Strategy in the Republic of Croatia, <<http://www.uredzadroge.hr/upload/File/English/Documents/National%20drug%20control%20strategy%20in%20the%20Republic%20of%20Croatia%202006-2012.pdf>> (visited Aug. 18, 2012)
 3. Action Plan for the Suppression of Drugs Abuse for the Period of 2009 -2012, <http://nijd.uredzadroge.hr/upload/File/English/Documents/Action_Plan_on_Combating_Drugs_Abuse_in_Croatia_2009_2012.pdf> (visited Aug. 18, 2012)
 4. Both National Commission for the Prevention of Drug Abuse and the OCDA are government bodies. On the one hand, government involvement can be seen as a proof that the highest political officials are determined to deal with drug abuse issues. However, on the other, government coordination is insufficient when performing every day operative actions. Sakoman stresses that designed coordination is not a real horizontal coordination which can only be achieved by a team-work of different professionals resolving practical problems from diverse subsystems to suppress drug abuse. Moreover, government decision to implement incredibly high centralisation is problematic due to the fact that implementation of the national strategy and action plan depends on skills and knowledge of persons working in only two government bodies. If OCDA does not have a sufficient number of employees who are experts in the field of drug abuse, the whole national system is in question no matter the financial resources and employees' efforts, energy and time. Sakoman, S, Pavišić, B., Cvjetko B.: *Aktualna pitanja primjene Zakona o suz-*

the OCDA systematically monitors the drug situation in Croatia. Apart from monitoring, the key tasks of this governmental body is to perform continuous coordination, through the existing coordination mechanisms, and to ensure efficient and adequately balanced measures on two main levels, i.e. among the state government bodies and between the state and local self-government bodies.

On the governmental level the OCDA works tightly with the following state bodies: the Ministry of Health and Social Welfare, Ministry of Social Policy and Youth, Ministry of Foreign and European Affairs, Ministry of Science, Education and Sports, Ministry of Finance, Ministry of Defence, Ministry of the Interior, Ministry of Justice, Ministry of Labour and Pension System, Ministry of Entrepreneurship and Crafts, Public Prosecutor's Office of the Republic of Croatia, Croatian National Institute of Public Health, Croatian Employment Service and other expert and scientific institutions. On the county level and the level of local self-governing units, the OCDA coordinates implementation of strategic documents and legal regulations to suppress drug abuse between: county commissions for narcotic drugs abuse control, county government administration offices for social activities (health, education, social care etc.), services for prevention and out-of-hospital treatment of addiction within the county public health institutes, clinical hospital centres for medical care for drug addicts, social welfare centres, regional offices of the Croatian Employment Service, civil society organisations (nongovernmental organisations, therapy communities), educational-pedagogical services, family and religious institutions, Croatian Red Cross Centres, Public Prosecutor's Office, judiciary and police.

The OCDA policy is to approach drug abuse issues applying scientific, multidisciplinary methods. In order to put this policy into practice, the OCDA has established the **National Drugs Information Unit (NDIU)**. As an important element of the structure of the OCDA, its main role is to collect all available information about drug issues from the relevant institutions, government bodies and civil society organizations. Collecting data is a necessary prerequisite which has to be fulfilled in order to prepare an objective evaluation of drugs and the drug addiction situation in Croatia as a basis for policy in this area. In addition to collecting, harmonizing and analysing data, the NDIU supervises and analyses the national scientific, legal and political progress to combat drug abuse. Moreover, as the main partner of the National Drugs Information System in the Republic of Croatia (NDIS), the NDIU coordinates activities of all other partners and endeavours to strengthen their partnership. Furthermore, this unit is primarily responsible for direct coop-

bijanju zlouporabe opojnih droga / Current Issues Regarding the Implementation of the Drug Abuse Prevention Act, Faculty of Law University of Zagreb, Zagreb, 2002, pp. 275-276.

eration with the EMCDDA's European Information Network on Drugs and Drug Addiction (the Reitox network). To facilitate integration into the EMCDDA's new system which collects data on best national practices, the NDIU has established **the Information and Documentation Centre** to collect professional literature on drugs and develop a database of relevant research and project documentation in the field of drug demand reduction.

After the dissolution of the Socialist Federative Republic of Yugoslavia, the Croatian Parliament recognised binding powers of certain international legal documents by a note of succession. Therefore, on 8th of October, 1991, Croatia became a party of the 1961 UN Single Convention on Narcotic Drugs as well as its 1972 Geneva Protocol, the 1971 UN Convention on Psychotropic Substances and 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.⁵

According to the National Strategy, especially the 5.3 chapter on "Drug Demand Reduction", social aid services and NGOs play an important role in reducing drug use to a minimum.⁶ Numerous scientific studies have reached a conclusion that the general presence of drugs is a global problem which can no longer be denied.⁷ Therefore, one of the most important prerogatives is to educate children and youth, as well as the public in general, about drugs and their effects.⁸ Moreover, if

5. Tripalo, D.: *Kazneopravni aspekti zlouporabe droga / Criminal Legal Aspects of Drug Abuse*, Croatian Annual of Criminal Law and Practice, vol. 10, no. 2, 2003, p. 553.

6. The 1996 Croatian State Program and Strategy to Suppress Drug Abuse assigned important tasks to social aid services and NGOs in preventing drug abuse and rehabilitating former addicts. Kovačević-Čavlović, J.: *Protiv zlouporabe droge na nacionalnoj i međunarodnoj razini / Against Drug Abuse on National and International Level*, Official Gazette, Zagreb, 1996, pp. 105-107.

7. Kušević, V.: *Zlouporaba droga / Abuse of Drugs*, Ministry of the Interior, Zagreb, 1990, p. 20; Klarić, D.: *Suvremeni trendovi zlouporabe droga / Modern Trends in Drug Abuse*, State Inspectorate of the Republic of Croatia, Zagreb, 2000, p. 9; Tripalo, D.: *Zlouporaba droga prema novom Kaznenom zakonu / Drug Abuse according to the new Criminal Code, Novine u kaznenom zakonodavstvu / Novelties in Criminal Legislation*, Supreme Court of the Republic of Croatia, Zagreb, 2012, p. 27.

8. Previous research in other countries has shown that educational programs on drugs are highly important especially within the drug prevention among youths who mostly have an ambivalent attitude towards drugs or lack of knowledge about drug addiction. Consequently, educational programs in Germany were considered to be fire fighting actions. Mellenthin, K.: *Rauschgift-Bekämpfung und Drogentherapie / Suppression and Prevention of Drug Crimes*, Selection of Articles from Foreign Journals, no. 1, 1993, pp. 7-8.

the quality of life is directly interrelated with drug demand,⁹ society has to organise itself in a way that assures quality of life and healthy life styles. Demand reduction programmes should be, first of all, related to and implemented within the educational system, family, health and social security systems on the local level. To successfully carry on such programs, it is also necessary to establish cooperation with local community institutions, addiction prevention centres, police and other participants and subjects within the community. Furthermore, religious associations, citizen associations and the media also play a part in the implementation of a drug demand reduction programme.

Setting the above described objective, the National Strategy emphasizes that the primary task of social aid services is to take preventive measures aimed at the high-risk group of children (those who are from high-risk family surroundings or are risky-behaving). The measures are undertaken in accordance with the legal regulations relating to social security and family legal protection in the interest of children. Furthermore, the Drug Abuse Prevention Act contains provisions according to which local social security centres are primarily responsible for offering help to an addict, a temporary narcotic drug user or to persons addicted to alcohol, or experimenting with drugs.¹⁰ Due to the fact that social security centres have a legal obligation to provide drug rehabilitation programmes or the rehabilitation of other addictions, according to the Criminal Procedural Code, the State Public Prosecutor has the power to impose such a programme on a drug offender in the summary proceedings after gaining the victim's consent although there is a reasonable doubt that the offender has committed an offence subject to public prosecution and punishable by a fine or imprisonment up to five years.¹¹ In juvenile offenders' cases, a juvenile court judge can pronounce an educational measure to a minor or young adult who committed a crime to attend a rehabilitation programme offered by a social security centre and centres for prevention and addiction treatment if there is enough evidence to conclude that such an educational measure could influence the young offender's behaviour.¹²

9. Due to the fact that there is a strict relationship between quality of life and drug demand, there is a need to include social measures in preventive programs targeting the drug abuse. Vejzović, N.: *EU Phare međudržavni program za borbu protiv droga / EU Phare Multi-Country Programme for Fight against Drugs*, Journal of Criminal Justice Issues, vol. 1, no. 1, 1998, p. 172.

10. Art. 37 and 38 of the Drug Abuse Prevention Act, Official Gazette no. 107/2001, 87/2002, 164/2003, 141/2004, 40/2007, 149/2009, 84/2011.

11. Art. 522, para. 1, sec. 5 of the Criminal Procedural Code, Official Gazette no. 121/2011.

12. Art. 10, para. 10 of the Juvenile Courts Act, Official Gazette no. 84/2011. To find out more about juvenile sanctions, see Kos, J.: *Izvršavanje maloljetničkih sankcija / Execution of Juvenile Sanctions*, Croatian Annual of Criminal Law and Practice, vol. 13, no.2, 2006, pp. 807-865.

According to the National Strategy, the NGOs main role is to create services which would help drug addicts, narcotic substance users and their families and to take an active part in the addiction prevention field. It is of the utmost importance to strengthen and preserve the partnership of civil society, state institutions and local communities, respecting the principles of wholeness and balance. To accomplish this goal, the National Strategy calls for solutions which would resolve the lack of independence of NGOs and their excessive dependence on state budget funds. On the other hand, previous researches and the present one has shown that NGO members do not feel they have an officially recognised and active part in drug prevention system. They are concerned about the bureaucracy of the administration system and insecure funding provided by the government.¹³ According to the government sources, in the period 2006 - 2008 there were about 50 NGOs actively involved in implementation of the National Strategy. In 2009 and 2010 their number significantly increased. Ten new NGOs were working with drug abusers. One of the reasons was access to funding through IPA projects, recognition of NGOs in research and their more active participation in prevention and harm reduction programs.¹⁴

The National Drug Control Strategy in the Republic of Croatia was developed according to the current international frame, UN conventions, instructions of the Council of Europe and European Union, as well as other international agreements and recommendations in different professional fields. A multidisciplinary, integrated and balanced approach was applied while creating its strategies, principles and goals with respect to drug supply and demand reduction. Consequently, at least on the normative level, there are no issues left uncovered or problems undetected. While conducting the evaluation of the national strategy in 2011, the Trimbos Institute reached a similar conclusion. According to the exploratory interviews “The Drug Strategy is seen as a good, comprehensive and thorough policy document”.¹⁵ However, there are some practical issues which should be particularly discussed in future. For example, in certain areas, the strategy has some weak points (substitution therapy leaks into the black market, rehabilitation / reintegration programmes for drug users released from prison have limited results, harm reduction programmes are not yet implemented country-wide). The relationship between different coordination bodies (National Commission, OCDA and Coun-

13. Trautmann, F, Braam, R., Keizer, B., Lap, M.: Evaluation of the National Drug Strategy of the Republic of Croatia (2006-2012), Trimbos Instituut, Utrecht, 2011, p. 41.

14. Trautmann, F, Braam, R., Keizer, B., Lap, M., *op. cit.*, p. 122.

15. Trautmann, F, Braam, R., Keizer, B., Lap, M., *op. cit.*, p. 19.

ty Commissions) is unclear as well as their division of powers and responsibilities.¹⁶ A certain problem is presented by the structural lack of communication from the National Commission to the field. Human resources in treatment and prevention services are insufficient and multidisciplinary work is limited. While conducting treatment in prisons and the community, professionals insufficiently use guidance documents. The evaluation of implemented programmes and interventions is insufficient. Financial resources are scarce and existing budgets are unbalanced.¹⁷

2. National Substantive Criminal Law

The Criminal justice system in Croatia has been facing substantial changes. It is in a transitional period due to the fact that 1997 Criminal Code currently in force will be replaced by the 2011 Criminal Code on January 1st, 2013. Although new criminal law concepts and theories have been applied and most of the offences reshaped and altered in line with the 2011 Code, certain basic legislative principles were adopted without adaptation, as they were in previous criminal codes. In both the 1997 and 2011 Codes crimes are divided and grouped in different Code Chapters depending on the value protected by the norm. For example, the offence of Abuse of Narcotic Drugs is regulated by the article 173 and is placed under Chapter thirteen "Criminal Offences against Values Protected by International Law".¹⁸ This was a political decision which was purely made based on formal criteria, keeping in mind the fact that Croatia is a party to certain international drug conventions (see 1.3.).¹⁹ The 2011 Criminal Code does not support such reasoning. Now, drug abuse is regulated under the Article 190 as the offence of Unauthorised Possession, Manufacturing and Selling of Drugs and Substances Prohibited in Sport belong-

16. While discussing the newly introduced provisions of the Drug Abuse Prevention Act in 2001 which was seen as a normative tool for implementation of the national strategy, different Croatian professionals working in the field of drug abuse had pointed at vague relationship between the OCDA and National Commission. The Act was used to establish a massive bureaucratic apparatus with numerous "general" and "coordinative", but in fact, multiple and overleaping functions. (Sakoman, S, Pavišić, B., Cvjetko B., *op. cit.*, pp. 244-245.) Future legislative amendments did not resolve these legislative imperfections.

17. Trautmann, F, Braam, R., Keizer, B., Lap, M., *op. cit.*, p. 20.

18. Art. 173 of the 1997 Criminal Code, Official Gazette no. 110/1997, 27/1998, 50/2000, 129/2000, 51/2001, 111/2003, 190/2003, 105/2004, 84/2005, 71/2006, 110/2007, 152/2008, 57/2011.

19. Bačić, F, Pavlović, S., *Kazneno pravo - posebni dio / Criminal Law - A Special Part*, Informator, Zagreb, 2001, 117.

ing to the offences prescribed under Chapter Nineteen “Criminal Offences against People’s Health”.²⁰

The offences do not differ only in their content and values protected in their dispositions. If the offence is considered to be a minor one, criminal proceedings are instituted by a private charge (bodily injury, coercion, threat, insult, defamation, exposure of personal or family details, reproach of a criminal offence, minor larceny of a movable property, embezzlement, privileged fraud, privileged abuse of trust, privileged poaching of fish, arbitrary securing of rights) or by the Public Prosecutor’s Office following a motion (aggravated coercion, aggravated threat, violating the privacy of correspondence and other pieces of mail, unauthorized recording and eavesdropping, disclosure of professional secrets without authorization, unauthorized use of personal data, privileged larceny of a state movable property, embezzlement of a state movable property, malicious mischief, misuse of insurance, misuse of a check and a credit card, violation of another person’s rights, criminal offences against property belonging to offender’s close family member, transmission of venereal diseases, preference of creditors, aggravated arbitrary securing of rights).²¹ The same procedural distinction is maintained in the 2011 Criminal Code.

In Croatian criminal legislation there is no distinction between misdemeanours and felonies.

According to the 1997 Criminal Code still in force there are different types of sanctions. Perpetrators of criminal offences can be punished by 1) fine or 2) imprisonment.²² In cases determined by the law the criminal court may pronounce non-custodial measures, i.e. 1) admonition and 2) suspended sentence.²³ If there is a need to eliminate the conditions which enable or encourage the perpetration of another criminal offence, the court may sentence a perpetrator to a security measure.²⁴ Security measures are: 1) compulsory psychiatric treatment, 2) compulsory

20. Art. 190 of the 2011 Criminal Code, Official Gazette no. 125/2011.

21. Art. 8 of the 1997 Criminal Code.

22. Art. 49, para. 1 of the 1997 Criminal Code.

23. Art. 64 of the 1997 Criminal Code.

24. Sušić, E., Pleše, S.: *Aktualni problemi primjene i provođenja sigurnosne mjere obveznog psihijatrijskog liječenja* / Current problems Related to the Application and Enforcement of the Security Measure of Compulsory Psychiatric Treatment, Croatian Annual of Criminal Law and Practice, vol. 13, no. 2, 2006, p. 917. (pp. 915-932.)

treatment of addiction, 3) prohibition from engaging in a profession, activity or duty, 4) prohibition from driving a vehicle, 5) expulsion of aliens and 6) forfeiture.²⁵

On 1st of January 2013, a third type of punishment will be introduced in the Croatian criminal system, long-term imprisonment.²⁶ Except for suspended sentences, the new 2011 Criminal Code also prescribes a partially suspended sentence.²⁷ Admonition, as a non-custodial sentence, is no longer prescribed by the Criminal Code. Certain amendments are introduced with respect to security measures. Due to the fact that the Law on Aliens contains specific provisions on the expulsion of aliens, the Criminal Code no longer regulates the expulsion of aliens as a security measure. Having in mind that security measures are by their nature facultative, which is not the quality of forfeiture, forfeiture is now regulated as a special measure together with confiscation of pecuniary gain acquired by a criminal offense.²⁸ Five new types of security measures are introduced: 1) compulsory psychosocial treatment, 2) prohibition from approaching the victim, other person or persons or from entering the vicinity of certain places (restraining order), 3) removal from common household, 4) prohibition from having access to the Internet and 5) supervision after completely serving the prison sentence.²⁹ The last mentioned security measure found its place within the criminal sanctions system as a response to obligations imposed by the European Court for Human Rights in Croatia in the Tomasic case.³⁰

Offenders serve custodial sentences according to the provisions of the Law on the Execution of Prison Sentence which was enacted in 1999 and subjected to numerous amendments.³¹

25. Art. 73 and 74 of the 1997 Criminal Code.

26. Art. 40, para. 1 of the 2011 Criminal Code.; The Article 24 of the 2011 Criminal Code restrains the principle of culpability stating that a mentally disabled person cannot be punished, however a security measure of prohibition from engaging in a profession, activity or duty, prohibition from driving a vehicle, prohibition from approaching the victim, other person or persons or from entering the vicinity of certain places (restraining order), removal from common household and prohibition from having access to the Internet can be issued upon him.

27. Art. 57 of the 2011 Criminal Code.

28. Art. 79 of the 2011 Criminal Code.

29. Art. 65 of the 2011 Criminal Code.

30. Branko Toma ić and Others v. Croatia, ECHR final judgment on 15th of April, 2009, Application no. 46598/06, <<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-90625>> (visited Aug. 28, 2012)

31. The 1999 Law on the Execution of Prison Sentence, Official Gazette no. 128/1999, 55/2000, 59/2000, 129/2000, 59/2001, 67/2001, 11/2002, 190/2003, 76/2007, 27/2008, 83/2009, 18/2011, 48/2011, 125/2011.

Croatian criminal justice system does not recognise a classic institute of probation as it exists in common law systems. Instead of probation, a suspended sentence can be issued like in most European countries. It is a criminal sanction which consists of the pronounced punishment and the term within which such a punishment shall not be executed under the conditions prescribed by the Criminal Code.³² There are two sets of conditions. First of all, objective criteria have to be fulfilled in the particular case. 1) The perpetrator has to be pronounced guilty for committing the criminal offence for which the Criminal Code prescribes the imprisonment of up to five years, exceptionally of up to ten years if the provisions of mitigation of punishment have been applied. In addition, the punishment pronounced has to be imprisonment not exceeding two years or a fine, either for a single offense or for concurrently adjudicated offenses. The period of probation for a suspended sentence cannot be shorter than one or longer than five years and such time is assessed in full years only. 2) Furthermore, the court has to determine that, even without the execution of the punishment, the realisation of the purpose of punishment can be executed, particularly taking into account the relationship of the perpetrator towards the injured person and the compensation for the damage caused by the criminal offence.³³ A suspended sentence is revoked and pronounced punishment ordered to be executed by the court if the offender, within the period of probation, commits one or more criminal offences for which the court has imposed imprisonment of two years or a more serious punishment. A revocation is elective if the court has imposed a less serious punishment. Regardless of the reasons for revocation, a suspended sentence may not be revoked until one year has expired within the probation period.³⁴ According to the 1997 Criminal Code, the court may order one or more obligations together with imposing a suspended sentence (compensation for damages, restitution of the gain acquired by the offense, fulfillment of other statutory obligations concerning the perpetration of the offense).

When in a particular case conditions to impose a suspended sentence are met but the circumstances in which the perpetrator lives and his personality suggest that he needs assistance, protection or supervision in order to fulfil the obligation not to commit a criminal offence during the probation period, the court may impose a

32. A detailed analysis of suspended sentence is given in Cvitanović, L., Glavić, I.: *Prvi pogled na uvjetnu osudu u novom Kaznenom zakonu / A Preliminary View of the Suspended Sentence in the New Criminal Code*, *Croatian Annual of Criminal Law and Practice*, vol. 18, no. 2, 2011, pp. 755-778.

33. Art. 67 of the 1997 Criminal Code.

34. Art. 69 of the 1997 Criminal Code.

suspended sentence with supervision.³⁵ As in cases of classic suspended sentence, the perpetrator is found guilty, punishment pronounced and the probation period determined, however, the perpetrator is supervised for the whole period of probation, or shorter if there is no longer need for assistance, protection or supervision, by experts of a government body for the execution of criminal sanctions. Besides the above mentioned obligations accompanying the classic suspended sentence, the court may order the perpetrator to fulfil one or more obligations during the period of probation:

- 1) to undertake vocational training for a certain profession which he chooses with the professional assistance of a probation officer,
- 2) to accept the employment which corresponds to his professional qualifications, skills and actual abilities to perform the working tasks suggested or offered to him by a probation officer,
- 3) to dispose of his income in accordance with the needs of persons he has an obligation to provide for under law and in accordance with advice offered by a probation officer,
- 4) to undergo medical treatment necessary to eliminate physical or mental disorders which may induce the perpetration of a new criminal offence,
- 5) to undergo treatment for addiction to alcohol or to narcotic drugs in a health institution or therapeutic community,
- 6) to participate in psychosocial therapy in specialized institutions established by competent governmental bodies to eliminate aggressive behaviour,
- 7) to avoid visiting certain places, bars and events which could offer an opportunity and motive to commit a new criminal offense,
- 8) to regularly keep in touch with the probation officer so as to be able to report on the circumstances which could induce the perpetration of another criminal offense.

With the new 2011 Criminal Code provisions governing the suspended sentence have been significantly amended. Due to the fact that Croatian criminal courts have dominantly pronounced suspended sentences in their practice (around 70% of all sentences) and neglected other sentences, creating the “mild

35. Grozdanić, V., Škorić, M.: *Uvod u kazneno pravo* / Introduction to Criminal Law, Organizator, Zagreb, 2009, pp. 197-198.

punishing policy”³⁶ the legislator changed objective conditions for application of suspended sentences. According to the new provisions, a suspended sentence may be applied only in cases in which the court pronounces imprisonment not exceeding one year or a fine no matter the length of sanction prescribed by the Criminal Code for the offense committed. The probation period has the same duration, however, now the court has the power to shorten it or prolong it during the execution of suspended sentence under the conditions prescribed by the special law.³⁷

The Code does not contain separate provisions on suspended sentence with supervision due to the fact that **supervision** is treated as a separate sentencing measure which could be imposed together with suspended sentence, replacement of imprisonment with community service and conditional release upon the court’s assessment that a perpetrator needs the help, guidance and assistance of a probation officer in order not to commit criminal offenses in future and to be more easily included in society.³⁸ On the other hand, under the Article 57, a special type of suspended sentence is introduced in the Croatian sentencing system, **the partially suspended sentence**. According to this provision, the court may apply a partially suspended sentence to the offender who was sentenced to a fine or imprisonment for more than one year and less than three years if a conclusion has been reached that there is a high probability that the offender is not going to commit criminal offenses in the future even without execution of the whole punishment.³⁹

The Criminal Code still in force opens the possibility of converting a fine into work in the public interest (**community service**). According to the Article 52, paragraph 1, if the attempt to collect the fine by the tax authorities was unsuccessful, the court shall bring a decision to substitute the fine with community service in such a way that the offender’s one daily income is substituted with one day of community serv-

36. Similarly, German criminal courts have expressed a great reliance on suspended sentence as a sanction to reduce criminality. Between 1976 and 1996, the number of suspended sentences nearly doubled. Statistics show that overall numbers of suspended sentences increased from about 59,000 to more than 84,000. Nestler, C.: Sentencing in Germany, *Buffalo Criminal Law Review*, vol. 7, 2003, pp. 123-124.

37. Art. 56 of the 2011 Criminal Code.

38. Art. 64 of the 2011 Criminal Code.

39. Art. 57 of the 2011 Criminal Code.

ice.⁴⁰ The maximum duration of working days may not exceed 60 days.⁴¹ Moreover, when the court assesses and imposes imprisonment for the duration of up to six months, it may at the same time decide that such punishment, with the consent of the offender, be replaced with community service.⁴² In practice, this provision was problematic because it was not clear when the court has to ask for the convict's permission, after or before pronouncing the verdict and decision on sanction. On the other hand, the Code offers precise guidance what has to be taken into consideration when evaluating the possibility of imposing community service. The decision to replace imprisonment with community service has to be based upon the assessment that, considering all the circumstances determining the type and range of the sanction, the execution of imprisonment would not be necessary to realize the purpose of punishment, and (at the same time) a non-custodial measure would not be sufficient to accomplish the general purpose of criminal sanctions. Community service is determined for a duration proportional to the imposed imprisonment, however, from a minimum of 10 to a maximum of 60 working days. It has to be performed within a period which is neither shorter than 1 month nor longer than 1 year.⁴³

The 2011 Criminal Code has retained the possibility of substituting a fine of up to 360 daily incomes with **community service**. However, with a clear division in separate paragraphs, the legislator has stressed that the court firstly has to try to collect it through the tax authorities within 3 months, and only after that is the court authorised to substitute it with work in the public interest, previously obtaining the offender's consent. In case the offender does not give his consent to community

40. In Croatia, the fine is not determined by fixed amounts but by daily income of the person against whom it is imposed. Firstly, the court decides upon number of daily incomes which cannot be lower than 10 daily incomes or higher than the sum of 300 daily incomes. Exception is made in cases in which a criminal offence was committed for personal gain when the maximum fine may amount to 500 daily incomes. In the second phase of its assessment, the court determines the amount of money the convict gains in a day. The fine is calculated by multiplying the number of daily incomes with the monetary value of one daily income. (For a detailed analysis of a fine, see Grozdanić, V.: *Sistem sankcija u nacrtu Novog hrvatskog Kaznenog zakonika* / The System of Penal Sanctions in the Croatian Draft Penal Code, Croatian Annual of Criminal Law and Practice, vol. 1, no. 1, 1994, pp. 49-62.) Recently enacted Criminal Code embraces the daily income nature of the fine, however, according to the new provisions, the lower amount of daily incomes is set on 30 daily incomes and the maximum amount on 360 daily incomes.

41. Art. 52, para. 1 of the 1997 Criminal Code.

42. Art. 54, para. 1 of the 1997 Criminal Code.

43. Art. 54, para. 2 and 3 of the 1997 Criminal Code.

service, or fails to fulfil it, only then will the court issue the order to substitute a fine with imprisonment. Such development of events was necessary because, according to the legislator's opinion, the previous provisions on substituting the fine were against the function of the fine as a substitute for imprisonment.⁴⁴ There is no sense in pronouncing a fine while trying to avoid putting offenders in prisons if it would eventually be substituted with imprisonment. The main purpose of the fine as a sanction is to reduce the prison population. This can be clearly seen from the Article 45 according to which short prison sentences have to be pronounced as an exception. The imprisonment up to 6 months can be imposed upon the offender only if it can be expected that a fine will not be paid or community service not fulfilled or if the purpose of punishment will not be realised by a fine, community service or suspended sentence.⁴⁵ With the same aim the legislator has amended certain conditions regarding the substitution of imprisonment with community service. Starting from 1st January, 2013, the court may issue an order to fulfil community service instead of one year of imprisonment.⁴⁶ According to new provisions, the offender gives his consent for community service to a probation officer in charge who after that determines the period in which the service has to be fulfilled. In that way community service has become an institute with a dual nature, being part of the criminal justice system as well as of the probation system. Another novelty is the proportion of community service working hours and amount of the fine and days spent in prison. According to the law, one daily income is substituted with 4 working hours as well as one day of imprisonment.⁴⁷

Conditional release has been regulated with the same precision as the institute of community service in Criminal Codes, the one still in force and the one replacing it in less than 5 months.⁴⁸ According to the present legal regulation a person sentenced to imprisonment may be released from the institution after having served at least one-half of the term, or exceptionally, after having served one-third of the term to which he had been sentenced, under the conditions determined in the Law

44. Bill on Amendments of the 2011 Criminal Code, Government of the Republic of Croatia, Zagreb, 2011, p. 4.

45. Art. 45, para. 1 of the 2011 Criminal Code.

46. Art. 55, para. 1 of the 2011 Criminal Code.

47. Art. 55, para. 2 and 5 of the 2011 Criminal Code.

48. Criminal justice statistics show that the institute of conditional release is used as an important tool to diminish overcrowding of prisons in Croatia. However, in Belgium, due to automatic provisional releases of inmates serving prison sentences, judges have imposed longer prison sentences to ensure that convicts would be imprisoned for the period they deserved. Snacken, S.: Penal Policy and Practice in Belgium, Crime and Justice, 2007, vol. 36, pp. 162-163.

on the Execution of Prison Sentence. In case the person is serving a long-term imprisonment (imprisonment with duration of 20 to 40 years) he may be released after two-thirds of his sentence has expired, or exceptionally, one-half of it. The court must revoke the conditional release if the convict, while on conditional release, commits one or more criminal offences for which he is sentenced to imprisonment for 6 months.⁴⁹

The above described basic provisions governing the institute of conditional release have been amended by the last legislative interventions. First of all, the Code specifies that the criminal court is authorised to make a decision on conditional release. Moreover, there is no longer a distinction between terms which have to be served in prison by prisoners getting conditional release depending on the type of imprisonment. Everyone is entitled to submit a request for conditional release after serving the one-half of the term, but no less than 3 months. The court may grant release if it can be reasonably expected that the convict will not commit another criminal offense and if the convict gives his consent to be released earlier. The court will decide upon the request after carefully taking into consideration the convict's personality, his previous life and offending, whether other criminal proceedings are instigated against him, his relation towards the victim and committed offense, his behaviour while being in prison, his success while taking part in programs in prison, whether there was a change in his behaviour after he committed the offense or it is to be expected that such changes will occur while applying the measures of supervision during the conditional release, life circumstances and the convict's readiness to start living freely out of prison. With the first day of conditional release starts a period of supervision which will expire on the last day of the term supposedly served in prison.⁵⁰ The conditionally released convict may receive an order to fulfil one or more special obligations or to be supervised by a probation officer. The Article 62 prescribes different types of special obligations. Except for the list existing in the 1997 Criminal Code, the new Code contains new provisions on the following obligations:

- 1) to compensate for the damage caused by the criminal offence,
- 2) to transfer a certain amount of money to public institutions, humanitarian or charitable organisations, that is to the fund for compensation of victims of crimi-

49. Art. 55 of the 1997 Criminal Code.

50. The new Criminal Code provisions on conditional release are enacted with the aim of diminishing, as much as possible, differences between the conditional release and the suspended sentence.

nal offenses if this is appropriate with respect to the criminal offense committed and the offender's personality,

- 3) prohibition from approaching the victim or some other person (restraining order),
- 4) removal from the household if the offender committed the offense of family violence,
- 5) prohibition from socialising with a specific person or a group of persons who could influence him to commit another criminal offense or to offer them employment, teaching lessons or accommodation,
- 6) prohibition from stalking the victim or some other person,
- 7) prohibition from leaving home at specific time during the day,
- 8) prohibition from bearing, possessing or trusting arms or objects to another person which could influence him to offend again,
- 7) to fulfil the obligation to provide for persons or other obligations prescribed by the law for a specific criminal offense and
- 8) other obligations which are appropriate with respect to the committed offense.

Except for the fact that obligations are seen as a good method to reduce the risk of a prisoner's reoffending, it was possible to broaden the list of obligations due to their common characteristics with suspended sentence.⁵¹

3. National Drug Laws and Institutions

The Drug Abuse Prevention Act is a primary legal source which regulates the cultivation, production and trade of drugs in the Republic of Croatia. The Act has special provisions governing the:

- 1) conditions for cultivation of plants from which drugs can be extracted as well as conditions for manufacturing, possession and trade of drugs and substances which could be used to manufacture drugs,
- 2) supervision of the above enumerated actions,
- 3) measures to suppress drug abuse,

51. Turković, K.: *Okviri reforme sustava kaznenopravnih sankcija u Republici Hrvatskoj / The Framework of Reform of the Criminal Sanctions System in the Republic of Croatia*, Croatian Annual of Criminal Law and Practice, vol. 16, no. 2, 2009, p. 817.

4) drug prevention system and system created to help addicts and temporary narcotic drug users.⁵²

According to the Article 3, paragraph 1, drugs may be cultivated, produced and traded only for alimentary, veterinary, scientific, research and educational purposes. Depending on what kind of plants are going to be cultivated, the authorisation for cultivation is issued by the Minister of Health or Minister of Agriculture. To produce drugs it is necessary to obtain a permit from the Minister of Health. The Minister of Health is also authorised to issue permits to scientific institutions for cultivation and production of drugs for scientific and research purposes. If the authorisation or permit has not been obtained or any other condition for cultivation, production and trade of drugs prescribed by the law has not been met in an individual case, the cultivator, producer or trader commits a criminal offence under the Article 173 of the 1997 Criminal Code, the Abuse of Narcotic Drugs.⁵³

When a person uses drugs, the mere action as such is not penalised.⁵⁴ However, according to the 1997 Criminal Code a possession of drugs is considered to be a criminal offense. The Article 173, paragraph 1 stipulates that:

“Whoever, without authorization, possesses substances or preparations which are by regulation proclaimed to be narcotic drugs shall be punished by a fine or by imprisonment not exceeding one year.”⁵⁵ The mere possession of drugs as well as substances prohibited in sports is also a criminal offence according to the Criminal Code yet to come into force. Possessing drugs regardless of their quantity but without intention to sell drugs or put them into circulation became criminalised by 1996 Amendments of the Basic Criminal Code of the Republic of Croatia.⁵⁶ Such a legislative decision has raised numerous issues. Scientific community as well as criminal law practitioners have pointed out that criminalisation of drug possession is a political decision. If the legislator has decided to keep the position

52. Art. 1; Art. 3 para. 1 and 4, Art. 8 -33 of the 2001 Drug Abuse Prevention Act.

53. Art. 173 of the 1997 Criminal Code.

54. Cvjetko, B.: *Kazneno zakonodavstvo i kaznenopravna reakcija na kazneno djelo zloupotrebe opojnih droga u Republici Hrvatskoj / Criminal Legislation and Criminal Legal Reaction on Criminal Offence of the Abuse of Narcotic Drugs in the Republic of Croatia*, Croatian Annual of Criminal Law and Practice, vol. 10, no. 2, 2003, p. 913; Pavišić, P., Grozdanić, V., Veić, P., *Komentar Kaznenog zakona / Commentary on Criminal Law*, Official Gazette, Zagreb, 2007, p. 464.

55. Art. 173, para. 1 of the 1997 Criminal Code.

56. Art. 196, para. 1 of the Basic Criminal Code of the Republic of Croatia, Official Gazette no. 31/1993, 35/1993, 108/1995, 16/1996, 28/1996.

criminalised when enacting the 2011 Criminal Code, it means that there were no reasons for a contrary decision.⁵⁷ On the one hand it cannot be denied that police and public prosecutors have a better chance of getting information from drug possessors about drug dealers if the possession is considered to be a criminal offence. However, if we look at criminal justice statistics, the decision in question is highly problematic. Croatian criminal courts “suffer” from criminal cases overload and the fact that they predominantly have to resolve cases in which offenders are prosecuted under the Article 173, paragraph 1 gives no support for criminalisation of drug possession.

Table 1

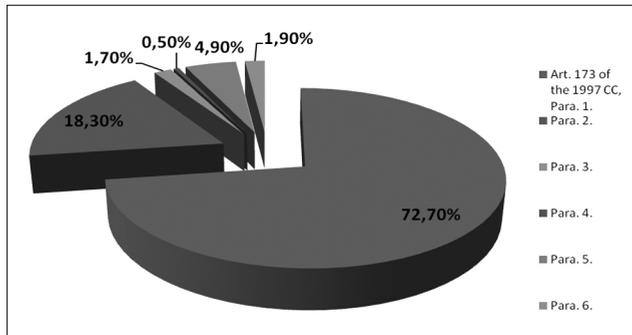
Number of cases prosecuted for the abuse of narcotic drugs in Croatia in the period in which the 1997 Criminal Code has been in force⁵⁸

Art. 173 of the 1997 CC,	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	TOTAL NO OF CASES
Para. 1. (possession of drugs)	784	1299	1462	1662	2318	2686	3122	2662	2872	2599	2313	1869	1383	1545	28576
Para. 2.	166	224	283	254	413	483	515	576	695	799	697	732	709	653	7199
Para. 3.	24	29	57	21	22	36	23	37	51	54	49	28	101	96	628
Para. 4.	6	9	10	7	7	10	24	17	24	13	26	18	7	17	195
Para. 5.	37	92	107	101	131	184	184	144	180	186	147	188	149	110	1940
Para. 6.	24	32	22	62	66	66	72	60	68	66	64	45	45	51	743
Σ															39281

57. Tripalo, D., Drug Abuse according to the new Criminal Code, *op. cit.*, p. 36.

58. Tripalo, D., Drug Abuse according to the new Criminal Code, *op. cit.*, p. 32.

Graph 1
Proportion of different forms of narcotic drug abuse offense
in Croatia in the period of 1998-2011



Furthermore, the European Court for Human Rights Practice gave a clear warning to Croatia that criminalisation policy when possession of drugs is in question presents a violation of the European Convention of Human Rights and Fundamental Freedoms with respect to the *ne bis in idem* principle.⁵⁹ In the Croatian legal system the principle is recognised as one of the basic constitutional rights, however, certain legislative lapses do exist. Drug possession is at the same time a criminal offence (Art. 173, para. 1 of the 1997 Criminal Code) and a misdemeanour (Art. 54, para 1. of the Drug Abuse Prevention Act). Consequently, if the possessor is firstly pronounced guilty for possessing drugs in front of the misdemeanour court and then in front of the criminal court, he is condemned twice for the same actions. A double incrimination is contrary to the *ne bis in idem* principle. Having this in mind and with the aim of securing legal security and avoiding different interpretations of the laws, the working group of the Ministry of Justice has drawn up a proposal to amend the Article 190 of the 2011 Criminal Code decriminalising the possession of drugs. If the legislator accepts the proposal, drug possession will still be penalised, but as a misdemeanour, not a criminal offense. This would significantly reduce the “drug addicts’ crime” of abusing drugs for personal use.⁶⁰ The proposed amendment follows recent European policy. For example, possess-

59. Maresti v. Croatia, ECHR final judgment on 25th of September, 2009, Application no. 55759/07, <<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-90625>> (visited Aug. 28, 2012); Tomasović v. Croatia, ECHR final judgment on 18th of January, 2011, Application no. 53785/09, <<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-107047>> (visited Aug. 28, 2012);

60. Cvjetko, B., Criminal Legislation and Criminal Legal Reaction on Criminal Offence of the Abuse of Narcotic Drugs in the Republic of Croatia, *op. cit.*, p. 917.

ing drugs for personal use is not a criminal offense in Spain, Portugal, Italy, Luxembourg, Belgium and Slovenia.⁶¹ In modern criminal law there is a trend not to punish persons for their “lifestyle”. i.e. alcohol abuse, vagabonding or prostitution. If there is a need to sanction such actions, misdemeanours are considered a suitable means to express social disapproval. In such cases criminal liability is too harsh and disproportionate a reaction. Moreover, recent statistics from the Public Prosecutor’s Office show that in numerous drug possession cases public prosecutors did not instigate criminal proceedings according to the principle of opportunity. Moreover, court statistics give solid proof that it was not a rare occasion in court practice that a criminal court judge rendered a judgement of acquittal because the offender’s actions of possessing drugs were assessed as an insignificant offense. In the last three years public prosecutors dismissed crime reports applying to the institute of insignificant offense or principle of opportunity in 43,9% cases of reporting the drug possession under the condition that the reported person had offended for the first time and had possessed a small quantity of drugs.⁶²

The offender’s addiction could influence the sentence in different ways. When determining a type and range of punishment, the court has a legal obligation to take into consideration all the circumstances which result in a less or more serious punishment for the perpetrator of a criminal offense. The court has to assess in particular the degree of culpability, motives for committing the criminal offense, the degree of peril or injury to the protected good, the circumstances under which the criminal offense was committed, the conditions in which the perpetrator had lived prior to committing the criminal offense and his abidance by the laws, the circumstances he lives in and his conduct after the perpetration of the criminal offense, particularly his relation towards the injured person and his efforts to compensate for the damage caused by the criminal offense, as well as the totality of social and personal grounds which contributed to the perpetration of the criminal offense.⁶³ Drug addiction is a strong personal circumstance which, depending on other subjective circumstances of the case, could be treated as an aggravating as well as a mitigating circumstance.

61. To find out more about the non-punitive strategy to address drug problems in Portugal, see Woods, J., B.: A Decade after Drug Decriminalization: What Can the United States Learn from the Portuguese Model?, *University of the District of Columbia Law Review*, vol. 15, p. 1-31.

62. Bill on Amendments of the 2011 Criminal Code, *op. cit.*, p. 4.

63. Art. 56 of the 1997 Criminal Code.

Furthermore, in most cases, drug addiction affects the degree of the offender's culpability.⁶⁴ If, at the time of the perpetration of an illegal act, the accused completely lacks capacity to understand the significance of his conduct or to control his will due to his addiction, he is a mentally incapable person, and therefore, he cannot be pronounced guilty and no criminal sanction imposed on him.⁶⁵ If *tempore criminis* the offender has problems in understanding the significance of his conduct or to control his will due to his addiction, the court will rule that he is of diminished mental capacity and may use this fact as a reason to mitigate the offender's punishment.⁶⁶ On the other hand, when a perpetrator commits a criminal offense under the decisive influence of addiction to narcotic drugs, if there is a danger that due to such an addiction he will repeat the offence, the court may order the security measure of the compulsory treatment for addiction.⁶⁷ Under the circumstances determined by the law, the court also has the opportunity to order a special obligation to undergo treatment for addiction to alcohol or to narcotic drugs in a health institution or therapeutic community (*see* 2.3).

Provisions of the Criminal Procedural Code also provide for a special legal effect to the offender's drug addiction. According to the Article 521, the public prosecutor is authorised to dismiss a criminal report or to desist from prosecution for criminal offenses punishable by a fine or imprisonment up to five years referring to the principle of opportunity. The public prosecutor may issue the same decision if the offender undertakes the obligation to undergo treatment for addiction to narcotic drugs if there is a reasonable belief that he committed the offense punishable by a fine or imprisonment up to five years subject to public prosecution and if the victim or injured person consented to such a decision.⁶⁸ The main purpose of this institute is to reduce criminal prosecution of temporary narcotic drug users and

64. Mitrović, G., *Krivična odgovornost zavisnika od droga / Criminal Responsibility of Drug Addicts*, a transcript of the article available at the Library of Faculty of Law, University of Rijeka.

65. Art. 40 of the 1997 Criminal Code.

66. Art. 42 of the 1997 Criminal Code; According to the Article 26 of the 2011 Criminal Code, it would be possible to mitigate the punishment only if the offender was of substantively diminished mental capacity.

67. Art. 76, para. 1 of the 1997 Criminal Code; Starting from 1st January, 2013, it will no longer be possible to order the compulsory treatment for addiction if danger exists that the addiction will cause the offender to simply reoffend. According to the Article 69, paragraph 1, the danger is defined more precisely because the addiction has to be assessed as a trigger of not any, but of a heavier criminal offense.

68. Art. 521 and 522 of the 2011 Criminal Procedural Code.

drug addicts according to the principle of “helping instead of punishing”. It is a tool for the de-penalisation of the offense of abuse of narcotic drugs.⁶⁹

The principle of opportunity is also regulated by the Juvenile Courts Act. The public prosecutor may decide not to prosecute a juvenile or young offender for the criminal offense punishable by a fine or imprisonment up to five years if he thinks that prosecution will be without purpose having in mind the nature of the offense and circumstance under which the offense was committed, the offender’s previous life and personal characteristics. The prosecutor may condition his decision by the juvenile’s readiness to undergo drug addiction treatment, previously obtaining the consent of juvenile’s legal guardian.⁷⁰

The misdemeanour court has a mandatory obligation to order a security measure of compulsory treatment of addiction for 3 months up to 1 year to the offender who is a drug addict or a temporary narcotic drug user and who committed one or more misdemeanours prescribed by the Drug Abuse Prevention Act.⁷¹

As it was stated before, the Criminal Code does not contain a specific provision which would allow criminal courts to assess the offender’s drug addiction as only a mitigating or aggravating circumstance. If existing, such provisions would be against the principle of imposing personal sanctions on perpetrators. There are numerous criminal cases and numerous offenders whose personal circumstances affected their decision to offend, and consequently, there could be no unanimous rule how to treat the drug addiction with respect to offenses indirectly associated with “cravings to use”. Court practice supports this conclusion. In criminal court archives it is possible to find court’s rulings in which the offender’s addiction was treated as a mitigating circumstance as well as a circumstance which caused more punishment.

Criminal legal provisions on drug abuse are not constructed in the way to impose different legal effects in case of offending by abusing “soft” or “hard” drugs. Penalties are proscribed for possession, cultivation, manufacturing and trade of drugs regardless of their quantity and quality.

3.6. What is written in the law about sentences for different drug law offences? How would you characterize these sentences in regards to the sentences for other serious offences (e.g. first degree murder) in your country? In comparison to general

69. Cvjetko, B., Criminal Legislation and Criminal Legal Reaction on Criminal Offence of the Abuse of Narcotic Drugs in the Republic of Croatia, *op. cit.*, p. 920.

70. Art. 71, para 1 and 72, para 1 e) of the 2011 Juvenile Courts Act.

71. Art. 64, para. 3 of the 2001 Drug Abuse Prevention Act.

sentencing level in your country, would you characterize the treatment of offenders-drug dealers as strict?

The 1997 Criminal Code contains only one provision governing the criminal actions concerning the abuse of drugs.⁷² Actions are different, and therefore, there are different forms of narcotic drug abuse.

- Unauthorised possession of drugs: Whoever, without authorization, possesses substances or preparations which are by regulation proclaimed to be narcotic drugs shall be punished by a fine or by imprisonment not exceeding one year (Art. 173, para. 1).

- Distribution of drugs: Whoever, without authorization, manufactures, processes, sells or offers for sale or buys for the purpose of reselling, possesses, distributes or brokers the sale and purchase of, or, in some other way and without authorization, puts into circulation, substances or preparations which are by regulation proclaimed to be narcotic drugs shall be punished by imprisonment of no less than three years (Art. 173, para. 2).

- Offending within a group: If the criminal offense referred to in paragraphs 1 and 2 of this Article is committed by more persons who have gathered to commit these offenses or the perpetrator has organised a net of sellers or agents, he shall be punished by imprisonment for not less than five years or by a long-term imprisonment (Art. 173, para. 3).

- Unauthorised manufacturing of equipment, material or substances used to produce drugs and analogues thereof: Whoever, without authorization, makes, procures, possesses or offers for use equipment, material or substances, knowing that they are to be used to manufacture narcotic drugs, shall be punished by imprisonment for one to five years (Art. 173, para. 4).

- Encouragement of others to use narcotic drugs and creation of conditions for such use: Whoever induces someone else to use a narcotic drug, or gives a person a narcotic drug so that he or another person may use it, or makes available premises for the purpose of using a narcotic drug or in some other way enables another to use a narcotic drug, shall be punished by imprisonment for one to five years (Art. 173, para. 5).

- Aggravated encouragement of others to use narcotic drugs and creation of conditions for such use: If the criminal offense referred to in paragraph 5 of this Article is committed against a child or a juvenile, a person who is mentally ill, temporarily mentally disordered or mentally deficient, or against a number of persons, or if the

72. Art. 173 of the 1997 Criminal Code.

offense causes particularly serious consequences, the perpetrator shall be punished by imprisonment for one to ten years (Art. 173, para. 6).

- Forfeiture: Narcotic drugs and devices for their preparation shall be forfeited (Art. 173, para. 7).

- Remitting the punishment: The court may remit the punishment of the perpetrator of the criminal offense referred to in paragraphs 1, 2, 3, 4 and 5 of this Article who voluntarily and in a substantial way contributes to the discovery of the offence (Art. 173, para. 8).

The new 2011 Criminal Code accepted the division of drug related offences as it was applied in the 1993 Basic Criminal Code of the Republic of Croatia. The first offence concerns the unauthorised possession, production and trade of drugs and prohibited substances in sports,⁷³ and the second one to facilitating the use of drugs and substances prohibited in sports.⁷⁴

- Unauthorised possession: Whoever, without authorization, possesses substances which are by regulation proclaimed to be narcotic drugs or substances prohibited in sports shall be punished by imprisonment not exceeding six months (Art. 190, para. 1).

- Production of drugs and substances prohibited in sports without intent to put them in circulation: Whoever, without authorization, manufactures, processes, imports or exports substances from the paragraph 1 of this Article shall be punished by imprisonment not exceeding three months (Art. 190, para. 2).

- Distribution of drugs and substances prohibited in sports: Whoever manufactures, processes, transports, imports or exports, procures or possesses substances from paragraph 1 of this Article which are intended for unauthorised trade or, in some other way, unauthorised placing into circulation or whoever, without authorization, offers for sale, sells, carries or brokers the sale and purchase of these substances or puts them in some other way in circulation shall be punished by imprisonment for one to ten years (Art. 190, para. 3).

- Protection of children, incapable persons and other aggravated circumstances: Whoever offers for sale, sells or brokers the sale and purchase of substances from paragraph 1 of this Article to a child,⁷⁵ or in a school or in another place used for

73. Art. 190 of the 2011 Criminal Code.

74. Art. 191 of the 2011 Criminal Code.

75. According to the Article 87, para. 7 of the 2011 Criminal Code, child is a person under 18 years of age.

educational, sport or social activities of children or in its close distance,⁷⁶ or penal institution, or whoever, for committing the offence from paragraph 3 of this Article, uses a child shall be punished with imprisonment for three to fifteen years. The same punishment shall be imposed upon the perpetrator who is an official person and who committed the offense in the execution of his duty of public powers (Art. 190, para. 4).

• Organising a net: Whoever organises a net of sellers or agents shall be punished by imprisonment for not less than three years (Art. 190, para. 5).

• Giving a lethal dose of a narcotic drug or substances prohibited in sports: Whoever, committing the criminal offense referred to in paragraphs 3, 4 and 5 of this Article, causes the death of a person to whom he sold substances from paragraph 1 of this Article or brokered their sale and purchase shall be punished by imprisonment for not less than five years (Art. 190, para. 6).

• Unauthorised manufacturing of equipment, material or substances used to produce drugs and substances prohibited in sports and analogues thereof: Whoever manufactures, procures, possesses or gives for use equipment, material or substances which could be used to manufacture substances from paragraph 1 of this Article knowing that they are intended for their unauthorised production shall be punished by imprisonment for six months to five years (Art. 190, para. 7).

• Definition of production of drugs: Production of drugs stands also for cultivation of plants or mushrooms from which drugs can be extracted (Art. 190, para. 8).

• Forfeiture: Substances from paragraph 1 of this Article, substances which could be used for their production, plants, mushrooms or parts of plants or mushrooms from which substances from paragraph 1 of this Article can be produced, equipment for their production or processing, transportation means readjusted for hiding these substances and equipment for their use shall be forfeited (Art. 190, para. 9).

• Remitting the punishment: The court may remit the punishment of the perpetrator of the criminal offense referred to in paragraphs 1, 2, 3, 4, 5 and 7 of this Article who voluntarily and in a substantial way contributes to the discovery of the offence from this Article (Art. 190, para. 10).

76. Comparative research has shown that normative efforts to create drug free educational environment have been taken in other countries also. For example, in the US the drug-free schools legislation was enacted to prevent the illegal use of alcohol, tobacco, and drugs and to foster a safe and drug-free learning environment that supports student academic achievement. Stuart, S.: War as Metaphor and the Rule of Law in Crisis: The Lessons We Should Have Learned from the War on Drugs, Southern Illinois University Law Journal, vol. 36, 2011, p. 21.

• Encouragement of others to use narcotic drugs and substances prohibited in sports and creation of conditions for such use: Whoever induces someone else to use substances from the Article 190, paragraph 1 of this Code, or gives a person a narcotic drug so that he or another person may use it, or makes available premises for the purpose of using such substances or in some other way enables another to use them, shall be punished by imprisonment for six months to five years (Art. 191, para. 1).

• Protection of children, incapable persons and other aggravated circumstances: If the criminal offense referred to in paragraph 1 of this Article is committed against a child or a person who is mentally ill, or in school, or in another place used for educational, sport or social activities of children or at a close distance, or penal institution, or against a number of persons, or if the offense referred to in paragraph 1 is committed by an official person, medical worker, social worker, teacher, educator or a coach using his position, the perpetrator shall be punished by imprisonment for one to ten years (Art. 191, para. 2).

• Giving a lethal dose of a narcotic drug or substances prohibited in sports: Whoever, by committing the criminal offense referred to in paragraphs 1 and 2 of this Article, causes the death of a person to whom he gave substances from paragraph 1 of this Article shall be punished by imprisonment for three to fifteen years (Art. 191, para. 3).

• Forfeiture: Substances from paragraph 1 of this Article, substances for their production and use shall be forfeited (Art. 191, para. 4).

• Remitting the punishment: The court may remit the punishment of the perpetrator of the criminal offense referred to in paragraphs 1 and 2 of this Article who voluntarily and in a substantial way contributes to the discovery of the offences from the 190 and 191 Article of this Code (Art. 191, para. 4).

As it can be seen from the above presented description, sanctions prescribed for drug abuse offenses vary depending on the severity of the criminal actions. When deciding upon limits of punishment of a particular offense, the legislator has to take into consideration its severity with respect to other similarly dangerous offenses as well as other offenses within the specific Title. For example, possession of narcotic drugs is as equally severe as incest and broadcasting without authorization.⁷⁷ Distribution of drugs is considered to be as equally dangerous as international prostitution of children and aggravated rape.⁷⁸ Drug abuse by a group stands somewhere between murder and aggravated murder due to the fact that murder

77. Art. 173, para. 1, art. 183 and 198, para 1. of the 1997 Criminal Code.

78. Art. 173, para. 2, art. 178, para. 3 and 188, para 2. of the 1997 Criminal Code.

is punished by imprisonment of no less than five years and aggravated murder by imprisonment of not less than five years and long-term imprisonment.⁷⁹

When compared with other criminal offences from 2011 Criminal Code, the unauthorised possession of narcotic drugs and substances prohibited in sports endangers and injures human health in the same way as torturing animals by negligence endangers and injures the environment.⁸⁰ According to the legislator's opinion, the production of drugs and substances prohibited in sports without intent to put them in circulation should be treated with the same punishable severity as endangering the ozone layer.⁸¹ When such substances are distributed, the offender faces the same offence prescribed for manslaughter (killing another in a state of great suffering, strong irritation or fright).⁸²

Decision on the type and range of the sanction when determining a norm governing the precise criminal offense has always been a political decision. Therefore, it is not surprising that sanctions for drug related offenses were amended in almost every Criminal Code reform from the past. For example, in 2003 the legislator had prescribed a more severe sentence for possession and distribution of drugs as well as for drug abuse by a group.⁸³ Higher punishments for the abuse of narcotic drugs were imposed by the 2006 Amendments also.⁸⁴ A trend for harsher sentencing was partially caused by a political desire to satisfy public demand for zero tolerance towards dealers and their severe sentencing.⁸⁵ However, the scientific research has shown that such legislative measures have no or only a weak influence on court sentencing. In 2004 a group of criminal law professionals conducted research on courts sentencing policy. The results confirmed the thesis that courts in general impose less severe sentences among which dominate suspended sentences. When drug related offences are in question, in most cases the courts do not exhaust the whole range of sanctions. Pronounced punishments are measured within the first half, or more of-

79. Art. 173, para. 3, art. 90 and 92. of the 1997 Criminal Code.

80. Art. 190, para. 1 and art. 205, para 3 of the 2011 Criminal Code.

81. Art. 190, para. 2 and art. 195, para 1 of the 2011 Criminal Code.

82. Art. 190, para. 3 and art. 112, para 1 of the 2011 Criminal Code.

83. 2003 Amendments of the 1997 Criminal Code, Official Gazette no. 111/2003.

84. 2006 Amendments of the 1997 Criminal Code, Official Gazette no. 71/2006.

85. The above described Criminal Law Amendments were used to create drug policies with a predominantly punitive nature. Similar examples could be found in the US where the number of convicts serving prison sentences for drug offenses is almost equal to the number of convicts incarcerated for all criminal offences in the European Union. Woods, J., B., *A Decade after Drug Decriminalization: What Can the United States Learn from the Portuguese Model?*, op. cit., p. 3.

ten, within the first third of the range of punishments provided by the law. Regardless of the legislative sentencing interventions, court sentencing policy followed the described pattern in three different time periods in which diverse Criminal Codes were in effect, 1) 1979-1983, 2) 1993-1997 and 3) 1998-2002. Within the second and third research period, out of 110 Supreme Court cases of narcotic drug abuse, there were only three judgments in which the Court punished the offender by imprisonment for no less than five years. The imprisonment of ten years and higher was not pronounced even once. Most punishments were imprisonment for one to two years (24.54%). The imprisonment for six to twelve months followed (20.90%). Slightly less than that were imposed punishments by imprisonment for two to three years (19.09%). Imprisonment for two to three months was the rarest (9.09%). As it can be seen from the results, the courts applied provisions on imposing more lenient sentences in a significant number of cases (in 37.50% of cases from the second period and in 44.00% of cases from the third period). A mitigated punishment was pronounced in most cases when the offender committed the offence by cultivating the marijuana for personal use. The aggravated circumstances (prior conviction for drug related offences, prior conviction for any other offence and large quantity of drugs involved) were not seriously taken into consideration when determining the type and range of sentence.⁸⁶ It seems that discrepancy between legislative and court punishing policy on the one hand, and frequent amendments of drug offenses on the other, confirm that Croatian legislators have forgotten Leech's thesis according to which "Bad laws, or poorly implemented laws, may cause more damage and problems than drugs against which such laws are enacted."⁸⁷

There is no special provision according to which small and big drug dealers would be punished for a different offense. The abuse of narcotic drugs is committed regardless of the quantity and type of narcotic drugs. However, these specific circumstances could have an effect on the selection or range of punishment within the limits prescribed by law and on the court's decision to mitigate punishment by imposing the one under the legislative minimum.

Research in the past showed that in most cases small dealers trade in small quantities of drugs for personal use. For example, in 1998 64.30% of drug traders were

86. Garačić, A.: *Zakonska i sudska politika kažnjavanja županijskih sudova u Republici Hrvatskoj za kaznena djela silovanja i zlouporabe droga / Legislative and Court Punishing Policy of County Courts in the Republic of Croatia for Rape and Abuse of Narcotic Drugs*, Croatian Annual of Criminal Law and Practice, vol. 11, no. 2, 2004, p. 515.

87. Leech, K., *What Everyone Should Know about Drugs*, Sheldon Press, London, 1983, cited in Kušević, V., *op. cit.*, p. 256.

drug addicts or temporary drug users who committed the criminal offence while trying to secure drugs for future personal use.⁸⁸

According to the provisions of the Criminal Procedural Code, most drug related offences are prosecuted in front of municipal courts as courts of first instance. County courts have jurisdiction to adjudicate at first instance offences of distribution of drugs and offences committed within a group (Art. 173, para. 2, 3). From 1st January, 2013, the county courts will have jurisdiction to adjudicate at first instance the offences under the Article 190, para 4, 5 and 6 and the Article 191, para. 3. of the 2011 Criminal Code.

The **principle of universal jurisdiction** applies to drug related offences committed by an alien outside the territory of the Republic of Croatia, if, under the law in force in the place of the crime, a punishment of five years of imprisonment or a more severe penalty may be applied.⁸⁹

If a **prior conviction** was issued for the same offense in another country, the principle of universality cannot be applied. A prior conviction also has an effect in cases in which criminal legislation of the Republic of Croatia is applied according to the principle of territoriality. When the offender, who had committed a drug related offense within the territory of the Republic of Croatia or aboard its vessel or aircraft, was sentenced for it in another country, criminal proceedings in Croatia may be instituted only upon approval of the Public Prosecutor of the Republic of Croatia.⁹⁰ If the perpetrator is an alien, criminal proceedings may, under conditions of reciprocity, be ceded to the foreign state.⁹¹ Moreover, the prosecution according to the principle of active and passive legality cannot be instigated when the offender has served in full the sentence imposed on him in a foreign state.⁹² In the cases of the application of the criminal legislation of the Republic of Croatia, when the perpetrator has been deprived of his liberty in a foreign state due to a drug related offense, the time spent in pre-trial detention or imprisonment, or any other deprivation of liberty, has to be

88. Cvjetko, B., *Criminal Legislation and Criminal Legal Reaction on Criminal Offence of the Abuse of Narcotic Drugs in the Republic of Croatia*, op. cit., pp. 915-916.

89. Art. 14, para. 4 of the 1997 Criminal Code; Art. 17, para. 1 of the 2011 Criminal Code.

90. Art. 15, para. 1 of the 1997 Criminal Code. The identical provision exists in the 2011 Criminal Code (art. 12, para 1.).

91. Art. 15, para. 2 of the 1997 Criminal Code.

92. Art. 16, para. 1 of the 1997 Criminal Code. The solution accepted in the 2011 Criminal Code is more precise. Criminal prosecution shall not be commenced in Croatia if the punishment has been executed in full, or is in the process of execution or cannot longer be executed according to the law of the country of its execution (art. 18, para. 1 of the 2011 Criminal Code).

included in the sentence pronounced by the domestic court for the same criminal offense, and if the sentences are not of the same type, the inclusion shall be made in accordance with an equitable assessment of the court.⁹³

4. Drug Law Enforcement in Practice

There are no official data which would reveal police practices towards drug users. No research has been done on this issue. However, at the court's hearings, the accused sometimes complain about police actions during investigation.

Both of the Criminal Codes, the one enacted in 1997 and the other in 2011, criminalise the cultivation of plants from which drugs can be extracted. According to court practice and police reports offenders mostly plant cannabis. In most cases cultivators are juveniles or young persons who cultivate cannabis for their personal use and for their friends, or if they are experimenting with drugs, out of curiosity.⁹⁴ Due to that fact, the 2011 Criminal Code has a new provision according to which production of drugs and substances prohibited in sports without intent to put them in circulation is a more lenient offense than distribution of drugs (*see* 3.6.). Except for young cultivators, court practice reveals a significant percentage of adult offenders who cultivate cannabis in rural areas for monetary gain or some other purposes. In one County Court in a case in Rijeka, the offender, while presenting his defence in front of the court, stated that he was cultivating the cannabis for medical purposes trying to improve his and his wife's medical conditions.⁹⁵ In quite a number of cases, offenders defended themselves by invoking the institute of mistake of the fact. According to their testimony, they did not know that the plant they were growing was a drug. Their only intention was to grow seeds which would be used for feeding birds.⁹⁶ Croatian courts highly exceptionally accept the offender's mistake of fact defence and render a judgment of acquittal.⁹⁷ Therefore, it is no surprise that in the last twenty years criminal drug offenders who stated in their appeal, submitted to the Supreme Court of the Republic of Croatia, that they had not known that cannabis is a drug were pronounced guilty and convicted.

93. Art. 17 of the 1997 Criminal Code. Art. 19 of the 2011 Criminal Code.

94. Comparative researches show that the predominant cannabis users are 15 - 24 years old. Hyshka, E., Erickson, P. G., Hathaway, A.: The Time for Marijuana Decriminalization Has Come Again ... and Again, *Criminal Law Bulletin*, 2011, vol. 47, no. 2, p. 262.

95. The County Court in Rijeka, K-75/1999, 27th of June, 2000.

96. The Supreme Court of the Republic of Croatia, I Kž 236/1998-3 15th of December 1998; The Supreme Court of the Republic of Croatia, I Kž 146/2004-3, 17th of November, 2004.

97. Rittossa, D.: *Pojam zablude u Kaznenom pravu* / Notion of Mistakes in the Criminal Law, University of Zagreb, Faculty of Law doctoral thesis, Zagreb, 2012, pp. 193-194.

Pre-trial detention of drug offenders, as well as any other offenders, can be ordered under the strict conditions prescribed by the Criminal Procedure Code. A public prosecutor issues a pre-trial order against the accused person when he has a reasonable suspicion that the accused committed an offence subject to public prosecution and when there is one of the conditions for investigatory prison and the public prosecutor believes that detention is necessary to establish the offender's identity, check his alibi and collect information on evidence.⁹⁸ The pre-trial detention described in this way cannot be replaced by any other measure. On the other hand, the replacement by more lenient measures is possible for the investigatory prison which resembles the classic pre-trial detention as it is defined in most other countries (*see* the Article 123 of the Criminal Procedural Code and the footnote 73). However, the replacement cannot be made with mandatory/voluntary treatment. The public prosecutor issues compulsory treatment as a measure when he acts implementing the principle of opportunity (*see* 3.2 and 3.3).

The Criminal Procedural Code does not contain rules on how to treat an offender's potential substance dependence during interrogation performed by the police. Nevertheless, there are few rules on an offender's ability to take part in criminal proceedings due to his medical condition. For example, the public prosecutor is obliged to recess the investigation by a ruling if the defendant is not able to take part in the proceedings due to health problems. When obstacles (for example offender's addiction crisis) leading to recess cease to exist, the investigation will continue.⁹⁹ If suspicion arises that the defendant has committed a criminal offence due to his addiction to alcohol or drugs or that the defendant is unfit to stand trial due to such addiction, the expert witness testimony on the basis of the psychiatric examination of the defendant shall be ordered. By a court ruling, the defendant may be committed to a relevant medical institution by force if it is in the opinion of the expert witness necessary for the purpose of the expert witness testimony to conclude whether the defendant is fit

98. Art. 123, para 1, of the 2011 Criminal Procedural Code: If there exists reasonable suspicion that a person committed an offence, investigatory prison against this person may be ordered:

- 1) if there are special circumstances indicating a danger of flight (the person is in hiding, his identity cannot be established, etc.);
- 2) if there are special circumstances indicating that he shall destroy, hide, change or forge items of evidence and traces of importance for criminal proceedings or that he shall impede the investigation by influencing witnesses, co-principals or accessories after the fact;
- 3) if special circumstances support the concern that he shall repeat the offence, or complete the attempted one, or perpetrate the offence punishable with imprisonment not less than five years he threatens to commit;
- 4) if this is necessary not to obstruct criminal proceedings due to the particularly grave circumstances of the offence punishable by long-term imprisonment.

99. Art. 223, para 1 and 7 of the 2011 Criminal Procedural Code.

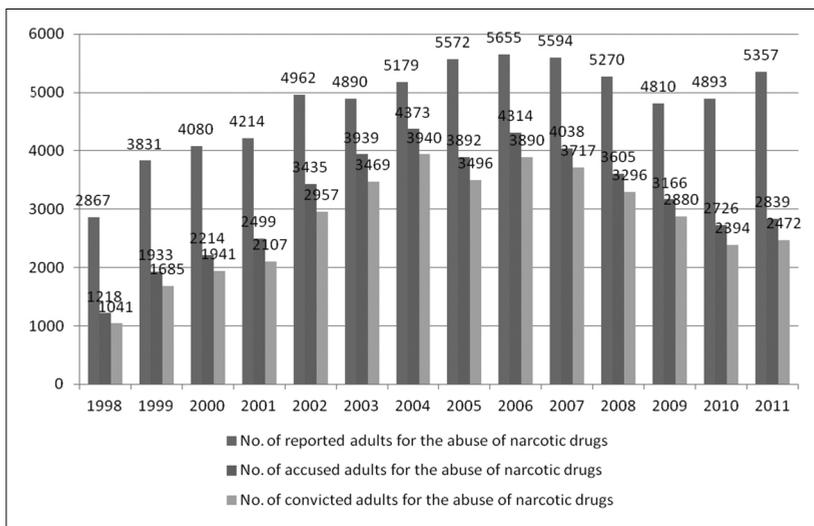
to stand trial. Before the charges are confirmed, the ruling on the commitment is rendered by the investigating judge, whereas after the charges have been confirmed, it shall be rendered by the court conducting the trial. The commitment cannot exceed the period of one month. In the case that a new expert witness testimony is needed, the commitment may be repeatedly ordered only once.¹⁰⁰

There are no special rules for “police entrapment”, nevertheless, the Criminal Procedural Code regulates special investigatory measures conducted by the undercover investigators who may be interrogated as witnesses about the course of the implementation of the measures. The undercover investigators act to investigate, under conditions prescribed by the law, heavier criminal offences enumerated under the Article 334 of the Criminal Procedural Code. The drug abuse of narcotic drugs is enlisted as well as criminal offenses committed by a group or criminal organization.¹⁰¹

The Central Bureau of Statistics collects data on perpetrators of criminal offenses on a regular basis. Data presented in Graph 2 are annually published in Statistical Reports available at the Central Bureau’s official website.

Graph 2

Reported, accused and convicted adult persons for criminal offense of abuse of narcotic drugs in Croatia in the period of 1998-2011¹⁰²

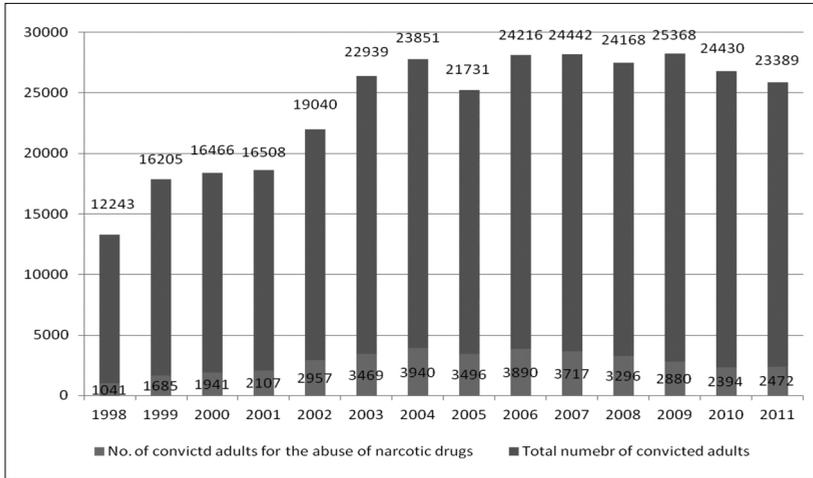


100. Art. 325, para 1 and 2 of the 2011 Criminal Procedural Code.

101. Art. 334 of the 2011 Criminal Procedural Code.

102. Statistical Reports, The Central Bureau of Statistics, <http://www.dzs.hr/default_e.htm> (visited Aug. 20, 2012)

Graph 3
Proportion of drug abuse offences within the total number of criminal offences in Croatia in the period of 1998-2011¹⁰³



5. Sentencing Levels and the Prison Situation

In 2011 there were 18,088 persons deprived of their liberty in one of the penal institutions in Croatia. The basis for liberty deprivation varied: imprisonment due to a final judgment delivered by a criminal court, imprisonment due to a final judgment delivered by a misdemeanour court, substitution of a fine by imprisonment, detention, provisional confinement, deprivation of liberty in educational institutions for juvenile offenders. The prison population rate has been stable during the past years. For example, there were 413 prisoners per 100.000 inhabitants in 2007, 409 in 2008, 420 in 2009, 419 in 2010 and 422 in 2011.¹⁰⁴

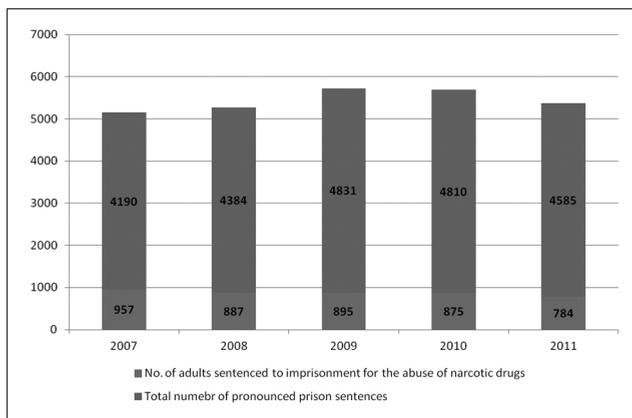
Within the Croatian penal system 14 prisons are organised (Bjelovar, Dubrovnik, Gospic, Karlovac, Osijek, Pozega, Pula, Rijeka, Sisak, Split, Sibenik, Varazdin, Zadar, Zagreb), 6 penitentiaries (Glina, Lepoglava, Lipovica-Popovaca, Pozega, Turpolje, Valtura), 1 prison hospital (Zagreb) and 2 educational institutions for juvenile offenders (Pozega, Turpolje).

103. Statistical Reports, The Central Bureau of Statistics, *op. cit.*

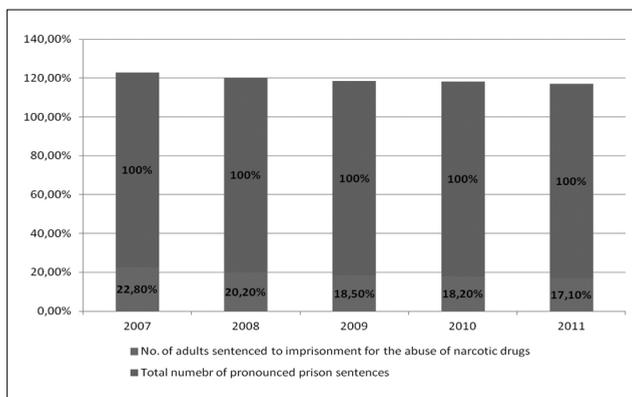
104. The Report on Situation and Work Carried on in Prisons, Penitentiaries and Educational Institutions in Croatia for the period 2007-2011, <<http://www.mprh.hr/Default.aspx?sec=288>> (visited Dec. 28, 2012)

Graph 3

Proportion of adult offenders sentenced to imprisonment for abuse of narcotic drugs within the total number of prison sentences pronounced in Croatia in the period of 2007-2011¹⁰⁵

**Graph 4**

Percentage of prison sentence for abuse of narcotic drugs within the total number of prison sentences in Croatia in the period of 2007-2011¹⁰⁶



Trafficking in drugs as an offence violating the international criminal law has not been proscribed by the Criminal Code. There was no need to criminalise it separately due to the fact that actions of drug abuse from the Article 173 also cover

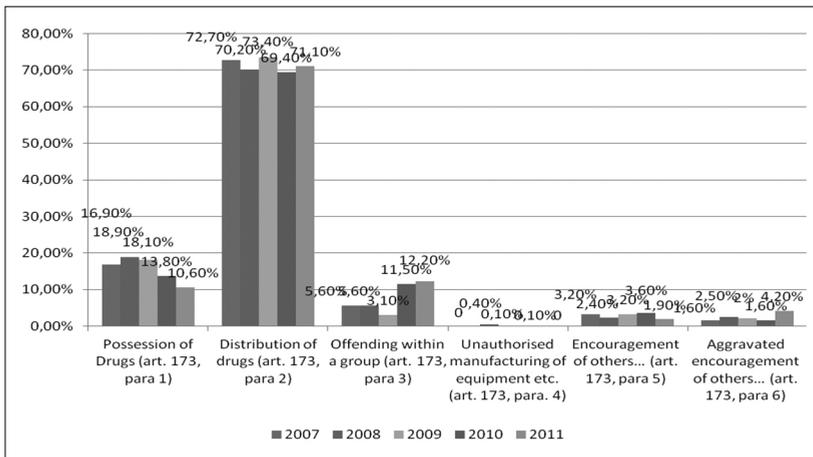
105. Statistical Reports, The Central Bureau of Statistics, *op. cit.*

106. Statistical Reports, The Central Bureau of Statistics, *op. cit.*

drug trafficking.¹⁰⁷ If the criminal offence is committed by a group or criminal organisation, it may constitute the offence from Article 173, para. 3. In other cases this circumstance can be taken into consideration when deciding upon the type and range of punishment.

Graph 5

Proportion of adult drug abuse offenders sentenced to prison according to the type of drug abuse in Croatia in the period of 2007-2011¹⁰⁸



A problem of overcrowded prisons does exist in Croatia.¹⁰⁹ The phenomenon has been partially caused by use of prisons to suppress criminal behaviour. The ratio for this policy is the belief that prolonged incarceration can have a deterrent effect on future reoffending, and therefore that it increases public safety.¹¹⁰ Lately, some measures have been taken by the government to ease the situation. However, the penitentiary system is still struggling with it. The Law on the Execution of Prison Sentence imposes standards for prisoners' accommodation. According to the Law,

107. Turković, K., *Kaznena djela protiv vrijednosti zaštićenih međunarodnim pravom / Criminal Offenses against Values Protected by International Law*, published in: Novoselec, P. (ed.), *Posebni dio kaznenog prava / A Special Part of the Criminal Law*, University of Zagreb, Zagreb, 2007, p. 127.

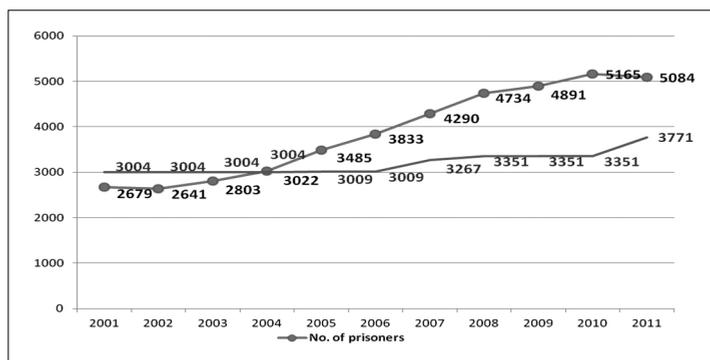
108. Statistical Reports, The Central Bureau of Statistics, *op. cit.*

109. An insufficient accommodation due to prison overcrowding and inadequate health care within prisons are the main problems burdening the Croatian penal system. Sušić, E.: *Strategija organizacije zdravstvene zaštite zatvorenika / Strategy for Organisn Healthcare for Prisoners*, Croatian Annual of Criminal Law and Practice, vol. 16, no. 1, 2009, p. 101.

110. Oleson, J. C.: *The Punitive Coma*, California Law Review, vol. 90, 2002, p. 849.

each prisoner has to have 4 square meters and 10 cubic meters of space for himself.¹¹¹ In 2011, the penal institutions in Croatia could accommodate 3771 inmates, however, there were 5084 of them housed within the prison walls. In the last ten years the accommodative capacity has been around 3000 prisoners. The quota was exceeded in 2004 leading to the general trend for prison overcrowding.

Graph 6
Capacity of Croatian prisons and actual number of inmates
in the period of 2001-2011¹¹²



In 2011 there were 3033 drug addicted persons deprived of liberty within the prison system in Croatia (16.8% of all imprisoned persons, regardless of their legal status of imprisonment). Among 8038 prisoners who were serving their prison sentence pronounced in the criminal proceedings, 25% of them were drug addicted. To follow up prisoners' progress regarding their therapy or measure of compulsory treatment of addiction, prisoners have been regularly tested for drugs in accordance with the Protocol for Testing Inmates and Minors on the Presence of Addiction Substance in Their Body, which was introduced in 2006. Testing is also done when the condemned person enters the prison for the first time (preliminary testing) or the prisoner returns to prison after spending a weekend out of prison or a longer period of time because of his good behaviour or other privileges. In 2011

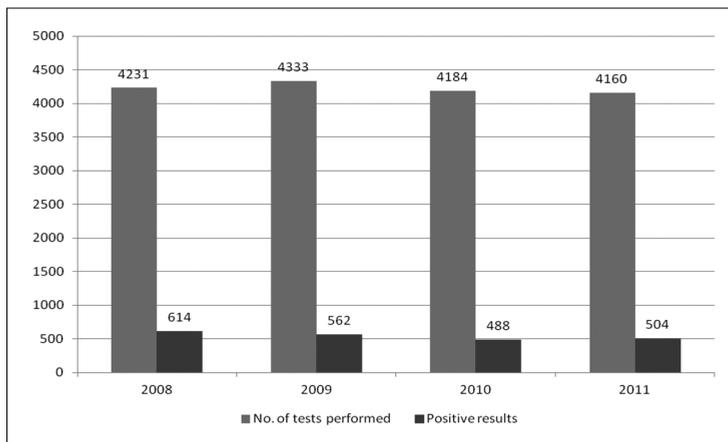
111. Damjanović, I., Butorac, K.: *Politika suzbijanja kriminaliteta: perspektive izvršenja kaznenopravnih sankcija* / The Policy of Fighting Criminal Behaviour: Prospects for the Enforcement of Criminal Law Sanctions, Croatian Annual of Criminal Law and Practice, vol. 13, no. 2, 2006, p. 664.

112. The Report on Situation and Work Carried on in Prisons, Penitentiaries and Educational Institutions in Croatia in 2011, <<http://www.mprh.hr/Default.aspx?sec=288>> (visited Dec. 28, 2011)

prisoners were tested 4160 times and results showed that 504 tests were positive which augments to a 0.5% increase with respect to 2010.¹¹³

Inmates in Croatian prisons have an opportunity to be tested for Hepatitis and HIV. They freely decide whether to be tested maintaining the anonymity. The testing started in 2004 and has been implemented within the “Programme of Anonymous and Free Testing of Prisoners for Hepatitis and HIV” organised and run by the Prison Hospital in Zagreb and the Infections Clinic “Fran Mihaljević”. According to the official data, 3460 prisoners were tested by the end of 2007. Results showed that 22% of prisoners who took testing were found to be positive for Hepatitis B and C and 2 prisoners (0.14%) were HIV positive.¹¹⁴ In 2011, 79 prisoners were tested for Hepatitis B and C and HIV, however, the outcome of test results are not officially published.¹¹⁵

Graph 7
Drug testing in Croatian prisons in 2008-2011¹¹⁶



If the court has found the accused to be guilty and sentenced him to prison and compulsory treatment of addiction, the offender will undergo the treatment while being incarcerated. The treatment can also be carried out within the prison if the

113. The Report on Situation and Work Carried on in Prisons, Penitentiaries and Educational Institutions in Croatia in 2011, *op. cit.*

114. Trautmann, F., Braam, R., Keizer, B., Lap, M., *op. cit.*, p. 101.

115. The Report on Situation and Work Carried on in Prisons, Penitentiaries and Educational Institutions in Croatia in 2011, *op. cit.*

116. The Report on Situation and Work Carried on in Prisons, Penitentiaries and Educational Institutions in Croatia in 2011, *op. cit.*

need for it has been established upon psychosocial diagnostics. Inmates are included in group and individual psychosocial treatment to cure and prevent their addiction and reoffending. They receive training and psychosocial help in the form of individual or group work by an expert treatment staff (including a therapist, psychiatrist, psychologist, social worker, social educator, doctor as well as a professional teacher and prison guard depending on program aims and conditions in prison). Group work is preferred. In most prisons and penitentiaries the Clubs of Treated Addicts have been set up as a therapeutic community method if the prison conditions allow.

Health care services are regularly provided in prison. In Lepoglava, which is a closed-type penal institution, an inmate may sign a therapeutic contract and may be placed in a special prison ward. Similar programs are established in Lipovica-Popovača, Požega and Turopolje, the semi-open penitentiaries, and in Valtura, the penitentiary with an open regime, where prisoners with addiction are treated in so-called “drug-free” wards. Before a prisoner enters into this specific “drug-free regime”, he has to sign a contract and to take an obligation to abstain from drugs. Regular abstinence controls are carried out, counselling assistance is offered, work therapy organised as well as prisoners free time together with other general treatment methods. Except for “drug free treatment”, persons with addiction who serve a prison sentence have a right to be examined by a doctor, right to counselling, psychiatric help, testing for hepatitis and HIV and substitution treatment.

When there is a necessity for detoxification, the prisoner undergoes the opiate agonist treatment. In the past, methadone (heptanon) prevailed as a means of quick detoxification in the prison system. In 2007 methadone was gradually substituted by buprenorphine (subutex, suboxon) which has been used for detoxification of opiate addicts, but also as maintenance therapy ever since. Methadone has been eventually administered to those who serve a short prison sentence, who are in detention or provisional confinement or to those who are in prison due to substitution of fine by imprisonment.¹¹⁷

As a special preventive measure, educational programs concerning drugs are organised for prisoners. Having in mind the significance of treatment and other special programs, the **Special Programmes Department (SPD)**, as a new department was established within the Treatment Service in the Central Office in 2009. The SPD assesses the need to introduce special programs in prisons, develops the new programs, supervises the quality of their implementation and takes measures, for-

117. Methadone therapy was introduced in Croatia in 1991. During the same year three times more persons with heroin addiction applied for treatment in Vinogradska hospital in Zagreb than the year before. Sakoman, S, Pavišić, B., Cvjetko B., *op. cit.*, pp. 278-279.

mulates criteria and priorities for the dissemination of these programs. Although positive steps have been taken with respect to harm reduction services and offenders' treatment within the penal system, previous researches show that there is a need to introduce quality standards, guidelines and examples of good practice for treatment of drug users in prison and to increase human resources and treatment options for drug users in detention.¹¹⁸

The 1997 Criminal Code already prescribes a possibility of diverting drug users from prison into community based treatment. The compulsory treatment of addiction, as a security measure, can be ordered together with a prison sentence, community service and a suspended sentence. If the offender is sentenced to prison, this special measure is carried out within the prison. If the court has chosen to pronounce a non-custodial sanction, the sentenced addict can undergo drug addiction treatment in one of the public health institutions or other specialised institutions for addiction outside the penal system, or, under the conditions prescribed by special regulations, in a therapeutic community if this is sufficient to eliminate the danger of the offender repeating the offence due to his addiction.^{119, 120}

At least on the normative level, a comprehensive strategy for social reintegration of prisoners after serving their sentence does exist. At least three months prior to a prisoner's release, the penitentiary institution has an obligation to include him in individual or group counselling for preparing prisoners for their release. Pursuant to legal norms on probation, upon the request of the execution judge, the Office for Probation prepares acceptance of the prisoner after the execution of his sentence. The prisoner himself has a right to ask for help and support from the execution judge. The execution judge works with social health centres and he is entitled to order the execution of necessary measures to help the prisoner to prepare himself for life in freedom (securing accommodation and food, providing advice to select a residence, helping with family relations, employment and professional education, securing monetary help for essential expenses, providing adequate health treatment etc.).

118. Trautmann, F., Braam, R., Keizer, B., Lap, M., *op. cit.*, p. 40.

119. Art. 76, para 1 and 2 of the 1997 Criminal Code; The same possibility to divert drug offenders from prison into community based treatment is prescribed by the Article 69, paragraph 2 of the 2011 Criminal Code with one small difference. From 1st of January, 2013, the compulsory treatment of addiction, except with already enumerated sanctions, may be also carried out together with a fine.

120. 8 therapeutic communities with 32 therapeutic houses are organised in Croatia offering treatment and psychosocial rehabilitation to drug addicts.

Bearing in mind that drug addiction is a chronic recurring disease and a complex social phenomenon, the National Strategy and the Action Plan contain special provisions on re-inclusion of addicts into society. A complex mechanism for resocialisation has been set, and to put it into motion, **the Drug Addicts Resocialisation Project** was adopted at the session of the Government of the Republic of Croatia held on 19 April 2007. To implement the Resocialisation Project, the Government also **adopted the Protocol of Cooperation and Acting of Competent State Bodies, Institutions and Civil Society Organisations in the Implementation of the Project of Resocialisation of Drug Addicts** on 27 September 2007. According to the Resocialisation Project and complementary Protocol, the OCDA is a coordinator of Project implementation. Except for general inclusive strategies and measures for drug addicts, the Resocialisation Project emphasises special measures to initiate post-penal care for addicted prisoners. The former imprisoned addicts who were in treatment have an opportunity to finish their already started secondary school education at the expense of the Ministry of Science, Education and Sport.¹²¹ Financial means are secured by the Government to co-finance their employment.¹²²

There was a great need to develop the Resocialisation Project due to the fact that prisoners with addiction find it harder to integrate into society being stigmatised not only as addicts, but also as former prisoners. In addition, data collected by the Croatian National Institute of Public Health and the OCDA pointed out a lack of support of state institutions and civil society organisations towards the resocialisation process.¹²³ Regardless of the strategic documents (the National Strategy, Action Plans, Resocialisation Project and Protocol), the recent research has pointed out that significant limitations and omissions in the resocialisation system of addicted prisoners exist in practice. For example, in some regions in Croatia social welfare centres only provide short-term material support (financial support, housing, etc) having no mechanisms to provide longer-term (psycho-social) follow-up support. Probation services for drug users being released from prisons do not

121. In the period 2007-2010, 120 drug addicts have been included in training conducted by social welfare centres and therapeutic communities and financed by the Ministry of Science, Education and Sport. Reports lack information on percentage of educated addicts who were previously imprisoned.

122. The official data shows that from the day of the adoption of the Resocialisation Project up to 31st December, 2010, the Croatian Employment Service conducted professional orientation and working skills evaluation on 231 addicts. 95 treated addicts have been included in educational programmes and 59 of them found employment or used employment incentives. However, there is no information how many of them were previously imprisoned.

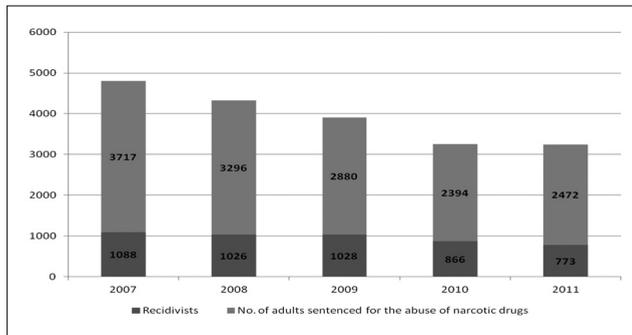
123. Action Plan for the Suppression of Drugs Abuse for the Period of 2009 -2012, op. cit., p. 20.

function well. However, an improvement is expected because plans to improve and strengthen these services have already been made.¹²⁴

The rates on previous conviction are exceptionally high among drug offenders. In 2007 the percentage of recidivists among offenders sentenced for the abuse of narcotic drugs was the lowest (29.20%) within the research period. In following years the proportion of recidivists gradually increased reaching the highest number in 2010 (36.20%). A slight decrease was noted in 2011. According to the official data 31.30% of convicted drug offenders had already been sentenced for a crime by Croatian criminal courts.

Graph 8

Recidivism of adult offenders sentenced to imprisonment for abuse of narcotic drugs in Croatia in the period of 2007-2011¹²⁵



II. Initiatives for drug law reform undertaken by the government and/or the parliament in the last 10 years

A major drug policy issue in Croatia in the last 10 years has been the (de)criminalisation of possession of drugs. General public, drug policy practitioners as well as the scientific community have been engaged in discussions whether possessing drugs should be a criminal offence or not. In 1996 the legislator decided positively imposing a fine or one year imprisonment over a drug possessor who has no intention to sell drugs or put them in circulation.¹²⁶ Although the criminal offence was considered a minor one due to its sanction, it was not unanimously accepted. The

124. Trautmann, F., Braam, R., Keizer, B., Lap, M., *op. cit.*, p. 40.

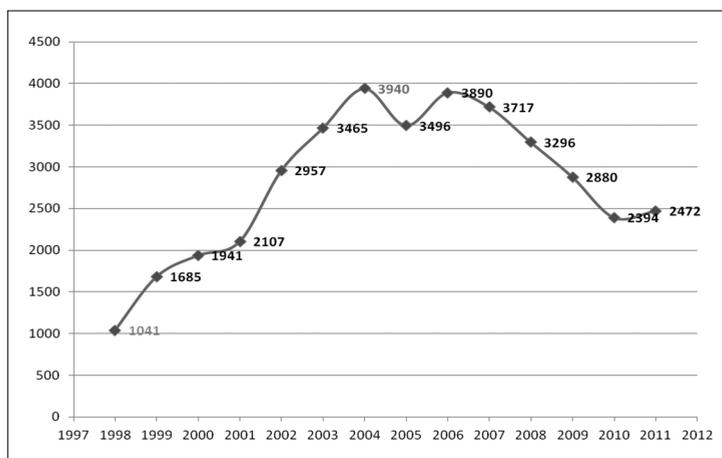
125. Statistical Reports, The Central Bureau of Statistics, *op. cit.*

126. Art. 196, para. 1 of the Basic Criminal Code of the Republic of Croatia, Official Gazette no. 31/1993, 35/1993, 108/1995, 16)1996, 28/1996.

negative effects of such a decision immediately followed. As it can be seen from the Table 1 (p. 15), only three years after the 1996 Basic Criminal Code Amendments introduction, the Croatian criminal courts started to struggle with drug cases overflow. The highest number of drug possession cases was reached in 2004 (3122 cases) which is almost four times higher than in 1998 (784 cases). Due to the fact that drug possession offences are the highest drug related offences, the same growth can be seen in the total number of drug offences.

Graph 9

Total number of drug related offences in Croatia in the period of 1998-2011



The statistical extremity was reached eight years after the criminalisation of possession of drugs probably because, on the one hand, Croatian courts had to adjust to applying the new Criminal Court provisions, and on the other, criminal proceedings do take considerable time until the final court judgment is reached. A negative trend for drug offences in following years was a product of the public prosecutors' decision to apply the principle of opportunity in drug possession cases especially when the criminal action consisted of possessing minor quantities of marijuana. However, even in the last two years the total number of drug offences is extremely high if being compared with statistical data for 1998.

The overload of cases has not been the only negative consequence of criminalisation of drug possession. Once a drug possessor is prosecuted, he is stigmatised as a drug addict and as a criminal too. Being isolated from his closest environment, he is treated as the outcast, unwelcomed, not worthy, dangerous or doomed. Although in most cases the drug possessor is sentenced by a suspended sentence, he is a convicted person and for him a court ruling has certain consequences. The convicted drug possessor has a criminal record, and as a result, he cannot apply

to any of the state or local self-government jobs. Even though the convicted has a right to rehabilitation, according to the Criminal Code, he will acquire all citizens' rights determined by the Constitution only after the expiry of three years from the expiry of probation within the suspended sentence.¹²⁷ The additional problem imposes a rule that rehabilitation cannot be achieved during the execution of security measures. It is unlikely however, technically speaking, that a court may impose a security measure of compulsory treatment for addiction on a convicted drug possessor for five years if this is the probation period from his suspended sentence. Therefore, although the pronounced sentence is a suspended one, the offender will not be rehabilitated after three but after five years due to the fact that this was the time during which he was mandatorily treated for addiction.

The Legislator's decision to criminally prosecute drug possessors has been firmly determined within the last 15 years.¹²⁸ Its negative consequences regarding the offender and the criminal justice system were barely taken into consideration. This strict attitude is confirmed by the 2011 Criminal Code Amendments according to which the possession of drugs or substances prohibited in sports constitutes a criminal offense. Finally, two months ago the Working Group for Criminal Code Amendments made a proposal to completely decriminalise drug possession except if for selling or putting it into circulation. The proposal has not yet been made official and it is up to the Government to decide whether to propose it to the Parliament or not.¹²⁹

The civil society sector in Croatia has pointed out another crucial issue within the field of drug policy. According to the Criminal Code, encouraging someone else to

127. To obtain rehabilitation, the same time period has to expire from the day of a served, expired or a remitted sentence, in the case of a sentence to one year of imprisonment, imprisonment of juveniles or a fine, and from the finality of the decision on admonition or remission of sentence. Art. 85, para. 5 of the 1997 Criminal Code.

128. In 2003 the Criminal Code Amendments were introduced and according to the Art. 63, para. 1, the possession of drugs was a criminal offense only if a perpetrator possessed drugs in order to sell or circulate them in some other way. In other words, the possession of drugs without such specific intent was decriminalised, however, this lessened legislator's prosecuting policy only for a bit due to the fact that the proposed sentences for possession of drugs for selling was imprisonment for one to twelve years. The described provision has never come into force because the whole Amendments were declared unconstitutional by the Constitutional Court on 27th of November, 2003.

129. "Robust experimentation with decriminalisation" is one of the Global Commission on Drug Policy proposals to end, as O'Connor stated, one of the most disastrous public policy fiascos in modern history. O'Connor, M., P.: Market Solutions to Global Narcotics Trafficking and Addiction, Phoenix Law Review, vol. 5, 2011, p. 124.

use a narcotic drug, or giving a person a narcotic drug to use it, is a criminal offense punishable by imprisonment for one to five years. If the aggravating circumstances exist, the punishment is imprisonment for one to ten years.¹³⁰ Due to this provision, there have been a significant number of cases of leaving overdosed persons without help which resulted in their death. The NGOs have called for the reform of the Article 173 lowering the punishment for these perpetrators who secure medical help for overdosed persons or excluding unlawfulness in such special cases. The proposal was not accepted by the competent government bodies due to the fact that encouragement to use narcotic drugs is considered a highly dangerous offence against people's health. Mitigation of the punishment or exclusion of lawfulness could be seen as an encouragement for drug dealers. The aim of the provision in question is to prevent giving drugs in every single case and the official judgment is that general prevention is a more suitable means to fulfilling this aim than allowing exceptions in certain cases.

In the last fifteen years official government initiatives to suppress the abuse of narcotic drugs have been taken on a legislative level and implemented by specific actions in practice:

- The major step was taken in 1996 when the National Drug Supervision and Control Strategy and Assistance to Drug Addicts in the Republic of Croatia was enacted by the Croatian Parliament. The Strategy became a basis for action in the field of drug abuse control.
- In 2001 the Drug Abuse Prevention Act was enacted as a basic legal document to regulate drug use and abuse in Croatia.¹³¹ The Act was based on the above mentioned National Strategy, and since its enactment, it has been considered to be the principal legal instrument for regulation of manufacturing, possession and trafficking of drugs and other substances used for making drugs, control over the cultivation of plants used for drug manufacturing, drug abuse control measures, addiction prevention system and the system for helping addicts and occasional drug users.
- Criminal sanctions for drug abusers are proscribed by the Article 173 of the 1997 Criminal Code. The present provision is directly related to the 2001 Drug Abuse Prevention Act due to the fact that it is an uncompleted criminal norm (*blanket norm*) which acquires the complete meaning after the interpretation of the terms "drugs" and "abuse of drugs" provided by the Drug Abuse Prevention Act. The same legislative nature was given to the Article 190 and 191 of the 2011 Criminal

130. Art. 173, para. 5 and 6 of the 1997 Criminal Code.

131. The 2001 Drug Abuse Prevention Act, *op. cit.*

Code which will come into force on 1st of January, 2013. Furthermore, drugs, prohibited substances and plants are enumerated within the List of Narcotic Drugs, Psychotropic Substances and Plants from which Drugs Can be Obtained and Substances which Could Be Used to Manufacture Narcotic Drugs.¹³²

- In 2002 the Office for Combating Narcotic Drug Abuse was established.
- In 2003 the system for addiction prevention and out-of-hospital treatment became a part of the Institution of Public Health. The shift within the drug prevention system was brought by the 2003 Health Protection Law and 2003 Amendments to the Narcotic Drugs Abuse Control Act.¹³³
- The organisation of an institutional framework for drug abuse control was planned by the Narcotic Drug Abuse Control Action Plan for the Period of 2004-2005.¹³⁴ The second Action Plan covered the period of 2006-2009,¹³⁵ and the one which has been currently implemented, the period of 2009-2012.¹³⁶
- In 2006 the new National Drug Control Strategy in the Republic of Croatia for the period of 2006-2012 was drafted by OCDA and brought into effect by the Croatian Parliament.¹³⁷

III. Standpoints of relevant stakeholders on drug law reform

More than half a century after the enactment of the UN Single Convention on Narcotic Drugs, Croatia has taken considerable steps to create and implement in practice a coherent, meaningful and effective national drug strategy, however, as research results indicate, significant gaps and insufficiencies are still present.

As it was mentioned before, the main issue of the future drug law reform concerns the decriminalisation of drug possession in case a possessor has no intent to sell the

132. The 2009 List of Narcotic Drugs, Psychotropic Substances and Plants from which Drugs Can be Obtained and Substances which Could Be Used to Manufacture Narcotic Drugs, Official Gazette no. 50/2009, 2/2010.

133. The 2003 Health Protection Law, Official Gazette no. 121/2003; The 2003 Amendments to the Narcotic Drugs Abuse Control Act, Official Gazette no. 163/2003;

134. Narcotic Drug Abuse Control Action Plan for the Period of 2004-2005, <http://www.uredzadroge.hr/archive/84/akcijski_plan_za_2005_godinu.pdf> (visited Aug. 18, 2012) (in Croatian)

135. Action Plan on Drug Abuse Control for the Period of 2006 -2009, <<http://www.uredzadroge.hr/upload/File/English/Documents/Action%20plan%20on%20drug%20abuse%20control%20for%20the%20period%202006-2009.doc.pdf>> (visited Aug. 18, 2012)

136. Action Plan for the Suppression of Drugs Abuse for the Period of 2009 -2012, *op. cit.*

137. National Drug Control Strategy in the Republic of Croatia, *op. cit.*

possessed drugs or to put them into circulation. The scientific community and civil society sector in Croatia almost unanimously support such a decision. Having in mind that the working group to reform the Criminal Code at the Ministry of Justice has made a proposal to decriminalise possession under the mentioned circumstances, it will be seen in the near future whether the legislator will accept it or not.

According to the general stakeholders' assessment the future measures prescribed by the 2011 Criminal Code to substitute incarceration are seen as positive. Their implementation will reduce incarceration and minimise the negative consequences of criminal prosecution and short-term prison sentences to drug addicted persons. Positive views have been expressed with respect to the principle of opportunity as a public prosecutor's tool to persuade a drug addicted offender to undergo treatment as a condition not to instigate criminal proceedings against him.

On the normative level, the treatment programs within and outside the prison system are qualitatively defined, however, there is a general acknowledgment that it is hard to grasp the magnitude of various treatments impact in practice. Lack of human resources and financial support for treatment programs is a significant issue. Post-release programs should be improved with respect to ex-prisoners' treatment and support.

Prevention continues to be a weak point of Croatian drug policy being predominantly based on the ineffective legal deterrent through punishment. Evaluation mechanisms of treatment, prevention and reintegration programs are insufficiently developed especially for drug offenders after serving their sentence. There is a strong feeling that the probation system should respond better to drug addicted offenders' needs. Employing skilled professionals is essential. Due to OCDA efforts and National Strategy, the harm reduction services have become more visible; however, there is an almost mutual understanding that this aspect of drug policy can be improved too.

According to the present analysis, a considerable number of different drug policy issues have to be addressed in the near future. Therefore, there is a strong need to conduct additional scientific studies in order to make further critical evaluations of current drug policy and legislative solutions as well as to adopt, with respect to the obtained results, the most efficient measures which would curb the problems associated with drug abuse and prevent future re-offending.

References:

Action Plan for the Suppression of Drugs Abuse for the Period of 2009 -2012, <http://nijd.uredzadroge.hr/upload/File/English/Documents/Action_Plan_on_Combating_Drugs_Abuse_in_Croatia_2009_2012.pdf> (visited Aug. 18, 2012)

Action Plan on Drug Abuse Control for the Period of 2006 -2009, <<http://www.uredzadroge.hr/upload/File/English/Documents/Action%20plan%20on%20drug%20abuse%20control%20for%20the%20period%202006-2009.doc.pdf>> (visited Aug. 18, 2012)

Bačić, F., Pavlović, S.: *Kazneno pravo - posebni dio / Criminal Law - A Special Part*, Informator, Zagreb, 2001.

Bill on Amendments of the 2011 Criminal Code, Government of the Republic of Croatia, Zagreb, 2011, p. 4.

Branko Tomašić and Others v. Croatia, ECHR final judgment on 15th of April, 2009, Application no. 46598/06, <<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-90625>> (visited Aug. 28, 2012)

Cvitanović, L., Glavić, I.: Prvi pogled na uvjetnu osudu u novom Kaznenom zakonu / A Preliminary View of the Suspended Sentence in the New Criminal Code, Croatian Annual of Criminal Law and Practice, vol. 18, no. 2, 2011, pp. 755-778.

Cvjetko, B.: *Kazneno zakonodavstvo i kaznenopravna reakcija na kazneno djelo zlouporabe opojnih droga u Republici Hrvatskoj / Criminal Legislation and Criminal Legal Reaction on Criminal Offence of the Abuse of Narcotic Drugs in the Republic of Croatia*, Croatian Annual of Criminal Law and Practice, vol. 10, no. 2, 2003, pp. 909-939.

Damjanović, I., Butorac, K.: *Politika suzbijanja kriminaliteta: perspektive izvršenja kaznenopravnih sankcija / The Policy of Fighting Criminal Behaviour: Prospects for the Enforcement of Criminal Law Sanctions*, Croatian Annual of Criminal Law and Practice, vol. 13, no. 2, 2006, p. 657-684.

Garačić, A.: *Zakonska i sudska politika kažnjavanja županijskih sudova u Republici Hrvatskoj za kaznena djela silovanja i zlouporabe droga / Legislative and Court Punishing Policy of County Courts in the Republic of Croatia for Rape and Abuse of Narcotic Drugs*, Croatian Annual of Criminal Law and Practice, vol. 11, no. 2, 2004, pp. 475-516.

Grozđanić, V.: *Sistem sankcija u nacrtu Novog hrvatskog Kaznenog zakonika / The System of Penal Sanctions in the Croatian Draft Penal Code*, Croatian Annual of Criminal Law and Practice, vol. 1, no. 1, 1994, pp. 49-62.

Grozđanić, V., Škorić, M.: *Uvod u kazneno pravo / Introduction to Criminal Law*, Organizator, Zagreb, 2009.

Hyshka, E., Erickson, P. G., Hathaway, A.: The Time for Marijuana Decriminalization Has Come Again ... and Again, *Criminal Law Bulletin*, 2011, vol. 47, no. 2, pp. 58-275.

Klarić, D.: *Suvremeni trendovi zlouporabe droga / Modern Trends in Drug Abuse*, State Inspectorate of the Republic of Croatia, Zagreb, 2000.

Kos, J.: *Izvršavanje maloljetničkih sankcija / Execution of Juvenile Sanctions*, Croatian Annual of Criminal Law and Practice, vol. 13, no.2, 2006, pp. 807-865.

Kovačević-Čavlović, J.: *Protiv zlouporabe droge na nacionalnoj i međunarodnoj razini / Against Drug Abuse on National and International Level*, Official Gazette, Zagreb, 1996.

Kušević, V.: *Zlouporaba droga / Abuse of Drugs*, Ministry of the Interior, Zagreb, 1990.

Leech, K., *What Everyone Should Know about Drugs*, Sheldon Press, London, 1983.

Maresti v. Croatia, ECHR final judgment on 25th of September, 2009, Application no. 55759/07, <<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-90625>> (visited Aug. 28, 2012)

Mellenthin, K.: *Rauschgift-Bekämpfung und Drogentherapie / Suppression and Prevention of Drug Crimes*, Selection of Articles from Foreign Journals, no. 1, 1993, pp. 5-16.

Mitrović, G.: *Krivična odgovornost zavisnika od droga / Criminal Responsibility of Drug Addicts*, a transcript of the article available at the Library of Faculty of Law, University of Rijeka.

Narcotic Drug Abuse Control Action Plan for the Period of 2004-2005, <http://www.uredzadroge.hr/archive/84/akcijski_plan_za_2005_godinu.pdf> (visited Aug. 18, 2012) (in Croatian)

National Drug Control Strategy in the Republic of Croatia, <<http://www.uredzadroge.hr/upload/File/English/Documents/National%20drug%20control%20strategy%20in%20the%20Republic%20of%20Croatia%202006-2012.pdf>> (visited Aug. 18, 2012)

Nestler, C.: *Sentencing in Germany*, Buffalo Criminal Law Review, vol. 7, 2003, pp. 109-138.

O'Connor, M., P.: *Market Solutions to Global Narcotics Trafficking and Addiction*, Phoenix Law Review, vol. 5, 2011, p. 123-149.

Oleson, J. C.: *The Punitive Coma*, California Law Review, vol. 90, 2002, pp. 829-901.

Pavišić, P., Grozdanić, V., Veić, P.: *Komentar Kaznenog zakona / Commentary on Criminal Law*, Official Gazette, Zagreb, 2007.

Rittossa, D.: *Pojam zablude u Kaznenom pravu* / Notion of Mistakes in the Criminal Law, University of Zagreb, Faculty of Law doctoral thesis, Zagreb, 2012.

Sakoman, S, Pavišić, B., Cvjetko B.: *Aktualna pitanja primjene Zakona o suzbijanju zlouporabe opojnih droga* / Current Issues Regarding the Implementation of the Drug Abuse Prevention Act, Faculty of Law University of Zagreb, Zagreb, 2002, pp. 241-284.

Snacken, S.: Penal Policy and Practice in Belgium, *Crime and Justice*, 2007, vol. 36, pp. 127-215.

Statistical Reports, The Central Bureau of Statistics, <http://www.dzs.hr/default_e.htm> (visited Aug. 20, 2012)

Stuart, S.: War as Metaphor and the Rule of Law in Crisis: The Lessons We Should Have Learned from the War on Drugs, *Southern Illinois University Law Journal*, vol. 36, 2011, pp. 1-43.

Sušić, E.: *Strategija organizacije zdravstvene zaštite zatvorenika* / Strategy for Organising Healthcare for Prisoners, *Croatian Annual of Criminal Law and Practice*, vol. 16, no. 1, 2009, pp. 99-115.

Sušić, E., Pleše, S.: Aktualni problemi primjene i provođenja sigurnosne mjere obveznog psihijatrijskog liječenja / Current problems Related to the Application and Enforcement of the Security Measure of Compulsory Psychiatric Treatment, *Croatian Annual of Criminal Law and Practice*, vol. 13, no. 2, 2006, pp. 915-932.

The 1997 Criminal Code, Official Gazette no. 110/1997, 27/1998, 50/2000, 129/2000, 51/2001, 111/2003, 190/2003, 105/2004, 84/2005, 71/2006, 110/2007, 152/2008, 57/2011.

The 1999 Law on the Execution of Prison Sentence, Official Gazette no. 128/1999, 55/2000, 59/2000, 129/2000, 59/2001, 67/2001, 11/2002, 190/2003, 76/2007, 27/2008, 83/2009, 18/2011, 48/2011, 125/2011.

The 2003 Amendments of the 1997 Criminal Code, Official Gazette no. 111/2003.

The 2003 Amendments to the 2001 Narcotic Drugs Abuse Control Act, Official Gazette no. 163/2003.

The 2003 Health Protection Law, Official Gazette no. 121/2003.

The 2006 Amendments of the 1997 Criminal Code, Official Gazette no. 71/2006.

The 2009 List of Narcotic Drugs, Psychotropic Substances and Plants from which Drugs Can be Obtained and Substances which Could Be Used to Manufacture Narcotic Drugs, Official Gazette no. 50/2009, 2/2010.

The 2011 Criminal Code, Official Gazette no. 125/2011.

The Basic Criminal Code of the Republic of Croatia, Official Gazette no. 31/1993, 35/1993, 108/1995, 16/1996, 28/1996.

The County Court in Rijeka, K-75/1999, 27th of June, 2000.

The Criminal Procedural Code, Official Gazette no. 121/2011.

The Drug Abuse Prevention Act, Official Gazette no. 107/2001, 87/2002, 164/2003, 141/2004, 40/2007, 149/2009, 84/2011.

The Juvenile Courts Act, Official Gazette no. 84/2011.

The Report on Situation and Work Carried on in Prisons, Penitentiaries and Educational Institutions in Croatia for the period 2007-2011, <<http://www.mprh.hr/Default.aspx?sec=288>> (visited Dec. 28, 2012)

The Supreme Court of the Republic of Croatia, I Kž 146/2004-3, 17th of November, 2004.

The Supreme Court of the Republic of Croatia, I Kž 236/1998-3 15th of December 1998.

Tomasović v. Croatia, ECHR final judgment on 18th of January, 2011, Application no. 53785/09, <<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-107047>> (visited Aug. 28, 2012)

Trautmann, F., Braam, R., Keizer, B., Lap, M.: Evaluation of the National Drug Strategy of the Republic of Croatia (2006-2012), Trimbos Instituut, Utrecht, 2011.

Tripalo, D.: *Kazneopravni aspekti zlouporabe droga* / Criminal Legal Aspects of Drug Abuse, Croatian Annual of Criminal Law and Practice, vol. 10, no. 2, 2003, pp. 553-585.

Tripalo, D.: *Zlouporaba droga prema novom Kaznenom zakonu* / Drug Abuse according to the new Criminal Code, *Novine u kaznenom zakonodavstvu* / Novelties in Criminal Legislation, Supreme Court of the Republic of Croatia, Zagreb, 2012, pp. 27-48.

Turković, K., *Kaznena djela protiv vrijednosti zaštićenih međunarodnim pravom* / Criminal Offenses against Values Protected by International Law, published in: Novoselec, P. (ed.), *Posebni dio kaznenog prava* / A Special Part of the Criminal Law, University of Zagreb, Zagreb, 2007, pp. 99-144.

Turković, K.: *Okviri reforme sustava kaznenopravnih sankcija u Republici Hrvatskoj* / The Framework of Reform of the Criminal Sanctions System in the Republic of Croatia, Croatian Annual of Criminal Law and Practice, vol. 16, no. 2, 2009, pp. 809-841.

Vejsović, N.: *EU Phare međdržavni program za borbu protiv droga / EU Phare Multi-Country Programme for Fight against Drugs*, Journal of Criminal Justice Issues, vol. 1, no. 1, 1998, pp. 172-175.

Woods, J., B.: *A Decade after Drug Decriminalization: What Can the United States Learn from the Portuguese Model?*, University of the District of Columbia Law Review, vol. 15, p. 1-31.

**Country Report
Former Yugoslav Republic
of Macedonia**

Country Report Former Yugoslav Republic of Macedonia

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I. The current national drug strategy and drug legislation in the Former Yugoslav Republic of Macedonia

1. National Strategy on Drugs

The Former Yugoslav Republic of Macedonia is a candidate country for accession to the European Union. The ongoing process of approximation of the national legislation with the European one is significant for reviewing the current drug policy and its impact regarding the people who use drugs. This report is an overview of the current legislative framework related to drug policy and laws regarding drug use in the Former Yugoslav Republic of Macedonia and its adjustment to the contemporary drug policies on a regional and international level. The report also aims to identify the key obstacles in the implementation of current laws and strategies that have an impact on drug policy. The framework regarding drugs encompasses legally binding and strategic documents that need to be analyzed in order to understand the development of drug policy in the country. For the purposes of the report interviews were conducted with representatives from relevant stakeholders in the field of drugs. Based on the analysis of the legal documents and information received through interviews with key persons, the report will provide recommendations for further analysis and drug policy changes.

In December 2006 the Government of the Former Yugoslav Republic of Macedonia adopted the National Drug Strategy³ that covers the period from 2006-2012 and is in line with the European Union drugs strategy 2005-2012.⁴ The Government also adopted a pre-implementation plan for the period 2007-2008 and an ac-

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3. Ministry of Health. National Drug Strategy 2006-2012, December 2006.

4. European Monitoring Center for Drugs and Drug Addiction. Former Yugoslav Republic of Macedonia, Country overview 2009, page 17.

tion plan for the period of 2009-2012. Currently there is an initiative for drafting a new drug strategy for the period of 2012-2017.⁵

The National Drugs Strategy was prepared by experts who are members of the Inter-ministerial Commission on Narcotic Drugs and a Working group formed by the Minister of Health that involved representatives from the Ministry of Health, the Ministry of Internal Affairs, the Ministry of Finances, the Customs administration, the Ministry of Education and Science, the Ministry of Labor and Social Policy, the Ministry of External Affairs, the Ministry of Agriculture, Forestry and Water Supply, the Ministry of Justice, the Agency for Youth and Sports, the Psychiatric Hospital “Skopje”, the Center for treatment of addictions “Kisela Voda” Skopje, the Red Cross of Former Yugoslav Republic of Macedonia, and a network of non-governmental organizations active in the field of drugs. The institutions involved in the drafting of the strategy are the key players in the development and implementation of drug policy in the country. Under the Law on control of opioid drugs and psychotropic substances⁶ the Government has established an Inter-ministerial Commission for combating illicit production, trade and misuse of drugs (Inter-ministerial Commission). It is comprised of representatives from the Ministry of justice, Ministry of interior, Ministry of health, Ministry of local-self government, Ministry of environment and physical planning, Ministry of foreign affairs, Ministry of education and science, Ministry of labor and social policy, Ministry of agriculture, forestry and water, Ministry of finance - customs administration and the Agency for youth and sport. The professional and administrative work of the Inter-ministerial Commission is done by the Bureau of drugs.⁷ The Commission has the responsibility for coordination, implementation of national drug policies and its alignment with international documents. More specifically, the Commission examines laws and other regulations related to the issue of drug use and gives recommendation for implementation of international conventions on drug control and other regulations related to drugs. It develops and takes care of overall and systematic implementation of the drug strategy and promotes preventive activities provided in the strategy and regulated by the law. Furthermore, the Commission has an obligation to introduce a system for collection and processing of information related to drug use, to follow the trends in drug demand and drug supply in the country and to report in accordance with international drug control conven-

5. Interview with Prim. dr. Ilco Zahariev the director of Bureau on drugs and President of Inter-ministerial National Commission on drugs.

6. Official Gazette of the Republic of Macedonia no. 103/2008. Law on control of opioid drugs and psychotropic substances.

7. Law on control of opioid drugs and psychotropic substances, Article 6 paragraph 2.

tions. The Commission also coordinates and gives support on activities of local self government units. Related to this, there are nine regional units that perform the activities for combating and eradicating the misuse of opioid drugs and psychotropic substances.

Furthermore, the National Drug Strategy 2006-2012 emphasizes five key elements for an integrated, multidisciplinary and balanced approach:

1. Coordination at national and international level,
2. Demand reduction,
3. Supply reduction and fight against illicit trafficking,
4. Evaluation, monitoring, information, training
5. International cooperation

In the second specific goal of the Strategy there is a part that refers to a comprehensive policy on drug demand reduction where treatment, prevention, harm reduction and social care are central issues. Since drug use is a complex phenomenon that has health and social consequences for the people involved in drug use, it is necessary to develop health and social services that will target people who use drugs. One of the main principles of the Strategy is protection of human rights and against the social exclusion of people who use drugs. The principle of a balanced approach requires coherent and complementary drug policy regarding drug supply reduction and drug demand reduction. In that respect the drug demand reduction framework needs to strike a balance between prevention of drug use, treatment, harm reduction and social care.⁸The specific goals need to be accomplished by establishing effective and accessible preventive programmes and cost effective and accessible treatment programmes. In local communities and within organizations and institutions in the public and private sector, drug use is prevented, drug related health and social harms are reduced and the social reintegration of drug users has been advanced.⁹

According to the specific aims of the strategy, NGOs should be involved in the coordination of activities on a local level and are part of the structures responsible for the local approach to the drug problem (specific aim 1, result 4). The involvement and participation of civil society, NGOs, the general public and drug users in particular in the realization of the activities aimed at strengthening drug demand reduction, has been facilitated and is based on the principle of shared re-

8. Ministry of Health National Drug Strategy 2006-2012, page 12.

9. Ministry of Health National Drug Strategy 2006-2012, page 13.

sponsibility and subsidiarity (specific aim 1, result 5). The NGO HOPS- Healthy Options Project Skopje covers 3 needle and syringe programmes and one mobile unit in Skopje. According to the Strategy, the activities of the NGOs are very important in the programs for: changing social perceptions and relations towards the drug phenomenon; primary prevention; harm reduction programmes; the protection of human rights; the effort put into the improvement of the conditions for treatment; the creation of help and information services; counseling, social and psychosocial clubs, etc.¹⁰ However, most of them are limited in their scope of implementation, and are usually part of the projects which are, almost exclusively, financed by foreign organizations and foundations. Regarding the involvement of the NGO sector, the National Drugs Strategy considers civil society as an important partner in achieving the aims and objectives of the National Drugs Strategy and National Drug Action Plan(s). The functioning of harm reduction programmes could be seen as a good practice between governmental and non-governmental organizations.

The strategy is in line with the European Drug Strategy and mostly covers all the issues related to drugs, drug use and drug control. There are shortcomings related to implementation of certain activities. The Strategy does not give much attention to programmes for re-socialization and rehabilitation of drug users.¹¹

The initial documents directly related to the issue of drug use are the treaties regarding drugs from the United Nations that Macedonia acceded after the dissolution of Yugoslavia. Thus, the Republic of Macedonia acceded to the Single Convention on narcotic drugs from 1961 and the amendment of this Convention by the Protocol to the Single Convention on narcotic drugs from 1972 as well as the Convention on psychotropic substances from 1971 and United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances from 1988.

2. National substantive Criminal Law

According to the Criminal law in Former Yugoslav Republic of Macedonia there is a distinction between a misdemeanor and a felony/criminal act. The Criminal Code¹² regulates criminal acts of different types depending on the damage. There are crimes against life and body, crimes against the freedoms and rights of people,

10. Ministry of Health National Drug Strategy 2006-2012.

11. The Director of Bureau of drugs and the president of Inter ministerial Commission shares this opinion.

12. Official Gazette of the Republic of Macedonia no. 37/96; 80/99; 04/02; 43/03; 19/04; 81/05; 60/06; 07/08; 139/08; 114/09; 51/11; 135/11; 185/1. Criminal Code. The Criminal Code was

crimes against elections and voting, crimes against work relations, crimes against honor and reputation, crimes against sexual freedom and sexual morality, crimes against marriage, family and youth, crimes against human health,¹³ crimes against the environment, crimes against property, crimes against cultural monuments, archive materials and natural rarities, crimes against public finances, payment operations and the economy, crimes against the general safety of people and property, crimes against safety in public traffic, crimes against the state, crimes against the armed forces, crimes against official duty, crimes against the judiciary, crimes against legal traffic, crimes against the public order, crimes against humanity and international law.

A crime is defined as an unlawful act which is determined by law to be a crime, and whose characteristics are determined by law.¹⁴ An act is not a crime even though it contains characteristics of a crime, when it is an act of minor significance, because of the lack or insignificance of the damaging consequences and the low level of criminal responsibility of the offender.¹⁵ Under the Law, misdemeanor is an unlawful act determined by law as such, with characteristics determined by Law for which a certain sanction is prescribed.¹⁶

Sanctions under criminal law

The Criminal Code prescribes the following sanctions: punishments, alternative measures, security measures and educational measures. The punishments are prison, fine, prohibition from carrying out a profession, activity and liability, prohibition of vehicle operation and expulsion of a foreigner. Since 2004, with amendments of the Criminal Code, alternative measures have been incorporated in the criminal law system. Some of these measures already existed in the previous categorization of sanctions in the Criminal Code. However, the classification as alternative measure as well as the enlargement of their number, point out that the

adopted in 1996 and since now it was amended and changed many times. The drug related provisions were amended once in 2009.

13. The criminal act unauthorized production and release for trade of narcotics, psychotropic substances and precursors regulated in Article 215 of the Criminal Code and the criminal act enabling the taking of narcotics, psychotropic substances and precursors regulated in Article 216 are considered drug-related crimes and are classified as crimes against health.
14. Official Gazette of the Republic of Macedonia no. 37/96; 80/99; 04/02; 43/03; 19/04; 81/05; 60/06; 07/08; 139/08; 114/09; 51/11; 135/11; 185/1. Criminal Code Article 11.
15. Official Gazette of the Republic of Macedonia no. 37/96; 80/99; 04/02; 43/03; 19/04; 81/05; 60/06; 07/08; 139/08; 114/09; 51/11; 135/11; 185/1. Criminal Code Article 8 paragraph 1.
16. Official Gazette of the Republic of Macedonia no. 62/06. Law on misdemeanor, Article 5.

system of sanctions is directed toward alleviation, humanization and redefinition of the sanctioning policy. These measures include probation, probation with supervision, probationary suspension of the criminal procedure, community service, court remand and house arrest. The aim of the alternative measures is not to use a punishment for lighter crimes against the criminally responsible person when this is not necessary because of criminal-legal protection, and when it may be expected that the warning with a threat of punishment or the warning itself will have sufficient influence upon the offender not to commit any more crimes. The educational measures can be imposed on minors and this is regulated by the Law on juvenile justice.¹⁷ Under the Law on misdemeanors the authorities can sentence only fines regulated by a specialized law.

Custodial sentences are served in prisons according to the rules and procedure specified in the Law on Execution of sanctions.¹⁸ The previously existent probation, probation with supervision and court remand, are adjourned with conditional termination of criminal procedure, community work and house arrest. Probation is a separate penalty and can be imposed by the court if it is among the sanctions provided for the specific offence. With probation, the court determines the punishment for the offender while at the same time determining that this punishment will not be executed if the offender does not commit a new crime during a court-specified period, which cannot be shorter than one or longer than five years. This period is known as a control period. There, the offender is put on check in the community. The court may determine in the probation that the punishment will also be executed if the offender does not repay the property gained by the perpetration of the crime, if he does not compensate the damages which he caused with the crime, or if he does not fulfill any other obligations foreseen by the criminal-legal provisions. The assessment of the offender's behavior is done not only through controlling whether the offender had fulfilled the obligations issued by the court but also if the damage was compensated, if the property was returned etc. The probation can be imposed when the offender is sentenced to an imprisonment of two years or a fine. It can also be imposed when a punishment of imprisonment with duration of up to two years or a fine has been determined, if the circumstances of the case allow the court to apply the provisions for mitigation of punishment. In the decision making process whether a probation will be pronounced, the court should take into consideration the offender's personality, his/her previous life, his/her behavior after the perpetrated crime, the extent of criminal responsibility, and other circumstances under which the crime has been committed. The court will re-

17. Official Gazette of the Republic of Macedonia no. 87/07. Law on juvenile justice.

18. Official Gazette of the Republic of Macedonia no. 2/2006. Law on execution of sanctions.

voke the probation if during the control period the offender commits one or more crimes for which a punishment of imprisonment of two years or longer has been defined. The court will also revoke the probation if it comes to its knowledge after pronouncing it, that the offender has committed a crime prior to being sentenced, and if it evaluates that there would be no reason for pronouncing a probation if it had known about that crime.

In cases where the court evaluates that probation will not influence the offender sufficiently to not commit crimes again, and the circumstances related to the offender justify the expectation that the aim of the probation will be achieved if measures of help, care, supervision or protection are determined, the court will determine probation with supervision. When the court pronounces supervision, it may determine one or more obligations. For the purposes of this report it is important to highlight the following measures: 1. not visiting certain types of premises or other places where alcoholic drinks are served and where gambling exists; 2. prohibition of using alcoholic drinks, narcotics or other similar psychotropic substances and 3. submitting to medical treatment or social rehabilitation in appropriate specialized institutions.

For criminal acts committed under exceptionally mitigating circumstances, when there is consent by the offender who has to be a first time offender and if the punishment for the committed crime is imprisonment of up to 3 years or a fine, community work can be given as a sentence. This measure means that the offender will work several hours of unpaid work for the benefit of the community. The court can pronounce that the offender is obliged to work at least 40 of maximum 240 hours of unpaid work, at least 5 hours a day over a period of 12 months. The community work is done in state institutions, public institutions, humanitarian organizations etc. Contrary to the other alternative measures, house arrest is not a measure that avoids imprisonment, but a way to alter the institution or place where the offender will serve the punishment in his/her home. The house arrest is not a substitute for prison, but substitutes the manner in which the sentence is served. This sanction can be pronounced for a criminal act for which the law prescribes fine or imprisonment of up to one year and if the offender is old, weak, and unhealthy or if the offender is a pregnant woman. Effectuating this sanction requires the availability of technical equipment that will monitor the movement of the offender. If the offender disobeys the prohibition on leaving the house, the court can withdraw this sanction and will order execution in a regular prison facility. An offender serving a prison sentence could be released from prison earlier. This is called 'conditional release' and is possible only if the offender has already served at least half of the penalty and has demonstrated his or her correction through exemplary conduct and honest attitude to work.

Drug related offences

According to the Criminal Code there are two types of drug related crimes. The unauthorized production and release for trade of narcotics, psychotropic substances and precursors regulated by Article 215 and enabling the taking of narcotics, psychotropic substances and precursors regulated by Article 216 are considered as drug-related crimes. The Article 215 paragraph 1 states that “*production, processing, sale or offering for sale, or when for the purpose of selling, buying, keeping or transporting, or mediating in the selling or buying, or in some other way releasing for trade, without authorization, narcotics, psychotropic substances and precursors, will be punished with imprisonment of one to ten years.*” If the crime is committed by several persons, or if the offender of this crime organized a network of resellers or mediators, the offender shall be punished with imprisonment of at least five years.¹⁹ The national law does not recognize the difference between soft and hard drugs as long as the substance is illegal and controlled. In September 2009 the Article 215 of the Criminal Code was amended with a new paragraph which states that if the crime is conducted with a smaller amount of narcotic drugs, psychotropic substances and precursors the punishment can be from six months to three years of imprisonment.²⁰ While drafting the amendments, the legislator did not define the amount that will be considered as smaller concerning the proper implementation of the provision. After the adoption of the amendments, the Prosecutor’s office encountered problems in formulating an indictment related to a certain amount of drugs. Therefore the State Prosecutor delivered a compulsory directive on what should be considered a smaller amount while drafting the indictment.²¹ According to this decision a smaller amount shall be considered 5 grams of marijuana, 2 grams of heroin, and 2 grams of cocaine and it will be prosecuted under paragraph 2, Article 215 from the Criminal Code. Furthermore, if a person without authorization manufactures, procures, mediates, or gives out for use equipment, materials or substances, which he knows are intended for the production of narcotics, psychotropic substances and precursors, shall be punished with imprisonment of one to five years.²² The narcotics, psychotropic substances and precursors, and the

19. Official Gazette of the Republic of Macedonia no. 37/96; 80/99; 04/02; 43/03; 19/04; 81/05; 60/06; 07/08; 139/08; 114/09; 51/11; 135/11; 185/1.Criminal Code Article 215 paragraph 3.

20. Amendment of Criminal Code article 215 paragraph 2 was changed in paragraph 3 and a new paragraph 2 was added.

21. Public prosecution of the Republic of Macedonia. Compulsory directive Dov.no. 16/2010 from 14.04.2010.

22. Official Gazette of the Republic of Macedonia no. 37/96; 80/99; 04/02; 43/03; 19/04; 81/05; 60/06; 07/08; 139/08; 114/09; 51/11; 135/11; 185/1.Criminal Code Article 215 paragraph 4.

means for their production, transportation and distribution shall be confiscated.²³ Moreover, if we analyze the wording of the first paragraph regarding the possession of drugs it clearly states that if “*for the purpose of selling, buying, keeping or transporting, or mediating in the selling or buying*” it will be sanctioned. It means that possession for personal use is not covered by Article 215 of the Criminal Code.

Apart from the possession of drugs, drug use is regulated under Article 216 where enabling the taking of narcotics, psychotropic substances and precursors is stipulated. Under this article “*anyone who induces another to take narcotics, psychotropic substances and precursors, or who gives narcotics, psychotropic substances and precursors to another for this person or someone else, or who makes available premises for the taking of narcotics, psychotropic substances and precursors, or in some other way enables another to take narcotics, psychotropic substances and precursors, will be punished with imprisonment of three months to five years*”.²⁴ The second paragraph of the same article provides a more severe sentence from one to ten years of imprisonment if the crime is committed towards a juvenile person, or towards several persons, or if it has caused especially severe consequences.

In order to distinguish a crime from a misdemeanor regarding drug use it is indispensable to consider the Law on misdemeanors against public order and peace²⁵ which regulates that “*resorting to the use of narcotic drugs and psychotropic substance in a public space will be fined from 200 up to 500 Euros*”.²⁶ The application of this provision is possible if drug use happens in a public space which is defined as a place where an undefined number of people can have free access without any precondition (a street, school, square, picnic place, harbor, waiting rooms, catering, business or craft stores) or under certain conditions (sport stadiums, playgrounds, public transportation, cinema, theater and concert halls, exhibition rooms, gardens etc) or in places which are sometimes used for such purposes (grounds or premises in which public gatherings, performances, competitions etc. are organized). Under this law, violation of public order and peace will be considered places which are not treated as public unless it is readily visible from a public space (a balcony, terrace, tree, pillar, stairs etc) or the consequences of the act happen in a public place.

23. Official Gazette of the Republic of Macedonia no. 37/96; 80/99; 04/02; 43/03; 19/04; 81/05; 60/06; 07/08; 139/08; 114/09; 51/11; 135/11; 185/1. Criminal code Article 215 paragraph 5.

24. Official Gazette of the Republic of Macedonia no. 37/96; 80/99; 04/02; 43/03; 19/04; 81/05; 60/06; 07/08; 139/08; 114/09; 51/11; 135/11; 185/1. Criminal Code Article 216 paragraph 1.

25. Official Gazette of the Republic of Macedonia no. 31/2007. Law on misdemeanors against public order and peace.

26. Official Gazette of the Republic of Macedonia no. 31/2007. Law on misdemeanors against public order and peace, Article 20.

3. National drug laws and institutions

The cultivation, production and trade of drugs is defined and regulated under the Law on control of drugs and psychotropic substances. Under this law, cultivation is considered to be the sowing, planting, cultivating or cropping of plants or in any other way collecting pieces of plants from which an opioid drug can be produced. Production is defined as preparation, processing, mixing, refining, production and any other activity from which an opioid drug can be obtained or which helps to get an opioid drug, a psychotropic substance or their concoction. Furthermore, trade is any act of releasing into the market an opioid drug, psychotropic substance, plant, a piece of a plant or any such import, export, transit and supply. The Law on control of opioid drugs and psychotropic substances regulates the procedure for legal cultivation, production or trade of drugs by licensed entities that fulfill strict requirements stipulated in the law. Illicit cultivation, production and trade of drugs is sanctioned under the Criminal Code.

Drug related sentences

There are general rules for the court when pronouncing a sentence within the limits prescribed by the law for each crime. The court should take into consideration all the circumstances that have influenced the decrease or increase of the punishment, and especially: the level of criminal responsibility, the motives for the perpetrated crime, the extent of endangerment or damage to the protected goods, the circumstances under which the crime was committed, the contribution of the victim in the perpetration of the crime, the previous life of the offender, his/her personal circumstances and his/her behavior after the perpetrated crime, as well as other circumstances that concern the personality of the offender. Thus, the Criminal Code does not explicitly assert drug addiction as a mitigating or an aggravating circumstance. When the court metes out the punishment to the offender for the committed crime, perpetrated in repetition, it will especially have in mind whether the previous crime is of the same kind as the new crime, whether the crimes were committed with the same motives and how much time has passed since the previous sentence, respectively since the punishment was served or was pardoned. The case law in this regard, is incoherent. Since the judges have discretion to evaluate the circumstances of the case there are some sentences that have considered drug addiction as a mitigating circumstance, while others have regarded it as irrelevant to the sentence. In practice, very often drug addicts are recidivists of different crimes and recidivism is definitely considered as an aggravating factor for the sentence.

The Criminal Code prescribes a sentence for each criminal act. However, there are legal margins of minimum and maximum sentences that can be imposed on the

offender. Thus, imprisonment cannot be shorter than 30 days or longer than 15 years. When the law provides life imprisonment for certain criminal acts (e.g. first-degree murder, genocide, and robbery with fatal consequences etc.) a sentence of 20 years of imprisonment can be assigned. As previously mentioned, drug related crimes are sentenced depending on the amount of drugs confiscated, where the offender can be charged from six months to three years imprisonment for smaller amounts or one to ten years of imprisonment for greater amounts. The case-law in this respect shows lower sentences for drug related offenders than the legal maximum prescribed by the Criminal Code.

Regarding the statistics of sentences imposed under Article 215, the Ministry of justice has produced information on the legal aspects and practical experience related to the prosecution of offenders of the criminal act - illegal drug trafficking.²⁷ The statistics in this information present all crimes related to illegal drug trafficking which includes Article 215 and 216. In the period 2005-2008 there were 602 cases in 22 Basic Courts processed under Article 215 and 216 of the Criminal Code. The most frequent drug related cases in the period of 2005-2008 were in the Basic Criminal Court in Skopje - a total of 206. Based on the information, there were 137 probation convictions, 280 sentences with up to one year imprisonments, 113 sentences with up to two years of imprisonment, 64 sentences with up to three years of imprisonment, 15 sentences with up to four years of imprisonment, 15 sentences with up to five years of imprisonment, 12 sentences with up to six years of imprisonment, 3 sentences with up to seven years of imprisonment, 3 sentences with up to eight years of imprisonment and 6 sentences with up to 8 years of imprisonment. According to the State statistical office data for 2010 and 2011²⁸ here are the results related to drug related offences:

- Accused adult perpetrators for unauthorized production and release for trade of narcotics, psychotropic substances and precursors

year	total	female	convicted	investigation terminated	Charge dropped	charge rejected	security measures
2010	313	7	293	3	8	9	/
2011	464	19	420	9	16	17	2

27. Government of the Republic of Macedonia, Ministry of Justice. Information on the legal aspects and practical experience related to prosecution of the offenders of criminal act illegal drug trafficking, January 2009.

28. State statistic office. Perpetrators of criminal offences in 2011, July 2012 and Perpetrators of criminal offences in 2010, November 2011.

- Accused for facilitating the use of narcotics, psychotropic substances and precursors

year	total	female	convicted	investigation terminated	charge dropped	charge rejected	security measures
2010	46	/	44	/	2	/	/
2011	67	6	59	4	1	3	/

- Convicted adult perpetrators for unauthorized production and release for trade of narcotics, psychotropic substances and precursors

Year				main		secondary				probation	
	con- victed	fe- male	pun- ish- ment total	im- pris- on- ment	fine	fine	Prohibi- tion from engag- ing in a pro- fession	Prohibi- tion from operat- ing in a motor vehicle	Expul- sion of a for- eigner from the country	im- pris- on- ment	fine
2010	293	6	220	214	5	/	/	1	/	72	1
2011	420	18	282	264	14	1	/	/	3	138	/

- Convicted for facilitating the use of narcotics, psychotropic substances and precursors

Year				main		secondary				probation	
	con- victed	fe- male	pun- ish- ment total	im- pris- on- ment	fine	fine	Prohibi- tion from engag- ing in a pro- fession	Prohibi- tion from operat- ing in a motor vehicle	Expul- sion of a for- eigner from the country	im- pris- on- ment	fine
2010	44	/	24	24	/	/	/	/	/	20	/
2011	59	4	27	27	/	/	/	/	/	32	/

- Convicted for unauthorized production and release for trade of narcotics, psychotropic substances and precursors by type of sentence applied

Year	Imprisonment					
	5-10 years	3-5 years	2-3 years	1-2 years	6-12 months	up to 6 months
2010	11	16	15	46	74	52
2011	26	18	22	49	73	73

Year	fine			
	up to 5000 denars	5001-100000denars	100001-300000	more than 300000
2010	/	1	1	3
2011	/	2	4	8

year	alternative measures- probation						
	imprisonment				fine		
	over one year	6-12 months	3-6 months	up to 3 months	up to 5000 denars	5001-100000 denars	over 100000 denars
2010	19	40	7	6	/	/	1
2011	32	56	33	17	/	/	/
	alternative measures						
	Probation with protective supervision	Probationary suspension of the criminal procedure	Community service	Court reprimand	House arrest		
	2010	/	/	/	/	/	
2011	/	/	/	/	/		

- Convicted for facilitating the use of narcotics, psychotropic substances and precursors by type of sentence applied

Year	Imprisonment					
	5-10 years	3-5 years	2-3 years	1-2 years	6-12 months	up to 6 months
2010	/	/	1	1	12	10
2011	/	/	1	4	12	10

Year	alternative measures- probation						
	imprisonment				fine		
	over one year	6-12 months	3-6 months	up to 3 months	up to 5000 denars	5001-100000 denars	over 100000 denars
2010	3	15	2	/	/	/	/
2011	5	17	8	2	/	/	/

There is no available data on the amount of drugs used as a basis for conviction. In that respect it is impossible to analyze how many offenders were drug traffickers and how many of them were convicted because they possessed a smaller amount for personal use.

In 2011, under the Law on misdemeanors against public order and peace, 517 administrative procedures against 538 persons were initiated on the basis of drug use. Most of the acts, or 491, were committed in urban areas, and 277 misdemeanors were committed by people above 25 years of age. From the total number of reported cases, 26 were female, 28 minors and one foreigner.²⁹

In the judicial system of the Former Yugoslav Republic of Macedonia, the criminal jurisdiction falls to the basic courts as first instance courts, appellate courts as second instance and Supreme Court. The basic courts with basic jurisdiction can hear criminal cases for crimes for which the prescribed sentence is less than five years of imprisonment. The basic court with wider jurisdiction can hear criminal cases for crimes for which the prescribed sentence is more than five years of imprisonment. In 2008 in Basic court Skopje 1, a specialized judicial unit for organized crimes and corruption was established, with jurisdiction for the whole territory of the Former Yugoslav Republic of Macedonia. In addition to other organized crimes, it is authorized to hear cases of unauthorized production and release for trade of narcotics, psychotropic substances and precursors from Article 215 paragraph 3 where the offender of this crime has organized a network of resellers or mediators. The principle of universal jurisdiction is not applied to any drug related crimes. The courts in Former Yugoslav Republic of Macedonia can hear cases for drug related crime only if the offence has been committed on its territory or by a Macedonian citizen abroad. The criminal law is also applicable to everyone who commits a crime on a domestic ship or in a domestic aircraft, regardless where the ship or aircraft is at the time the crime was committed. The criminal code will be applied to

29. <http://www.mvr.gov.mk/ShowAnnouncements.aspx?ItemID=10933&mid=1094&tabId=201&tabindex=0>

anyone who commits crimes against the state or counterfeits money of the Former Yugoslav Republic of Macedonia irrespective of whether the crimes were committed abroad.

4. Drug law enforcement in practice

The Ministry of interior registers anyone who comes into contact with the police related to drug use or criminal act related to drugs. The Register does differentiate between people who have used cannabis for the first time and people addicted to heroin.³⁰ Based on this Register many people who use drugs are known to the police and are very frequently subject to searches, arrests and harassment.³¹ Furthermore, people who use drugs are often involved in petty crimes in order to support their daily use. Under such circumstances they get arrested by the police and are maltreated based on their addiction. During 2011, 257 new drug users were registered and their total number according to the latest annual report of the Ministry of interior is 9,864 drug users.³²

Drug cultivation is regulated by the Law on control of opioid drugs and psychotropic substances and illicit cultivation is sanctioned by the Criminal Code. There is a continuing trend of confiscation of marijuana with 297 cases, then the confiscation of heroin in 113 cases, 79 stems and seeds of cannabis sativa, 25 cases of confiscated amphetamine, 10 cases of cocaine etc. Marijuana is also the leading drug when it comes to the amount of confiscated substance.³³

According to the Law on criminal procedure³⁴ pre-trial detention can be implemented if the court has justified suspicions that a person who has committed a crime will hide, ensure that his identity cannot be detected or if there are other circumstances emphasizing danger of escape; if there is a justified fear that he will destroy the traces of the crime or if certain circumstances point to the likelihood that he will affect the investigation by influencing the witnesses, collaborators or conceivers; and if certain circumstances justify the fear that he will commit a crime

30. Ministry of Health, National Drug Strategy 2006-2012.

31. Monthly reports from the free legal service provided to drug users in HOPS-Healthy Options Project Skopje

32. <http://www.mvr.gov.mk/ShowAnnouncements.aspx?ItemID=10933&mid=1094&tabId=201&tabindex=0>

33. <http://www.mvr.gov.mk/ShowAnnouncements.aspx?ItemID=10933&mid=1094&tabId=201&tabindex=0>

34. Official Gazette of the Republic of Macedonia no.15/2005. Law on criminal procedure consolidated text and Official Gazette of the Republic of Macedonia no.150/2010. Law on criminal procedure.

again, or he will complete the attempted crime or will commit a crime which he threatens to commit. The pre-trial detention can be replaced by one of the other measures provided in the law such as bail, house arrest, promise that the offender will not leave the home and other preventive measures that will ensure the presence of the offender (temporary depositing of the passport, temporary depositing of driving license and obligation for the offender to check in at a certain institution). Mandatory treatment cannot be imposed by the court at the pre-trial stage. The voluntary treatment or the ongoing treatment of the offender can be taken into account in deciding on the type of measure that is going to be imposed on the offender. According to the data from the State statistics office, the reported adult perpetrators for crimes against health and duration of detention in 2010 and 2011³⁵ are as follows:

- Reported offenders for crimes against health and duration of detention

year	total reported	duration of detention					
		up to 3 days	over 3-15 days	over 15 days-one month	over 1 month-2 months	over 2-3 months	over 3 months
2010	115	/	17	32	15	6	45
2011	80	/	8	11	17	20	24

Drug dependence is not evaluated during interrogation. Since the Criminal Code does not stipulate drug dependence as a mitigating or aggravating circumstance there is no legal obligation to affirm if the offender is drug dependant.

According to the Law on criminal procedure there is a possibility for special investigative measures for crimes for which the prescribed sentence is a minimum of four years of imprisonment or a crime for which the prescribed sentence is maximum five years of imprisonment but it is committed by an organized group. The special investigative measure can be imposed in addition to other criminal acts, when there is a justified suspicion that someone committed the crime - unauthorized production and release for trade of narcotics, psychotropic substances and precursors from Article 215 paragraph 1 and 3 of the Criminal Code. These measures are: insight and searching in the computer system, confiscation of computer system or part of it or the computer data-base, secret surveillance, monitoring and visual-sound recording of persons and objects with technical equipment, simulating purchase of objects, as well as simulating bribery and simulating acceptance of

35. State statistic office. Perpetrators of criminal offences in 2011, July 2012.

bribe, controlled delivery and transport of persons and objects; using people with hidden identity for monitoring and collecting information or data, opening an apparent (simulated) bank account, where funds which originate from the committed criminal deed can be deposited and registration of apparent (simulated) companies or usage of the existing companies for collecting data. The special investigative measure can be implemented upon written order by the investigative judge or the prosecutor.

5. Sentencing level and the prison situation

Based on the latest annual report of the Directorate for execution of sanctions³⁶, in 2011 629 new prisoners (620 male, 9 female) checked in voluntarily, 1,084 convicted persons were brought to prison and 182 were transferred from pre-trial detention. The sanctions in the Former Yugoslav Republic of Macedonia are executed according to the Law on execution of sanctions from 2006.³⁷ The network of institutions where the sanctions are executed consists of sanction-correctional institutions and education-correctional institutions. The sanction-correctional facilities are: Sanction-correctional facility Idrizovo Skopje with an open department in Veles, Sanction- correctional facility Stip, Sanction-correctional facility -open type Struga, Prison Bitola, Prison Gevgelija, Prison Kumanovo with an open department in Kriva Palanka, Prison Ohrid, Prison Prilep, Prison Skopje, Prison Strumica and Prison Tetovo. Education-correctional institutions are located in Tetovo and Skopje. The categorization of prisoners is done based on the type of sanction, sex, age and whether the convicted is a recidivist. The overcrowded prisons remain one of the biggest problems of the sanctioning system in the country.³⁸

The prison population has increased by some 25% to 2,505 inmates (2,158 sentenced prisoners and 347 persons on remand) in the four years since the periodic visit in May 2006, for an overall official capacity of some 2,000.³⁹

36. Directorate for execution of sanctions. Annual report for 2011.

37. Official Gazette of the Republic of Macedonia. Law on execution of sanctions no.2/2006.

38. Ombudsperson office of the Republic of Macedonia. Annual report for 2011. CPT report.

39. CPT report for 2010.

custodial facility	Number of convicted persons on 31.12.2011		
	first time offenders	recidivists	total
Sanction correction facility Izdrizovo	571	745	1316
Sanction correction facility Stip	42	190	232
Sanction correction facility-open type Struga	33	10	43
Prison Skopje	153	20	173
Prison Tetovo	76	10	86
Open Unit Kriva Palanka	19	5	24
Prison Bitola	52	27	79
Prison Prilep	26	39	65
Prison Strumica	89	16	105
Prison Gevgelija	48	20	68
Prison Ohrid	20	1	21
TOTAL	1129	1083	2212

Source: Directorate for execution of sanctions. Annual Report for 2011

As previously mentioned, the law does not make a distinction between possession of drugs and trafficking. All cases of drug related offences are processed under the Article 215 of the Criminal Code for unauthorized production and release for trade of narcotics, psychotropic substances and precursors which is comprehended in the chapter of crimes against health. According to the data from the Directorate for execution of sanctions the number of prisoners convicted for crimes against health on 31.12.2011 was 300 prisoners, out of which 152 were convicted for the first time and 148 recidivists.⁴⁰ There is no available statistical data on the number of prisoners convicted for drug related crimes or for recidivists convicted for drug related crimes.⁴¹

Regarding drug use in prisons, the Committee for prevention of torture in its last report for the Former Yugoslav Republic of Macedonia⁴² emphasized the rising

40. Directorate for execution of sanctions. Annual report for 2011.

41. Information presented by representative from the Directorate for execution of sanctions 24.08.2012.

42. European Committee for Prevention of Torture and Inhuman and Degrading Treatment or Punishment. Report to the Government of the Former Yugoslav Republic of Macedonia carried out by the European Committee for Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) from 21 September to 1 October 2010, Strasbourg January 2012.

number of prisoners with substance abuse problems and the widespread availability of illicit drugs in the Idrizovo Prison. Thus, in 2011 in five prison facilities 74,21 grams marijuana, 11,81 grams heroin and 0,1 gram mix of tobacco and marijuana was confiscated from 29 prisoners. In that respect, besides the access to methadone it is necessary to develop harm reduction services within the prisons to prevent Hepatitis C and HIV transmission. In the Committee's view, the priority at Idrizovo Prison should be to prevent hepatitis C infections through an active harm reduction policy. The Committee has also recorded numerous incidents of fights among prisoners occurring as various groups battle to control the trade in drugs, mobile phones, etc.⁴³

1. Regarding the health services within the prison facilities there are different reports by national and international organizations and institutions that express concern about the low level of health care within custodial facilities.⁴⁴ In 2011, prisoners mostly appealed to the Ombudsperson office on inappropriate and untimely health care.⁴⁵ Under the Law on control of drugs and psychotropic substances Idrizovo Prison is classified as a regional centre for the treatment of addicts. Since 2005 through the programme for building a coordinated response for prevention of HIV/AIDS supported by the Global Fund, a programme for methadone treatment in the Idrizovo Prison has existed. However, methadone detoxification was not offered nor was there any psycho-social support to accompany the methadone maintenance. Since the beginning of 2012 methadone programmes have been introduced at the prison in Bitola and Skopje and the new HIV strategy plans to increase the number of prisons that have methadone programmes.⁴⁶ In the period from June 2010 to April 2011 the non-governmental organization HOPS Healthy Options Project Skopje provided psychosocial support five days a week to prisoners with drug problems. During its visit in Former Yugoslav Republic of Macedonia, the Committee for the prevention of torture observed that drug misuse remains a major challenge at Idrizovo Prison, and yet too little was being done to address the rising numbers of prisoners with a substance

43. CPT report for 2010.

44. CPT report for 2010, Helsinki Committee for Human Rights of the Republic of Macedonia, Annual report for 2011, Ombudsperson office of the Republic of Macedonia, Annual report for 2011.

45. Ombudsperson office of the Republic of Macedonia. Annual report for 2011.

46. Information presented by representative from the Directorate for execution of sanctions 24.08.2012.

abuse problem and the widespread availability of illicit drugs. This state of affairs continues to have negative repercussions on all aspects of prison life.⁴⁷ Based on the findings of the Ombudsperson, in October 2010 there were 187 registered drug addicts in the Idrizovo Prison, but the estimates were that there are 300 prisoners who are drug addicts. Except for the availability of methadone there are no harm reduction services available in the prison. There are also no statistics on the situation with Hepatitis C in the prison, nor a clear policy on how to deal with the problem. Currently there is an ongoing process of drafting a new national strategy for HIV that will contain a chapter on the prison situation. The strategy foresees development of protocols for dealing with drug dependent prisoners, a protocol for distribution of condoms for the prisoners and a protocol for health care of people with Hepatitis C, HIV/AIDS and other infectious diseases. There is no potential for developing a mechanism for the diversion of drug users from prison into community based treatment.⁴⁸

Regarding the social reintegration of prisoners after the execution of their sanction, there is no comprehensive strategy for their rehabilitation and re-socialization. The law on execution of sanctions regulates the procedure for preparation of prisoners before their release from prison. After their liberation, the role of reintegration is transferred to the centers for social care.⁴⁹

6. Initiatives for drug law reform undertaken by the government and/or the parliament in the last 10 years

The most important initiatives for drug related policies in the last 10 years in the Republic of Macedonia are the following:

1. In December 2006 the Government adopted the National Drug Strategy 2006-2012. The Strategy was drafted by a working group of the Ministry of Health and representatives from Ministries and civil society organizations. Currently there is an initiative for drafting a new Strategy for the period of 2012-2017.
2. The Law on control of opioid drugs and psychotropic substances was prepared by a working group formed by the Ministry of health. The civil sector was not involved in the drafting process and had no chance to provide input on the text of

47. CPT report for 2010.

48. Information presented by representative from the Directorate for execution of sanctions 24.08.2012.

49. Information presented by representative from the Directorate for execution of sanctions 24.08.2012.

the law. Immediately after the draft was publicized there was an initiative signed by 15 NGOs, experts and one state institution with a proposal for improvement of the draft text and its adjustment according to the national drug strategy. Although the law was supposed to be in line with the Strategy and International drug related Conventions, there are certain provisions that are in opposition with the basic principles of the Strategy on the balanced approach between drug demand and drug supply reduction. Instead of using the vocabulary on demand and supply reduction, one of the aims of the law is eradication of misuse of drugs and psychotropic substances. Article 3 of the law defines “misuse of opioid drugs and illicit use of opioid drugs” as cultivation of plants from which an opioid drug can be produced, possession of resources for production of opioid drug, production, trade and possession of opioid drugs, psychotropic substances, plants or parts of plants from which opioid drugs can be produced, contrary to the provisions of this law such as regards the usage of opioid drugs outside the therapeutic indications in undue dosages or during the time outside the treatment. People who use drugs which are not therapeutically indicated, or if they use drugs in undue dosages are declared criminals that need to be prosecuted in the same manner as people who produce and/or illicitly trade in opioid drugs. The definition of “trade” includes all acts of putting into trade opioid drugs, psychotropic substances, plants, pieces of plant such as import, export, transit, supply, buying, selling, trade, transfer, storing, prescription etc. The trade includes supply and purchase that also refer to the criminalization of supply of smaller amounts of drugs for personal use which is against the aims of the Strategy. According to the Strategy, a modern, consistent, efficient and effective national legislation is realized for the prevention and sanctioning of unauthorized production and trafficking of illicit drugs, through the changes and amendments of the existent legal regulations in accordance with the International standards and the EU legislation and acquis, (defining the minimal quantity of drugs for personal use). This aim of the strategy clearly states that the law should make clear divisions between drug users and drug dealers and traffickers. The initiative of the civil society sector was also directed toward the most controversial provision of the draft law that was imposing an obligation for all entities including NGOs to report to the police any activity related to drug misuse. After pressure from the signatories of the initiative, the provision was rephrased. Now Article 73 of the law stipulates an obligation for each entity to report to the police any people who use drugs in public places. This was the only change that was accepted during the drafting process.

3. The law for the control of precursors introduces the system of monitoring and control of legal trade and control of precursors, with the aim of preventing smuggling and the diversion of precursors from legal to illicit channels. The overall ob-

jectives of the law are the protection of human health and the environment from the harmful effects of some precursors. In addition to the control of precursors listed in the UN Convention of 1988, the Law on chemicals is important for controlling the substances included on the limited International Special Surveillance lists.

4. In September 2009 the Ministry of Justice proposed and the Assembly adopted, an amendment to Article 215 of the Criminal Code. The provision was amended with a new paragraph stating that if the crime is conducted with a smaller amount of narcotic drugs, psychotropic substances and precursors, the punishment can be from six months to three years of imprisonment. The amendment did not specify which amount will be considered a smaller amount which concerns the proper implementation of the provision. After the adoption of the amendments, the Prosecutor's office encountered problems in formulating an indictment related to a certain amount of drugs. Therefore the State prosecutor brought a formal decision on what will be considered a smaller amount while drafting the indictment. According to this decision, a smaller amount is considered to be 5 grams of marijuana, 2 grams of heroin, and 2 grams of cocaine and it will be prosecuted under paragraph 2 from Article 215 of the Criminal Code.

5. In May 2007 the Government established a National Centre for Monitoring of Drugs and Drug Addiction of the Former Yugoslav Republic of Macedonia. The Centre is led by the head of the sector for controlled substances within the Bureau of drugs at the Ministry of Health. The Center carries out informational, analytical, science research, expert-consultative, and publishing activities and is the official partner of the European Monitoring Centre for Drugs and Drug Addictions (EM-CDDA) on behalf of the Former Yugoslav Republic of Macedonia, as well as a participant in the European Network for Information in the field of drug addictions (REITOX). Its activities are also directed towards registration within the Qualitative European Drug Research Network, Exchange on Drug Demand Reduction Action and European Legal Database on Drugs. Most of the ministries, institutions and NGOs involved in drug-related issues provide data to the National Centre for Monitoring of Drugs and Drug Addiction.

Recommendations

The overview of the current legislative framework regarding drug policy and laws related to drug use in Former Yugoslav Republic Macedonia depicts inconsistencies in the laws and strategic documents. The National Strategy is in line with the European Drug strategy but the drug related laws are inconsistent with the National Drug Strategy. Therefore it is necessary to review current drug laws and to adjust them with the National Strategy related to sanctioning policy. The National Drug Strategy advocates modern, consistent and effective national legislation that will

define minimal quantity of drugs for personal use. The drug related laws do not define minimal quantity for personal use. Moreover, in practice, all possessions are sanctioned under the Criminal Code. In that respect the Government should propose amendments to the Criminal Code and the Law on control of opioid drugs and psychotropic substances that would distinguish people who possess drugs for personal use from people who possess drugs for trafficking.

The Strategy also encourages alternative sanctioning measures for perpetrators of drug related petty crimes and misdemeanors. As previously described, the system of alternative measures was introduced in 2004, but its implementation is still absent. The lack of ability to impose alternative measures leads to huge number of incarcerations of drug users without the possibility for their appropriate rehabilitation and re-socialization. Compelling alternative measures such as community work will not just individually sanction the offender, but the wider community will also benefit. In that respect, it is necessary to establish a system for implementation of alternative measures that will humanize the sanctioning policy in general and will also have a positive implication on sanctioning drug users.

The situation with drugs in the prisons imposes the need to introduce measures that will minimize the harm of a large number of imprisoned drug users. The fact that there is presence of drug trade in prisons and not all drug user prisoners are on methadone treatment, demonstrates the urgent need to develop harm reduction programmes in prisons in order to reduce the risks of Hepatitis C and HIV transmission.

Country Report Greece

Country Report Greece

by Athanasia Antonopoulou¹

Nikos Chatzinikolaou²

I. The current national strategy on drugs and drug legislation in Greece

1. National Strategy on Drugs

Greece's *National Strategy on Drugs 2006-2012* was first adopted in 2006. Since 2008, it has been supplemented with the *National Action Plan on Drugs 2008-2012*. At present, Greek policy on illicit drugs is documented in the National Action Plan against Dependence 2011-12; it replaced the preceding National Strategy on Drugs 2006-2012 and its associated Action Plan 2008-2012. Two more action plans are envisaged that will deal with alcohol dependence and other addictions respectively³.

The *Ministry of Health and Social Solidarity* is principally competent to plan and implement policies on demand reduction (primary prevention, treatment and rehabilitation) as well as harm reduction, while the *Ministry of Public Order and Citizen Protection* and the *Ministry of Justice, Transparency and Human Rights* are accountable for the country's law-enforcement and supply-reduction policies.

The major organizations involved in drug policy implementation are:

The Greek Organisation against Drugs (hereafter referred to as OKANA), established under Law 2161/1993 (Government Gazette A' 119) and operational since 1995, has been assigned with the coordination, monitoring and evaluation of the overall policy implementation on demand reduction. OKANA is a self-administered private legal entity that runs under the supervision of the Ministry of Health and Social Solidarity. According to its Founding Charter, the Organ-

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ization's main objectives are: a. to plan, promote, coordinate and implement a national policy on prevention, treatment and rehabilitation of drug addicts, b. to address the drug problem at a national level, provide valid and documented information, and raise public awareness, and c. to establish and effectively manage prevention centres, treatment units and social and professional reintegration centres.

On one hand, OKANA collaborates with other Greek (ministries, treatment programs, local government authorities, universities, etc.), European and international organisations (the European Monitoring Centre for Drugs and Drug Addiction - EMCDDA, the Pompidou Group of the Council of Europe, the World Health Organisation, the United Nations, etc.) to formulate and coordinate national drug policies; to look into the drug issue in Greece, OKANA works closely with the National Documentation and Information Centre on Drugs and Drug Addiction (EKTEPN). When it comes to prevention, on the other hand, OKANA has liaised with local government authorities in order to create an extended network of Prevention Centres all over Greece alongside several treatment and social reintegration programmes meeting the different needs of addicted individuals.

The Therapy Centre for Depended Individuals hereafter referred to as KETHEA) is the largest rehabilitation and social reintegration network in Greece. It has been established under Law 1729/1987 (Government Gazette A' 144) as a self-administered private legal entity supervised by the Ministry of Health and Social Solidarity. KETHEA has been providing its services to drug addicts and their families since "Ithaki" -the first Greek therapeutic community- was founded in 1983. Its services are offered free of charge on the street and in prisons and rehabilitation units around Greece. KETHEA also assists people suffering from other forms of addiction, including alcohol, gambling and the Internet. KETHEA programmes are drug-free and offer a comprehensive range of services which seek to help individuals recover and build new lives for themselves, in which they participate in society productively and on equal terms. It also provides counseling and drug treatment, family support, health care, education and training, legal support and assistance for social reintegration and vocational re-entrance. KETHEA's aims are full and sustained abstinence from substances for the individual and his/her equitable reintegration into society. KETHEA also runs schools and community-based prevention and early intervention programmes, and it is active in training and research in the field of addiction. Its therapeutic programmes and activities seek to raise awareness of the phenomenon, to promote scientific knowledge, and to continually improve the services offered to addicts and their families.

In 1998, the Greek Documentation and Monitoring Centre for Drugs (hereafter referred to as EKTEPN) was declared a national monitoring centre in charge of official and representative data collection in the field of drugs for Greece, and acts as the Greek REITOX Focal Point (Ministerial Decree of 24/11/93) of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA). Its mission is to collect and process official representative data on every aspect of the drugs phenomenon in Greece. EKTEPN monitors the drugs problem in Greece with the use of European indicators and provides Greek and European policy-makers, professionals and the public with detailed information on every aspect of the drugs problem in Greece over time. The data are collected by a nationwide network consisting of over 800 agencies and individuals. Every year, EKTEPN publishes the Annual Report on the State of Drugs and Alcohol in Greece and the Greek Bibliography on Drugs and Alcohol. It also reports the Greek data to the EMCDDA by means of the National Reports it submits.

The Central Anti-drug Coordination Unit (SODN) was established under Presidential Degree No 139/1989 (Government Gazette A' 66); under Presidential Degree No 126/1990 (Government Gazette A' 51), SODN has been sanctioned to function as a National Intelligence Unit (EMP) for Drugs within the European Union. The Central Anti-drug Coordination Unit - National Intelligence Unit (hereinafter referred to as SODN-EMP) operates within the Ministry of Public Order & Citizen Protection. Its members and associate members hail from the four competent prosecuting authorities of the country, namely: the Greek Police, the Customs authority, the Coast Guard, and the Special Control Service of the Ministry of Finance. It aims to the rigid cooperation between law enforcement authorities and to the accurate and timely flow and exchange of information flow so as to effectively tackle the drug issue. SODN-EMP is responsible for: a. collecting, utilizing and exchanging information and intelligence between agencies on specific drug-relevant cases, both nationally and internationally; b. developing a spirit of cooperation between the competent agencies to better address the drug problem; c. coordinating the activities of departments bestowed with multi-faceted authorities or handling cases incorporating international breadth, the solution of which requires extraordinary handling and immediate cooperation of those Agencies; d. resolving any possible disputes relevant to its operation and of possible concern to the interrelated agencies; e. providing direct assistance during research and investigation and every possible means designed mean to facilitate the investigation of drug cases; f. the exchange of information between competent agencies or on operational tactics of drug-dealers, to facilitate the effective prevention and suppression of drug-related offences.

The inter-ministerial Committee for the Coordination of the Fight against Substance Dependence (DESKE) was established in 2010, with the participation of representatives from 10 Ministries; namely, the Ministries of Health, Education, Justice, Citizen Protection (now Public Order), National Defence, Labour, Home Affairs, Finance, Culture, and Foreign Affairs. Its main mission is to draw up a mid-term two-year (2011-12) Action Plan on Drugs under the coordination of OKANA, and also assist OKANA in monitoring the implementation of the national action plan.

This stratagem against drug trafficking has been linked to the contemporary international trend on drug policy. Greece has signed and ratified the following International Drug Conventions: 1. The UN Single Convention on Narcotic Drug of 1961 (ratification: Legislative Degree 1105/1972, Government Gazette A' 36/10-3-1972) - 2. The UN Convention on Psychotropic Substances of 1971 (ratification: Law 348/1976, Government Gazette A' 146/15-6-1976), - 3. The 1972 Protocol amending the Single Convention on Narcotic Drugs (ratification: Law 1549/1985, Government Gazette A' 93/21-5-1985), - 4. The UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (ratification: Law 1990/1991, Government Gazette A' 193/16-12-1991).

Apart from these international Drug Conventions, at a European level Greece has signed the Schengen Convention that was ratified via Law 2514/1997 (Government Gazette A' 140), which envisages cooperation of the participating countries on the fight against drug trafficking within the Schengen zone. Being an EU Member-State, Greece has also built its drug policy around several relevant EU legislative documents, the most important being the Council Framework Decision 2004/757/JHA of October 25 2004, which dictates minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking, as well as the EU Drugs Strategy 2005 - 2012 (of 2004) and the Green Paper on the role of Civil Society in Drugs Policy in the European Union(2007/2212(INI)).

Additionally, on an international level, Greece has ratified several International Conventions on other important issues of criminal justice, such as organized crime and terrorism, that incorporate provisions concerning the international cooperation on the repression of drug trafficking.

According to the previous *National Action Plan* of 2008, civil society is already playing a key role in prevention against addictive substances and provision of care for addicted individuals. For example, with respect to the fight against drugs, parents' associations already formulate an integral part of a network on care and social solidarity in Greece. Towards this direction, the Ministry of Health and Social Soli-

ilarity had recommended the creation of an agency called “Society of Volunteers” that would aim at strengthening the work of NGOs active in the field of health care and social solidarity. However, such an agency has not yet been founded. As the Action Plan recognized *expressis verbis* “ *in most countries in the developed world, the state shall, in cooperation with civil society, create the necessary prerequisite for the coordinated and well planned development of corporate social responsibility*”. However, the role of civil society on drug policy in Greece is actually rather limited: drug prevention and treatment are only provided through the recognized institutional agencies of OKANA, KETHEA and selected psychiatric hospitals, while the existing NGOs play a rather limited, advisory part.

The current national drug strategy is considered to be comprehensive and balanced, focuses on illicit drugs and alcohol, and encompasses the same pillars as the EU drug strategy; namely: coordination, demand reduction, supply reduction, international cooperation, training, research and evaluation. The 2011 Action Plan includes two foremost priorities: (a) the construction of additional treatment sites for opiate substitution treatment programmes in order to eliminate waiting lists, and (b) the enhancement of coordination of drug policy via transformations at an institutional level⁴.

Nonetheless, it must be noted that drug strategy as part of the general drug policy of the country is affected in its actual implementation by several variables (Lambropoulou, 2003), such as the geographical location and the economic and political instability of the crisis times.

2. National Substantive Criminal Law⁵

The Greek Penal Code (hereafter referred to as GPC) classifies crimes in three categories: felonies, misdemeanors, and infractions/petty offenses. Each crime is thus labeled according to its prescribed penalty, notwithstanding any applicable mitigating circumstances. Accordingly, Article 18 GPC provides that a felony is any unlawful act punishable by incarceration of five to twenty years (long-term imprisonment) or life imprisonment; a misdemeanor is any unlawful act punishable by imprisonment of ten days up to five years (short-term imprisonment), pecuniary

4. According to Greece’s overview in EMCDA, <http://www.emcdda.europa.eu/publications/country-overviews/el>

5. For a further analysis of the basic elements of Greek Criminal law, see, *M. Kaiafa-Gbandi/N. Chatzinikolaou/A. Giannakoula/Th. Papakyriakou*, The framework decision on combating trafficking in human beings - Evaluating its fundamental attributes as well as its transposition in Greek criminal law, in *A. Weyembergh/V. Santamaria* (Ed.), *The evaluation of European Criminal law*, Editions de l’ Université de Bruxelles, 2009, pp. 131, 132-138.

fine of 150 € to 15,000 €, or juvenile detention; an infraction/petty offense is any unlawful act punishable by a detention of one day to one month or a pecuniary fine of 29 € to 590 €. Hence, any crime committed by a juvenile is classified as misdemeanor.

This classification is effective in the application of substantive criminal law in terms of:

- *Requisite mens rea*: Felonies are only punishable when committed by intent. The same rule applies to misdemeanors, unless the law specifically introduces a specific exception. On the other hand, infractions/petty offenses are punishable when committed either by intent or negligently, unless the law expressly restricts their *mens rea* to intent (Article 26 GPC).

- *Statutory limitations*: The period of statutory limitation varies according to the type of offence: 20 years for felonies punishable with life imprisonment, 15 years for other felonies, 5 years for misdemeanors, 2 years for infractions/petty offenses. The statute of limitations is temporally extended upon referral of the case to court; such extensions may generally not last for more than 5, 3, or 1 years depending on the nature of the offence as a felony, misdemeanor or infraction/petty offense respectively (Articles 111 and 113 GPC). An exception was recently introduced in Article 118 § 6 GPC (added by Law 3625/2007), related with a number of offences against minors.

- *Prosecution*: In the event of a felony or an infraction/petty offense, charges are normally pressed by the State Prosecutor *proprio motu*. While this is also the standard procedure for misdemeanors, the law requires the injured party to press charges in a number of cases.

The above distinction between the three categories of crimes is also vital for determining the scope of application of criminal laws *ratione loci*, circumscribing *recidivism*, granting *probation*, etc. In the field of *criminal procedure*, different crimes are treated in a different way in practically every stage of the prosecution (pressing of charges, issuance of restraining orders, indictment, referral of the case to court, appeal, etc.).

The majority of cases heard before courts involve misdemeanors. According to data from the National Statistical Service, 73.161 individuals were convicted in 2003, of which 69.622 received a short-term imprisonment sentence (63.107) or a pecuniary fine (6.515), whereas only 360 received a long-term (348) or life incarceration (12). While short-term imprisonment may also be imposed for felonies if mitigating circumstances apply, that does not reduce the statistical dominance of misdemeanors; indeed, the same set of data indicates that 43.808 of the individu-

als sentenced to short-term imprisonment had no more than 3 months to serve, which in turn suggests that the respective cases involved nothing more than a misdemeanor.

Other classifications of crimes are either suggested or envisaged in the general part of the Greek Penal Code: thus, the GPC discriminates between offenses by act or by omission (Article 15), crimes committed with intent or as a result of negligence (Articles 26 *et seq.*), crimes resulting in a more serious harm than intended (Article 29), etc.

Despite its idiosyncrasy, the Greek sanctioning system can be regarded as “dualistic” or “two-track”, its respective two “tracks” being *penalties* and *security and reform measures*. Still, much of the drive favoring reform over retribution -underlying not only particular norms but the very “dualistic” system as a whole- has waned in practice. An focal issue are the provisions on recidivism (Articles 88 *et seq.* GPC), which remain consistently ignored by criminal courts, not to mention that the overall application of “security and reform measures” has not lived up to the original expectations that led to their adoption.

Despite criticism of this sort, the distinction between penalties and measures of reform and security is not uncalled for: for instance, it is imperative to note that the principle of non-retroactivity of sanctions does not apply to the latter (Article 4 GPC).

The *death penalty* was prescribed for certain grave felonies until the early '90s, though it had last been enforced in 1972. As a result of multiple statutory amendments, it was finally abolished for non-military crimes; in fact, Article 7 § 3 of the Greek Constitution (as amended in 2001) currently proclaims that the death penalty may only be prescribed for crimes committed in times of war and in relation thereto. Subsequently, Greece ratified Protocol No. 13 to the ECHR concerning the abolition of the death penalty in all circumstances, which supersedes the pertinent provisions of the Greek Military Code (ratification: Law 3289/2004). As a result, the death penalty has been abolished for all crimes, including those committed in times of war.

Custodial sanctions under Greek law are: long-term incarceration, short-term imprisonment, juvenile detention, psychiatric detention, and detention (Article 51 GPC):

- *Long-term incarceration* is the most austere sentence prescribed and can only be imposed for felonies: long-term incarceration may be imposed for either a fixed term (5-20 years) or life (Article 52 GPC). The GPC also provides for indefinite incarceration (Articles 90 *et seq.* GPC), which is in fact rarely imposed.

- *Short-term imprisonment* is imposed for a fixed term of 10 days to 5 years (Article 53 GPC). As noted above, short-term imprisonment constitutes the hub of crime policy in Greece, at least in terms of its frequency of imposition. It is noteworthy that the actual confinement of a person convicted for a misdemeanor poses the exception rather than the rule: this is due to the ever-increasing alternatives to imprisonment, such as probation, day-fines, or community service, owing their existence to prison overpopulation.

- *Juvenile detention* can only be imposed for crimes committed by individuals aged 15 to 18. In 2003, the provisions of the GPC on juveniles were amended to the effect that the judge now has to specify a fixed period of detention for each convicted juvenile (Article 127 § 2). This period (ranging from 6 months to 20 years) will depend on the penalty prescribed for the same offence when committed by an adult (Article 54 GPC).

- *Psychiatric detention*, applicable to “dangerous” offenders of diminished mental capacity (Article 38 GPC), is rarely imposed in actuality; the same goes as regards *detention* for infractions/petty offences (Article 55 GPC).

The abovementioned custodial penalties are alleviated in the occurrence of certain conditions, such as attempt (Article 42 GPC), *indirect aiding* or abetting (Article 47 GPC), and, notably, mitigating circumstances (Article 84 GPC). Thus, the penalty for a felony can be reduced to a minimum of 2 years (or even 1 year under an alternative proposed reading of the law), as opposed to 5 years which is the minimum period of incarceration prescribed for felonies. On the other hand, the GPC provides for aggregation of penalties in the event of confluent offences (Articles 94 *et seq.* GPC): for instance, the penalty imposed on a person convicted of multiple misdemeanors can extend to imprisonment of up to 10 years, as opposed to 5 years which is the maximum period of imprisonment for each misdemeanor. It then follows that, despite the delineation of custodial penalties, there is a “middle ground” ranging from 2 to 10 years that could potentially correspond to either felonies or misdemeanors. Even in these cases, labeling a crime as felony or misdemeanor does retain its significance in matters such as statutory limitations. Finally, the nature of the imposed sentence (long-term incarceration or short-term imprisonment) is vital in matters such as statutory limitations for the penalty itself, conditional release from prison/*parole* (which may be granted after the convict serves a minimum of 3/5 of the imposed long-term incarceration or of 2/5 of the imposed short-term imprisonment under Article 105 GPC), etc.

The imposition of *pecuniary fines* is becoming more and more prevalent: as regards misdemeanors, a fine can range from 150 € to 15,000 € (subject to adjustment in the special part of the GPC or other criminal laws, particularly affecting the maxi-

imum imposable amount); as regards infractions/petty offenses, fines constitute the most common form of punishment, ranging from 29 € to 590 € (Article 57 GPC). The fines imposed are increased by about 92% in the form of surcharges *pro bono*. Failure to disburse these surcharges amounts to non-compliance with the sentence itself. It is thus evident that the actual fines imposed are almost doubled compared to the net amount provided for each crime.

The most important *collateral sanctions/supplementary penalties* are: deprivation of civil rights (Articles 59 *et seq.* GPC) and forfeiture (Article 76 GPC), the latter occasionally imposed as a measure of security. Both these sanctions are applicable to felonies and misdemeanors alike. Other collateral sanctions such as the prohibition on the exercise a given profession (Article 67 GPC) or the conviction's publication (Article 68 GPC) are of lesser practical significance.

The GPC provides for such *measures of reform and security* as: confinement of persons suffering from mental illness (Article 69), placement of drug addicts and alcoholics into recovery and treatment centers (Article 71), corrective labor (Article 72), prohibition of residence in a given place or territory (Article 73), and judicial expulsion of aliens (Article 74). As previously noted, forfeiture can be imposed either as a collateral sanction/supplementary penalty or as a security measure.

The idiosyncrasy of the Greek sanction system, of which word was made earlier, consists in that the above measures either complement or substitute penalties. In any case, their application usually pivots on the custodial sentence prescribed for each crime.

Quite a few criminal law experts have reservations regarding the distinction between penalties and other measures⁶; they suggest that, in reality, the so-called “measures of reform and security” are penalties under a different tag. Some of these reservations have occasionally found their way into case-law.

Of the measures cited above, the ones that are actually being enforced are: confinement of the mentally ill, forfeiture, and judicial expulsion. The latter's occurrence has lately been on the rise, leading to a number of issues related to aliens' detention prior to expulsion⁷; in fact, certain rules governing probation and parole tend to facilitate the imposition of this measure. The other measures were practically never applied, either due to lack of resources or as a result of constitutional constraints (as in the case of corrective labor). Besides, the placement of

6. See I. Manoledakis, *General Theory*, v. C, 225, N. Paraskevopoulos, *Memory of Chorafas/Gafou/Gardika*, II, pp. 227.

7. See N. Chatzinikolaou, *The deportation of a foreign national as a sanction of criminal law*, 2006.

drug addicts and alcoholics in treatment centers has been fully supplanted by the meticulous provisions of the Code of Statutes on Narcotic Substances⁸.

The eighth chapter of the GPC's General Part concerning the *treatment of juveniles* was amended by Law 3189/2003 and Law 3860/2010 (Official Gazette A' 111). Juveniles aged between 15 and 18 may be subjected to detention to a Young Offender Institution, provided that the offense committed would have been a felony had it been perpetrated by an adult and contains elements of violence against life or physical integrity or it has been committed professionally or habitually; the detention may be imposed if the court finds that penal correction is required and the diversionary measures provided by Article 122 GPC are not sufficient for the specific case. Besides juvenile detention, which is the gravest sanction imposable only to minors aged 15 to 18 years old, the juvenile judge may choose to order a number of educative and therapeutic measures imposed to either children (minors between 8-12 who are not held criminally responsible for any offence, even if liable for prosecution) or juveniles (minors between 13-18 who the court may try either as criminally responsible or not for any offence).

The Greek correctional system has been facing acute overpopulation setbacks for the last 20 years⁹. Combined with the extensive criminalization of common infractions (such as tax and social insurance contribution evasion), these problems have brought about the introduction of various alternatives to custody, such as *probation* (Articles 99 *et seq.* GPC) and conversion to day-fines or community service (Article 82 GPC). These alternatives can be applied *in lieu* of short-term imprisonment not exceeding 3 years. Although supervised probation was recently introduced for terms of imprisonment between 3 and 5 years (Article 100 GPC), the pertinent provisions have yet to be implemented in practice due to lack of resources.

Probation may be mandatory or discretionary, depending on the term of the imprisonment imposed. The basic prerequisite to grant probation is the absence of previous conviction of the offender to imprisonment exceeding one year. The judgment granting probation will also specify a probation period of no less than 1 and no more than 3 years; any conviction for a felony or misdemeanor during that period will amount to a breach of the probation. Conversion of the sentence to a day-fine is normally opted for by criminal courts in the absence of the necessary prerequisite to probation (absence of previous conviction); on the other hand, community service has rarely been applied in actual practice. Of unique

8. See below, paragraph 3.

9. See below, paragraph 5.

-albeit problematic- nature were the previous provisions regarding probation on condition of judicial expulsion, applicable to alien offenders (Article 99 §§ 2-5 GPC, recently abolished by virtue of Law 4055/2012).

Other alternatives, introduced by different legislative acts, have rendered the actual detention of persons convicted to short-term imprisonment a rarity.

The expansion of conditional release/*parole* (Articles 105 et seq. GPC) is likewise significant. The minimum time served with respect to eligibility for parole varies according to the penalty imposed (2/5 for short-term imprisonment, 3/5 for long-term imprisonment, 20 years for life imprisonment); the sole factor to be evaluated by the judge when granting parole is the convict's conduct throughout the time served (Article 106 GPC). Accordingly, the gravity of the offence and the convict's criminal record are inconsequential. Combined with the provisions on voluntary prison labor (which reduces the minimum time served prior to achieving parole), a convict can be released on parole after serving 1/3 of the sentence. In the case of life imprisonment, the minimum time served before applying for parole can be reduced to 16 years. In contrast, exceptions to parole do apply, the most important one being introduced quite recently for persons convicted to long-term imprisonment for drug trafficking¹⁰.

With regard to the above general adjustments, the Greek legal order contains special provisions regarding crimes related to the trafficking of narcotic substances.

The first and oldest (Article. 82 par. 10 GPC) forbids the commutation of custodial sentences into pecuniary fines in the case of offenders convicted for the drug trafficking¹¹ felony. The term "trafficking" has generated serious interpretative conflicts in the past. As a result, case-law frequently incorporates therein certain behaviors (eg. possession) which do not relate to any direct financial benefit from the perpetration¹². The related problems are alleviated, yet certainly not eradicated, by the amendments to Article 82 GPC and the limiting of the debated provision on convictions for felonies, instead of the previous wording, which expressly cited the conviction for a drug trafficking "perpetration".

10. See below, paragraph 2.

11. As stated previously, this possibility (i.e. the imposition of imprisonment for a felon) is conceivable in the case of the court accepting general grounds for a reduction in sentence (attempt, mitigating circumstances, etc.) resulting in reduction of the fundamental temporal limits of imprisonment (5-10 years to 1-6 years).

12. See e.g. AP 1578/2004 CrimLaw 2004, 564.

A stride towards a stricter approach came with the introduction of a divergence from the general provisions for conditional release, via Article 40 of the previous Code of Laws on Drugs (Law 3459/2006, hereafter CLD). According to it, and its recent amendment by Law 4139/2013, if the offender has been convicted to life imprisonment for some of the aggravated forms of trafficking according to Articles 23 and 23A CLD, the minimum term of incarceration, with a view to being examined for possible conditional release, is increased to 25 years (instead of 20 years, i.e. the general provision for life sentence for any other offense), of which 20 must be actively served (instead of the 16 years of active serving provided for life imprisonment), that is, despite any beneficial calculation of time served as a privilege for the convict's work, participation in educational programs, etc.

The amendment of Article 23 CLD on special recidivism followed the same rationale of austerity. It holds that the right is reserved to incarcerate a recidivist offender of whatever felony for life, as stated in the provisions of Article 20-22 CLD.

The introduction of these divergences from the "classical" provisions of the GPC has provoked frequent criticism on behalf of theorists¹³, particularly articulated through the following argument: within the context of serving a sentence, any weighing of benefits and risks should specifically and exclusively relate to special prevention and not to the type of offense implicated. This criticism was partially adopted with the new relevant provisions of Law 4139/2013.

The second group of special provisions in the area of sentence-serving with particular reference to drugs concerns the favorable treatment of drug dependent individuals, with the escalation, under certain conditions, of the possibility for a suspended sentence, the acknowledgement of "special" mitigating circumstances etc. This concerns provisions which relate to the general treatment of dependent users and is examined below¹⁴.

3. National Drug Legislation and Institutions

Greek criminal legislation concerning the use and smuggling of narcotic substances is driven by the trend towards a wide and strict "combatting" of the phenomenon.

The relevant legal framework is structured upon the "use-supply" dualism, utilized by the legislator not only in an attempt to distinguish between users and suppliers

13. See e.g. *L. Margariti*, *CrimLaw* 2001, 855, *Pavlou*, *Drugs*, 241.

14. See below, paragraph 3.

and their respective criminal handling, but also to deal with intermediary acts of supplying, which nevertheless serves the need for the fulfillment of drug addiction.

The foundation of this legal policy structure is reduced to additional counterbalancing with respect to the wrongful nature of the relevant behaviors, as well as the criminal liability of the persons involved. In this fashion, acts of “trafficking” receive an evidently harsher handling than acts of drug use, as any distribution of drugs or their possession with the intention of further distribution endangers the lives and health of an indefinite number of people. Within the same context, the legislator attempts to assess the influence of drug addiction on the perpetrator’s culpability: if the distribution of drugs occurs for reasons of specifically serving the offender’s addiction (e.g. one’s involvement in trafficking to assure one’s dose), this indicates a limited potential for choice, and a subsequently diminished culpability receptive of more lenient treatment.

Until recently, the basic acts of felony trafficking were punishable by incarceration for 10-20 years and a concurrent pecuniary fine of € 2,900 - € 290,000, according to Article 20 of the earlier CLD, According to Article 20 of the new Law 4139/2013 on Addictive Substances (Government Gazette A’ 74/20-3-2013) that amended the earlier CLD, the sanctioning framework for basic felonies of drug trafficking now ranges from eight to twenty years and pecuniary fines rise up to 300,000€. Additionally, according to the innovative Article 21 of the new Law, imprisonment of no more than three years is provided for trafficking of small drug quantities by drug-dependent perpetrators in order to cover their individual needs, or for giving out to familiars for their individual needs in the absence of profit.

Another key element of the previous CLD was the exhaustive enumeration of a plethora of behaviors (among others: importing or exporting, possessing, buying, selling, disposing, storing, intervening, depositing, cultivating, harvesting and transporting drugs). This approach was partially amended by the respective provisions of the new Law 4139/2013.

Until recently, in cases of relevant felonies the law did not explicitly require the perpetrator’s intent to distribute the drugs in possession. However, the differentiated and drastically more lenient typification of drug use¹⁵, implies that the application of Article 20 or any other provision specifically relating to trafficking entails such an purpose for the perpetrator possessing the drugs. If the defendant is proven to possess the drugs for own consumption, then his conduct does not fall into Article 20 and is consequently handled exclusively within the context of the provisions applicable to drug users. This standpoint is now explicitly adopted in the

15. See below, paragraph 3.

new Law No 4139/2013. On the other hand, the affirmation of criminal liability does not require the ascertainment of intention to obtain direct financial benefit for the offender.

The acts of doctors and pharmacists who participate in the distribution of narcotic substances via issuing illegal (i.e. medically uncalled for) prescriptions to drug users are autonomously typified, though considered equivalent in severity to the basic forms of trafficking (Article 22 CLD, now Article 22 of the new Law on Addictive Substances). Besides, the law envisages a multitude of distinct crimes, the affirmation of which entails even harsher criminal sentencing, according to Articles 22 and 23 of the new Law on Addictive Substances (e.g. as the commission of acts under Article 20 by civil servants or recidivists or trafficking in school premises or prisons)¹⁶. Within the most distinct forms for which even life imprisonment may be imposed, the following aggravating circumstances are included: distributing to minors, drug trafficking professionally with an expected financial benefit of more than € 75,000, or with the use of guns or in a manner that could trigger dangerous physical harm or death (Article 23 of the new Law on Addictive Substances). Therefore, the new aggravated forms of drug trafficking are founded mainly on the grounds of a more grave harm/danger against the relevant legal interests (human health/life). Finally, behaviors related to the promotion of drugs (Article 24 of the new Law on Addictive Substances) and driving of vehicles under the influence of such substances (Article 25 of the new Law on Addictive Substances) are standardized as misdemeanors.

Greek criminal law theorists have repetitively highlighted the problems of penalizing drug use, in that such penalties seem unfit with the claims that punishment awaits only those who harm or endanger legal interests of third parties and are not applicable in cases of self-harm¹⁷.

In spite of this, the penalization of drug use as a misdemeanor remains a classic and enduring choice of the Greek legislator, even after the recent effort to change it with the new law.

Article 16 of Law No 3772/2009 introduced a refutable “presumption” concerning the quantity in possession¹⁸. Unless the courts judge otherwise, the pos-

16. See analysis of sentencing below, paragraph 3.

17. See the informative summary on the debate of *N. Paraskevopoulos*, *Repression*, 121, for further documentation. For a differentiated approach, see recently *Chr. Mylonopoulos*, *Poiniki Dikaiossini*, 2013, p. 159.

18. 1.5 gr. of heroin or cocaine, 50 gr. of unprocessed cannabis (marijuana) and 5gr of processed cannabis (hashish).

session of any drug quantity below the respective threshold is deemed to cover personal needs, and therefore not considered a felony according to Article 20. However, the new Law on Addictive Substances abolished this provision, leaving it to the court's discretion to resolve this issue in line with the relevant criteria set by the law. The court can opt to abstain from sentencing the defendant if it rules that the punishable offence was completely coincidental and unlikely to be repeated. These are special grounds for judicial remission from punishment for novice, "first time" users.

This provision, combined with other regulations concerning the treatment of dependent users, as well as the general provisions for the suspension/conversion of custodial sentences, significantly reduces the likelihood of actual confinement for one accused exclusively for committing the misdemeanor of drug use.

The "harsh" treatment of drug trafficking acts, combined with the frequent participation therein of drug users for reasons of fulfilling their own needs, has led the Greek legislator to decide that proven addiction bears a mandatorily drastic influence upon the severity of threatened sanctions or even upon culpability of individual acts, proportional to their gravity.

This is a case of an ex lege justification, which provides acknowledged grounds for reduction or remission of culpability¹⁹, based on the evaluation of whether the dependence of the perpetrator limits his willpower as to his/her involvement with any acts of use and/or distribution.

The reduction of threatened punishment is escalated proportionally to the severity of each case of criminal distribution. Specifically:

- The penalty of minimum one year imprisonment (instead of eight to twenty years incarceration) without a pecuniary fine is provided for some of the basic crimes of trafficking in Article 20, chargeable to the drug-dependent defen-

19. See all the debate, referred to in *Parakevopoulos*, pp. 172, *Pavlou*, pp. 269, with further documentation of the different views. According to the Article 30 par.6 of the previous CLD, as added with Article 25 par. 2 N 3811/2009, "the legal character of the acts committed by the perpetrator to whom the conditions of paragraph 1 assist, is judged based on the threat of punishment referred to in paragraph 4 item B and C". This provision confirms that the reduction in punishment, precisely because it is established upon the perpetrator's reduced guilt, influences the nature of the crime, and is not to be identified with other grounds for reduction for punishment (eg. mitigating circumstances), thus solving at birth the acute disagreements of the past between theory and practice. The same provision is located in article 30 par. 5 of the new Law Nr 4139/2013.

dant²⁰. For the crimes of Article 21, the envisaged penalty is maximum one year of imprisonment.

- The dependent perpetrator who has committed aggravating forms of trafficking faces a reduced penalty of up to ten years (instead of 10 - 20 years). The above differentiation evidently pertains to the evaluation that some trafficking behaviors involve an increased level of wrongdoing (e.g. bringing drugs into a military camp, disciplinary facility, etc.) compared to other forms (e.g. possession with the intent of distribution). Finally, in the case of drug use, if the user's dependency is confirmed, he/she remains unpunished and may enroll to a therapeutic facility, (provided that he/she so wishes) according to the provisions of Article 32 CLD.

Clearly, the above provisions express the interests of the legislator towards a more lenient treatment of individuals who get involved in trafficking in order to meet the needs of their addiction. Nevertheless, the powerful incentive for confirming dependence coupled with the fact that the relevant healthcare infrastructure as well as the procedural rigidities had not contributed to the formation of a reliable model to achieve it²¹ until today, combined with the occasional justifiable fear of courts to acknowledge dependence for systematic traffickers, renders the effectiveness of these provisions dubious in practice. It is at times possible for offenders whose trafficking activities were not due to addiction to receive a more lenient treatment, while other defendants a more wary one, especially owing to the generally deficient expert reports. Dependence on drugs can initially be assessed within the context of the general directives of GPC regarding culpability, and hence lead to partial or full abrogation of the defendant's culpability according to Articles 34 and 36 GPC, which in any case specifically refer to drug addiction as grounds for abrogation or diminution of imputability.

However, special provisions are contained in Articles 31 and 32 of both the previous and the new CLD, the scope of which is not limited to crimes related to

20. This concerns the acts of: 1) selling, buying, offering, distribution, provision to third parties, transportation or delivery, storing or depositing of drugs or mediation in these acts, 2) cultivation or harvesting of cannabis or any other plant from which narcotic substances are produced, 3) possession or transportation of drugs, 4) transportation or knowledgeable delivery of parcels etc which contain drugs or orders to complete transactions for such transportation or delivery and 5) the completion of any form of distribution of drugs.

21. See below, paragraph 4.

drugs, but also extend to other punishable offences, provided the assumption that they were perpetrated to facilitate the drug use²².

Encouraging the dependent perpetrator to willfully attend an approved therapeutic detoxification program is the core aim of these provisions, and their implementation is attempted through the subsequent mandatory impact of such a development not only in the course of the penal process but also in its judicial outcome.

In the same context, also:

- If it is confirmed that the perpetrator is successfully attending a therapeutic detoxification program, the public prosecutor may temporarily abstain from prosecution, while completion of such a program may lead to a definite termination of criminal proceedings²³
- Mandatory suspension of military service is granted during the period of therapeutic treatment, while a relevant presumption is introduced for the mandatory suspension of the criminal trial, if the latter is pending.
- Any temporal period in the therapeutic program is considered time served of the sentence imposable in the future.
- By deviation from the general provisions of the GPC, the public prosecutor of the court of first instance, with the consent of the public prosecutor of the court of appeals, may order the suspension of possible sentences imposed on the drug user prior to him/her attending the therapeutic program.
- Successful completion of the program entails the further extension of suspension for any future sentencing imposable, and is also considered a mandatory mitigating circumstance that reduces the penalty.

22. Exclusions are introduced for a series of crimes (culpable homicide, rape, robbery et al), for which the procedural adjustments displayed below are not applicable. It is, however, still possible to assess dependence based on the general stipulations.

23. Article 31 § 1: Suspension of penal prosecution for a specific period, if the offender is attending voluntarily a drug treatment and maintenance program, following a resolution of the Public Prosecutor of Misdemeanours and according to his/her discretion, with the approval of the Public Prosecutor of Appeals. If the perpetrator successfully completes the program, the Public Prosecutor has the discretionary competence to permanently abstain from penal prosecution. This benefit can only be used once for each drug user.

- Relevant favorable provisions also exist for the suspension of any arrest warrants, the granting of conditional release by deviation from the general norms, etc.²⁴

The abovementioned provisions are detailed and attempt to cover the whole spectrum of criminal proceedings. However, the divergence from the relevant provisions for offenses usually perpetrated by drug users²⁵ combined particularly with the ascertained cautiousness of the courts to fully enforce them, as well as the widespread ambiguity concerning therapeutic programs that meet the requirements of the law, have hindered the full reception of these provisions in the contemporary judicial practice²⁶.

In the current provisions of the law on drugs, there is no clear discrimination of liability for the trafficker and/or user, proportionate to the type of drug trafficked or used.

However, an indirect relevant reference can be detected, especially in the following cases:

- In Article 29 § 1a CLD, “drug use” (with a threatened penalty of up to five months imprisonment), includes not only the use, supply or possession of whatsoever drug, but also the cultivation of “cannabis plants to the number or extent which is justified only for his/her [the user’s] individual use”.

- In Article 29 § 1c CLD, according to which “the degree of harm for each drug and particularly the category it belongs to is taken into account regarding the determination of sentence”.

It must be noted that the problem of distinguishing between “soft” and “hard” drugs finds an inverted -problematic- expression in the field of confirming de-

24. Article 32: Conditional release from prison, if the offender has successfully completed a counseling/support program in the detention facilities and an officially certified program by the Ministry of Health and Social Solidarity for the maintenance of treatment and rehabilitation of drug users certifies that the essential requirements for him/her to participate are met. This conditional release is ordered by the Court of the place of detention, even before the completion of the required time as set in Articles 105 et seq. of the GPC for the conditional release of prisoners, provided that the released prisoner has served at least one fifth (1/5) of his/her sentence and that he/she shall attend the maintenance and rehabilitation program. The program’s authorized personnel have the responsibility to inform the competent authorities and to continuously monitor the progress, stability and successful completion of the program on behalf of the released prisoner. In case of undue interruption, the judgment on conditional release is revoked and the released prisoner has to return to prison.

25. E.g. part of the grand larceny and robbery.

26. See rel. *Paraskevopoulos*, *Repression*, pp. 199 et seq, for further documentation.

pendence. While the legislator demands that this diagnosis -and the consequent activation of the relevant favorable legal stipulations - be based upon the combination of diverse laboratorial and clinical evidence in an attempt to combine the addiction's biological and psychological extent, the competent medical coroners very rarely consent to an affirmative verdict regarding the dependence of a cannabis user.

The threatened sanctions for all drug trafficking offenses are among the harshest in the Greek legal order. To begin with, the basic offenses are punishable by incarceration of at least eight years (i.e. between eight and twenty years), reaching to the harshest custodial punishment in Greek criminal justice, i.e. life imprisonment. If one includes the soaring pecuniary fines (e.g. fines up to € 300.000 for the basic crimes or between € 50,000 and € 600.000 for the specific forms of Article 23), then one can safely refer to “draconian” measures, hardly ever to be encountered in Greek legislation²⁷. It should be noted that Law 4139/2013 has limited the aggravating circumstances punishable by life imprisonment, while the new set of provided penalties grants more opportunities for a more reasonable adjustment of the penalty to the actual responsibility of the perpetrator.

On the contrary, the handling of drug use is considerably more lenient. As mentioned above, the provisions on the misdemeanor of drug use aim to eliminate the likelihood of imprisonment for the offender, whenever he/she is charged with possession etc. of drugs intended exclusively for his personal use.

Finally, it should be mentioned that the Greek legislator has adopted the principle of global justice for acts of drug dealing, as evident in Article 8 i CLD, where Greek criminal law is made applicable on both nationals and aliens for cases of “illegal trading of narcotic drugs”, regardless of the standing laws in the locus delicti and even if the relevant acts were perpetrated outside Greece.

The term “trading” has caused serious interpretative problems as to its exact definition, with case law adopting, as a rule, an excessively broad approach. It integrates not only trafficking behaviors for profit, but also any act of trafficking or contribution thereof from one person to another²⁸.

27. The harshest penal sanctions would be encountered only in N. 3386/2005 on illegal emigration, in its knotty Article 88 § 1 d, by which the legislator threatens life imprisonment and a pecuniary fine of at least € 700,000 (See related *Chatzimitikolaou*, *The criminal Repression of illegal emigration*, 2009, page 243).

28. See *Paraskevopoulos*, o.c., 57.

Nevertheless, it should be noted that general concerns are expressed within Greek criminal theory, apart from the classic debate on the limits of the extent of criminal competence with particular reference to the contextual theories (Spielraumtheorie) and those of non-intervention and abuse of rights²⁹. This distress relates to the gradual expansion of the principle of global justice, especially over the last few years, in the area of incorporating the relevant international regulations into Greek law, so far as this expansion entails the possibility of multiple prosecutions for the same criminal act, but also the “selection” of the stricter legal system to prosecute the offender³⁰.

4. Drug Law Enforcement in Practice

In Greece, four (4) law enforcement/prosecuting authorities are in charge of policing drug-law related offences: the Greek Police, the Customs authority, the Coast Guard authority and the Special Control Service. Since 2005, all four authorities have elaborated 2 four-year Action Plans (2005-2008, 2009-2012) to implement a coherent policing of drug crimes. According to the European standards, at an operational level, the main objectives of the Greek law enforcement authorities on drug policing are currently the following: reduction of access to drugs for adolescent youth; escalating efficiency of the law-enforcement authorities at the operational level; increase in seizures of drug quantities; increase in the number of dismantled trafficking teams and criminal organizations; increase in the number of arrests for offences related to drug dealing; increase in amounts of confiscated assets from drug trafficking and money laundering; strengthening international cooperation and controls to create an environment of insecurity and high risk for drug traffickers; comprehensive and in-depth financial investigation on serious drug trafficking cases.

Drug policing routines includes stop-and-search tactics and arrests of both drug-users and dealers, but there is lack of available differentiated data on the arrest ratios for these categories. *Table 1* presents the total number of individuals arrested by the Greek law-enforcement authorities for drug-related offences between 2004-2010.

29. See *Milonopoulos*, International Criminal Law, pp. 99.

30. See *Kaiafa-Gbandi/Chatzinikolaou/Giannakoula/Papairiakou*, in *Weyembergh/Santarmaria* (Ed.), The evaluation of European criminal law, pp. 131, particularly 159 ep., *Chatzinikolaou*, Illegal emigration, pp. 86.

Table 1
 Number of individuals arrested in Greece
 for drug-related offences between 2004-2010

Year	Number of arrested individuals for drug-related offences (n)
2004	12.823
2005	14.893
2006	13.960
2007	13.423
2008	16.096
2009	16.464
2010	13.588

Source: SODN-EMP, <http://www.astynomia.gr>

Table 2 lists the total number of cannabis plants that have been detected, uprooted and confiscated by law-enforcement authorities (mainly by the Police), following drug cultivation policing operations between the years 2004-2010.

Table 2
 Number of cannabis plants detected,
 uprooted and confiscated between 2004-2010

Year	Number of cannabis plants (n)
2004	39.820
2005	34.993
2006	32.495
2007	17.611
2008	23.916
2009	15.515
2010	21.607

Source: SODN-EMP, <http://www.astynomia.gr>

In general, pre-trial detention is ordered for drug-addicted felony offenders according to the provisions of Article 282 § 3 of the Greek Criminal Procedure Code (hereafter referred to as GCPC). Hence, as far as this issue is concerned, they do not receive any extraordinary treatment compared to all other defendants. However, Article 31 of the Law on Addictive Substances states that if, during the interroga-

tion, the perpetrator is found to have acquired the habit of drug use and cannot surpass it on his/her own (i.e. he/she has become a drug addict), the Investigator, with the consent of the Prosecutor, may order his/her induction in a special therapeutic institution as a restrictive measure or as an alternative of pre-trial detention. During pre-trial detention, the perpetrator may attend a therapeutic program in the prison, if he/she so wishes. The temporal period in the therapeutic program is considered time served in pre-trial detention or - in case of a conviction to a custodial sentence - as time served of the sentence. However, there exists no feedback data for the application of the above measure and one can say that it is practically only rarely implemented.

According to Article 30 § 3 of previous CLD, if a defendant claims that he/she is a drug addict, the person authorized to conduct the preliminary inquiry or interrogation must immediately order for an expert examination within twenty four (24) hours from the arrest or during the initial testimony. In case the perpetrator has just been arrested, the individual authorized to conduct the preliminary inquiry must make all due arrangements to immediately receive samples of bodily fluids (urine and blood) and any other relevant biological material of the perpetrator, and send them to the Directorate of Laboratories of Criminological Investigation of the Greek Police or to the Forensic Service or to public hospitals or laboratories of Greek Universities, for the verification of traces of toxic substances or drugs. These samples are gathered by authorized medical personnel of the public hospital in the region of the preliminary inquiry/interrogation, according to detailed procedures envisaged by the Law. Following any such order, expert doctors must immediately examine the defendant and, in any case, not later than forty-eight (48) hours. Then, they must prepare and submit their report as soon as possible, taking into account the results of toxicological analysis of bodily fluids and any other relevant biological material. If the expert MDs conclude that the offender is a drug addict, they must also determine the type of (physical or mental) addiction and, if possible, make an estimation on the addict's daily drug dosage, propose an appropriate treatment and, if asked, pronounce the addiction's impact on the perpetrator's culpability. However, apart from any difficulties that may arise in practice regarding the immediate actions that must come to pass according to the law, the above provision for direct sampling of bodily fluids (urine and blood) and other biological material for reasons of toxicological analyses and laboratory testing outline a method appropriate only for detection of very recent use and not for chronic dependence of the defendant. In general, as noted above, the rigid provisions of the Law on the minimum required medical expertise, combined with the powerful motive of

accused traffickers to be identified as drug addicts, has rendered the current system of diagnosis and judicial recognition of dependence unreliable³¹.

In consequence, according to Article 30 § 2 of the new Law on Addictive Substances, a new system of diagnosis is introduced. In order to diagnose an individual's dependency on drugs, one or more of the following factors are accounted for by the court: documentation issued by a certified drug treatment program, proof of participation in an opioid substitution program, proof of medical attendance for diseases associated with substance use, psychological and social data of the defendant, findings of laboratory tests that reveal drug use for lengthy periods. If necessary, a medical examination may also be ordered at any stage of the criminal proceedings, either ex officio or at the request of the defendant, in order to determine dependence, as well as its type and magnitude.

According to Article 28 of the Law on Addictive Substances, officers of the Police, Customs authorities, Special Control Service and the Coast Guard are allowed to appear - after an order issued by their director - as dealers, buyers or carriers, or otherwise as individuals interested in handling, storage or disposal of drugs, in order to discover or arrest anyone who commits any crime referred to in Articles 20, 22 and 23; also, citizens may act correspondingly, on request of the competent drug prosecuting authorities, provided that the procedure abides by the provisions of Article 253A § 3 of GCPC. According to the latter, as regards offences of 187 § 2 and 187A of the GPC concerning organized crime, the investigation may include acts of undercover investigation (police entrapment) with respect to the guarantees and methodology provided by the Law, only if such acts of police entrapment (undercover investigation) are absolutely crucial to ascertain the perpetration of a criminal offence that had been planned by a criminal organization.

Despite the increasing adoption of the relevant provisions by the Greek criminal justice system, it should, however, be noted that theory has expressed strong reservations about their efficiency and-especially-their compatibility with the rule of law³².

The Hellenic Statistical Authority (ELSTAT), authorized with collecting and processing judicial data, yearly updates EKTEPN (Greek Documentation and Monitoring Centre for Drugs) reports on sentences imposed and number of individuals convicted for drug-related offences. According to the last published

31. See above, paragraph 3.

32. See indicatively, *M. Kaija-Gbandi*, The challenge of drug trafficking within penal repression, *Memory Daskalopoulos/Stamatis/Mpaka*, Vol. A', pp. 103.

Annual Report of EKTEPN (2011), the most recent available data refer to 2008. In keeping with these figures, from a total number of 46,128 sentenced individuals during 2008, 1,831 (4%) have been convicted for drug-related offences. The vast majority of them (95.8%, n = 1.755) were men, while 79% were between 22 and 44 years old.

Of those convicted for drug-related offences, 1,212 (66.2%) were sentenced for drug use, possession or cultivation of small quantity for personal use; 539 (29.4%) were sentenced for drug use, dealing and trafficking; 55 (3.0 %) for drug dealing and trafficking and 25 (1.4%) for drug cultivation/ manufacturing.

The maximum length of sentences imposed for drug use, possession or cultivation of small quantity for personal use is up to one year imprisonment, which is then suspended or converted 98.6% of the time. Of the sentences imposed for drug dealing/trafficking, 98.2% were sentences of long-term incarceration (5-20 years) or life imprisonment; similar data apply to those convicted for drug cultivation/ manufacturing. In their vast majority, these penalties imposed for dealing/trafficking cannot be suspended or converted in pecuniary fines.

5. Sentencing and Correctional System

The following table presents the prison population of Greece during the last decade:

Table 3
Prison population in Greece between 2003-2012

Year	Total prison population (n) (including both convicted and in remand)
2003	8.418
2004	8.726
2005	8.722
2006	9.964
2007	10.370
2008	11.645
2009	11.736
2010	11.305
2011	12.349
2012	12.479

Source: Ministry of Justice, Transparency and Human Rights, <http://www.ministryofjustice.gr>

The Greek Correctional System incorporates 34 institutions of various types, dispersed all over the country and all run by the Ministry of Justice, Transparency and Human Rights. According to Article 19 of the Greek Correctional Code (Law 2776/1999, Government Gazette A' 291), the Correctional System includes general detention institutions, special institutions and therapeutic institutions. According to Articles 11 and 19 of the Correctional Code, general institutions are distinguished as type A (pre-trial detainees, detainees for debts and short-term prisoners), type C (offenders who have received penalties of life imprisonment or incarceration of more than 10 years and are considered dangerous for cohabitation in the type A and B correctional institutions) and type B (cases not fulfilling the criteria of type A or C). Women are only detained in prisons for females (Article 13 of Correctional Code); they serve their sentence in a separate section of an otherwise male correctional institution (in Thessaloniki) and two immiscible female prisons elsewhere. Special institutions include juvenile correctional establishments (Article 12 of Correctional Code) and semi-open prisons (Article 19 of Correctional Code). In practice, though, the Ministry of Justice, Transparency and Human Rights discerns between five categories of correctional institutions: agricultural prisons, correctional institutions for minors, closed prisons, special therapeutic institutions and judicial prisons.

The following table presents the number of prisoners imprisoned for drug-related offences during the last decade:

Table 4
Prisoners incarcerated for drug-related offences between 2003-2012

Year	Prisoners for drug-related offences Total number (n)	Prisoners for drug-related offences Percentage of general prison population (%)
2003	3.386	40,2
2004	3.562	40,8
2005	3.465	39,7
2006	4.346	43,6
2007	4.640	44,7
2008	4.912	47,4
2009	4.937	42,1
2010	4.345	38,4
2011	4.303	34,8
2012	4.136	33,1

Source: Ministry of Justice, Transparency and Human Rights, <http://www.ministryofjustice.gr>

As already mentioned, since the maximum length of the sentences imposed for drug use, possession or cultivation of small quantity for personal use is imprisonment up to one year, these penalties are suspended or converted 98.6% of the time, therefore the vast majority of those convicted for these offences do not get imprisoned. Subsequently, even though the majority of those convicted have perpetrated offenses of drug use, possession and cultivation of a small quantity for personal use, the majority those imprisoned have been involved in drug trafficking/dealing.

Since the 1990's and the 2000's, living conditions have become very strenuous in the overcrowded Greek prisons, as the recorded occupancy rates have fluctuated between 140-170%. In 2002, the official capacity of penitentiary institutions was 5,284 beds, with the actual number of prisoners being 8,507. In 2004 and 2005, with a total capacity of 5,584 places, the number of prisoners has risen to 8,738 and 9,589, respectively (CoE, 2007). Even after the implementation of special legal provisions on massive probation or parole of prisoners as extraordinary measures were pressingly adopted in 2005 (Law 3346/2005, Government Gazette A' 140), 2008 (Law 3727/2008, Government Gazette A' 257), 2010 (Law 3904/2010, Government Gazette A' 218) and Law 4043/2012 (Government Gazette A' 25) as part of a prison decongestion policy, the situation has not dramatically changed. *Table 3* presents some relevant data on prison population as recorded on 1.1.2010.

Table 5
Prison population in Greece - 2010

Prison population total (including pre-trial/ remand)	11.364
Prison population rate (per 100,000 of national population)	101 estimated national population: 11,305,000, Jan. 2010 (Eurostat)
Official capacity of penitentiary institutions (1.9.2008)	9.103
Occupancy rate of penitentiary institutions (1.9.2008)	129,6%

Source: Ministry of Justice, Transparency and Human Rights - International Centre for Prison Studies http://www.prisonstudies.org/info/worldbrief/wpb_country.php?country=141

It is generally argued that the drug-addict prison population is bigger than that of drug-law offenders, as several of the latter have only been convicted for crimes against property that are perpetrated to facilitate the purchasing of drugs and not for any drug-related offence (Paraskevopoulos, 2010), therefore the statistical data on correctional institutions fail to portray the actual picture.

There are only few available sets of data embedded in empirical research on the extent, type and definition of drug-use among detainees in Greek prisons. The EMCDDA data (*Table 4*) derives from older studies of only a few penitentiaries and thus may not be considered as sufficiently representative of the Greek correctional system, but rather as a limited guide and accordingly restricted display of reality. As noted by the EMCDDA, lack of recurring surveys with specific methodological criteria obstructs the analysis of trends in most EU countries and impedes analysis and elaboration of outcomes. On the basis of these indicative surveys carried out throughout the country between 1995 and 2000 and also in line with the general trend witnessed of late, one can say that drug users are overrepresented among prison population.

Table 6
Drug use among prisoners in Greece between 1995-2000

References	Year	Definition of Drug Use	Drug used	%	Methodological comments
1	2000	persons reporting lifetime drug use prior to imprisonment	any illicit drug	48	survey in 1 prison amongst on remand and convicted prisoners (N= 136)
1	2000	persons reporting lifetime drug use while in prison	any illicit drug	46	survey in 1 prison amongst on remand and convicted prisoners (N= 136)
2	1999	persons reporting drug use within the last year	cannabis cocaine heroin amphetamines ecstasy	74 14 41 14 4	survey in 1 prison amongst on remand and convicted men (N=80)
3	1998	adolescents reporting lifetime drug use prior to imprisonment	cannabis cocaine heroin amphetamines ecstasy other drugs	46 18 19 4 7 11	survey in 2 prisons for adolescents, both on remand and convicted, enrolled in vocational training (N= 100)
4	1996	persons reporting lifetime injecting drug use		34	survey in 10 prisons (N= 861)

References	Year	Definition of Drug Use	Drug used	%	Methodological comments
4	1996	persons reporting injecting drug use while in prison		20	survey in 10 prisons (N= 861)
5	1995	lifetime drug use prior to imprisonment (based on self-reports and serum tests)	cannabis cocaine heroin	22 6 66	survey in 2 prisons amongst convicted voluntary prisoners (N= 544)
5	1995	injecting drug use prior to imprisonment (based on self-reports and serum tests)		69	survey in 2 prisons amongst convicted voluntary prisoners (N= 544)
5	1995		any illicit drug cannabis cocaine heroin	54 5 0,4 39	survey in 2 prisons amongst convicted voluntary prisoners (N= 544)
5	1995	injecting drug use in prison (based on self-reports and serum tests)		28	survey in 2 prisons amongst convicted voluntary prisoners (N= 544)
6	1995	injecting drug users		31	survey in prison (N=1183)

References (according to the above number of the first column of the table):

1. Giatroi choris Sunora. Katagrafi apotelesmaton diereunisis kai protasi programmatos sti Dikastiki Fulaki Koridallou, Athina, Médecins Sans Frontières; 2001.
2. Fotiadou M, Livaditis M, Manou I, Kaniotou E, Samakouri M, Tzavaras N, Xenitidis K. Self-reported substance misuse in Greek male prisoners. *European Addiction Research*. 2004; 10:56-60.
3. Aristoteleio Panepistimio Thessalonikis. Diereunisi anagon kai methodon epaggelmatikis katartisis anilikon paravaton kai anilikon se kindino 'Orestis' - Leonardo Da Vinci, Thessaloniki; 2000.
4. Koulierakis G, Gnardelis C, Agrafiotis D, Power K. HIV risk behaviour correlates among injecting drug users in Greek prisons. *Addictions*. 1995; (8):1207-1216.

5. Malliori M, Sypsa V, Psychogiou M, Touloumi G, Skoutelis A., Tassopoulos N, Hanzakis A, Stefanis C. A survey of bloodborne viruses and associate risk behaviours in Greek prisons. *Addiction*. 1998; 93(2):243-245.

6. Malliori M. European network on HIV/AIDS and hepatitis prevention in prison: Annual report to the EC. Marseille/Bonn: ORS/WIAD.1998: pp. 114-118.

Source: *EMCDDA Statistical Bulletin 2011:Table DUP-105. Prevalence (percentage) of drug use among prisoners in EU Member States and Norway - for full list of studies, see emcdda.europa.eu/stats11/duptab105*

Given the large population of drug users in correctional facilities, treatment, psychosocial support and harm reduction interventions in prisons is not only an expression of the right to health care for addicted detainees, but also an essential step towards an effective drug policy.

In the field of treatment, as of 2002 only one public treatment program for drug dependent detainees has been operational, i.e. the Treatment Centre for Drug Dependent Prisoners (KATK), located in Eleonas, Thebes. It was founded by decree of Law 2721/99 (Government Gazette A' 112/3-6-99) as a special therapeutic institution, aiming at providing detoxification therapy for mentally and physically addicted prisoners. The same Law also established a second center to treat addiction in the Kassandra therapeutic community, a plan still unimplemented.

The KATK in Eleonas has the capacity to accommodate 250 dependent inmates, while that still under construction in the Agricultural Prison of Kassandra will be able to treat and bed 360 prisoners.

The KATK program is a dry, voluntary, multi-phase biennial program that aims to: a) physical and mental rehabilitation, b) abstention from delinquency, c) education and training, d) prevention of relapse and social reintegration of the participants.

In addition to KATK, treatment is also available through the therapeutic communities run by KETHEA's "EN DRASI" initiatives in Koridalos Women's Prison and Koridalos Judicial Prison.

Table 7
Prisoners that attended treatment programs (2008-2010)

Year	2008	2009	2010
Number of prisoners	795	1.535	1.550

Source: *EKTEPN - Reitox Focal Point Annual Report 2011.*

Psychosocial support and counselling has also been provided by the “18 ANO” Dependence Treatment Unit of the Attica Psychiatric Hospital and KETHEA in 19 prisons across the country during 2010. According to data provided by EKTEPN - Reitox Focal Point Annual Report 2011, 1822 inmates have received counselling services in prison in 2010.

Support interventions include individual and group counselling, information and mobilization, self-help groups and relapse-prevention groups.

In 2010, eight programmes offered psychosocial support interventions in correctional institutions: seven of them are KETHEA initiatives, the remaining one being the “18 ANO” program³³.

In-prison harm reduction interventions mostly involve information and health awareness (e.g. prevention of infectious diseases), safer drug use and overdose prevention. According to the last available data, all seven (7) KETHEA programmes and the “18 ANO” one held seminars and group sessions during 2010, including individual sessions where deemed fitting, and handed out informative material to raise the participants’ awareness on harm reduction in all nineteen (19) penitentiaries where they operate.

33. List of operational programs and correctional facilities:

KETHEA:

- “STROFI” Open therapeutic programme for adolescents (Attica): Special Juvenile Correctional Establishment in Avlona.
 - “PILOTOS” Day-care therapeutic programme for adolescents and young adults (Thessaly): Juvenile Reformatory Facility in Volos, Penitentiary Establishment for Minors in Kassavetia, Special Juvenile Correctional Establishment in Volos, Larissa Judicial Prison, Trikala Closed Prison.
 - “OXYGONO” Day-care therapeutic programme for adolescents and young adults (Achaia): Closed Prison in Aghios Stefanos.
 - “EN DRASI” In-prison therapeutic programme (Attica): Koridalos Judicial Prison, Koridalos Women’s Prison, Koridalos Prison Psychiatric Division.
 - Counselling Unit for Prisoners in Thessaloniki: Thessaloniki Military Prison, Komotini Judicial Prison, Cassandra Rural Prison, Grevena Closed Prison.
 - “ARIADNE” Open therapeutic programme for adults (Crete): Neapoli Judicial Prison, Alikarnassos Closed Prison, Hania Judicial Prison, Aghia Rural Prison.
 - “MOSAIC” Intercultural transitional day-care programme (Attica): Detention Centre for Alien
- “18 ANO” Dependence Treatment Unit (Attica Psychiatric Hospital):**
- “18 ANO” Prison programme: Koridalos Judicial Prison, Koridalos Women’s Prison, Koridalos Prison Psychiatric Division. Psychosocial support interventions were implemented in 2009 in nineteen (19) prisons and in the Detention Centre for Aliens. Compared to the previous years, such interventions are constantly expanding. Suffice it to mention that in 2005 support interventions were implemented in twelve prisons, in 2006 in fifteen and in 2008 in sixteen prisons.

Table 8
 Prisoners that have participated in harm reduction
 interventions (2008-2010)

Year	2008	2009	2010
Number of prisoners	795	1.535	1.550

Source: EKTEPN - Reitox Focal Point Annual Report 2011.

According to EKTEPN, though, the total number of drug offenders in prison has been consistently increasing for the past twelve years, rendering the foundation of more therapeutic and counselling programs in Greek prisons of vital importance.

As mentioned above, Articles 31 and 32 CLD provide a favourable opportunity for drug-using detainees to avert from serving time in prison to participating into community-based treatment. For drug addicted perpetrators who have committed any of the offences included in Article 20 § 1 CLD or any other offence in order to facilitate the use of drugs (with the exception of crimes such as homicide and robbery³⁴), these mechanisms relate to the voluntary attendance or completion of a drug treatment and maintenance program and are available at all levels of the criminal procedure: pre-trial (pending penal prosecution - Article 31 § 1: suspension of penal prosecution), hearing (sentencing stage - Article 31 §§ 5 & 6: suspension of sentence execution/probation) correctional (in prison - Article 32: conditional release).

Apart from the above provisions, drug-addicted individuals who have been convicted and sentenced for any criminal offence besides drug-related ones may utilize aversion mechanisms at the correctional stage (in prison - Article 32 par. 2: conditional release). According to Article 32 § 2 CLD, and quite similarly to the first paragraph of the Article, any drug-addicted detainee convicted to imprisonment for any criminal offence (not just drug-related) and undergoing a treatment program in a therapeutic institution or in a special penitentiary department (following a Court's mandate according to Article 32 § 1 CLD) may be conditionally released before the completion of due time after successfully attending the treatment program, subsequent to a resolution issued by the competent Judges Council for Misdemeanors of the region of detention and in accordance with Articles 105 et seq. GPC (conditional release of prisoners). The Council decides after having consulted the scientific council of the therapeutic program or the head of

34. The crimes included in Articles 299, 306, 309, 310, 311, 312, 322, 323, 324, 336, 374 seq. a and b and 380 of GPC and Article 2 of Law No 2331/1995 (Government Gazette A 173).

the penitentiary's special department, and may require the additional commitment for the detainee applicant to regularly turn up to a specific drug treatment institution and be subjected to biochemical, toxicological or other tests. If these tests indicate resumption of drug use by the released prisoner or if he/she refuses or neglects to undergo examination according to the Council's decision, the drug treatment institution authorized to monitor the released detainee's follow-up is required to notify the public prosecutor, resulting in the revocation of the decision on conditional release.

Though the above detention-aversive mechanisms envisaged in the Law on Drugs are adequately endorsed in legislation, there is ample potential for implementation in practice, since they are presently only seldom activated. For the years 2008, 2009 and 2010, only 27, 61 and 26 drug addicted detainees respectively were granted conditional release or had their sentence suspended in order to follow out-of-prison dependence treatment programmes following the successful completion of the in-prison support programmes implemented by the three KETHEA agencies ("EN DRASI", Counselling Unit for Prisoners in Thessaloniki, "STROFI") and the "18 ANO" Dependence Treatment Unit (Attica Psychiatric Hospital).

Establishing more therapeutic and consulting programs both in and out of prison would aid towards further implementation of the above aversion mechanisms of community-based treatment for the numerous drug addicted convicts in Greece.

Only in recent years has the Greek correctional policy moved towards organizing a coordinated body commissioned to grant substantial assistance to prisoners and former detainees. The fundamental provisions on this institution are contained in Article 81 § 1 of the Correctional Code, envisaging the founding of an institution - in the legal form of a non-profit Private Law Entity - named "EPANODOS", that will operate under the supervision of the Ministry of Justice, Transparency and Human Rights. The overall goal of this organization is "*the vocational training and rehabilitation, the economic support and gradual reintegration of the released*". Within the first years of its operation, "EPANODOS" has considered the following activities as immediate priorities for the improved implementation of its purpose: undertaking the necessary initiatives to raise awareness and ensure social support for its mission; attempting to guarantee a small financial allowance for released prisoners as a bona fide prerequisite to help them stand on their feet; organizing close cooperation with local authorities and NGOs for the prevention of recidivism for released detainees (especially the drug-addicted, who represent one of the more numerous inmate groups in Greek prisons); contributing to the functional modernization of rehabilitation institutes (i.e.

Societies for the Protection of the Released, Committees on Social Support, and Juvenile Protection Societies); collaborating with the Probation Service towards the protective supervision of released detainees and prompting the formation of volunteer groups to support released prisoners (Courakis, 2010).

Especially with respect to drug-addicted individuals that are released from prison, both KETHEA's "EN DRASI" program and the "18 ANO" Prison Program of the Attica Psychiatric Hospital implement support interventions for released drug-using prisoners. "EN DRASI" provides a) private sessions including motivational interview, individual need-assessment and orientation about the programme, and b) group sessions including counselling and psychological support, medical and psychiatric screening, preparation for entering a therapeutic community and relapse prevention seminars. "18 ANO" organises awareness-raising groups and provides individual counselling to released prisoners who may then seek treatment in its available programmes. In 2008, 2009 and 2010, 167, 172 and 175 released drug users respectively participated in psychosocial support interventions.

All drug-dependence treatment programmes admit released detainees for treatment (dependence treatment and social reintegration), while most also offer legal aid. Moreover, as a complement to in-prison programmes, there are three specialised reintegration structures for released prisoners:

- Admission and Reintegration Centre for Released Drug Users in Thessaloniki (KETHEA).
- "EN DRASI" Admission and Reintegration Centre (KETHEA)
- KATK Social Reintegration Centre.

A total of 46 released prisoners participated in these programmes in the reporting year, a number almost equal to that for 2008 (45 released prisoners). In 2010, the total number of released prisoners that attended a treatment program more than doubled, as 106 individuals attended the programs.

Nevertheless, no available data exists on recidivism of offenders who have already served custodial sentences for drug-related crimes.

II. Initiatives for drug law reform undertaken by the government and/or the parliament in the last 10 years

As to the general institutional legal framework in Greece, the most important legislative initiatives of the last 10 years are the following:

Law 3459/2006 a.k.a. Code of Laws on Drugs - CLD (Government Gazette A' 103): Introduced the codification of all drug-related legislation since the enactment of Law 1729/1987 and up to 2006. This Code, consisting of seven (7) chapters and amassing a total of 61 Articles, attempted a more systematic legislative approach to the problem.

Law 3727/2008 (Government Gazette A' 257): Its 2nd Chapter seeks to harmonize national legislation with the Council Framework Decision 2004/757/JHA of 25 October 2004, which lays the general principles and guidelines on minimum provisions on the constituent elements of criminal offences and penalties. Specifically, this law: a) completes the list of drug-related perpetrations, by adding the offences of dispatching and delivery of drugs in any way, and extraction of drugs (Art. 9 Law 3727/2008); b) envisages that the penalties for the aggravated circumstances of Article 23 § 1 Law 3459/2006 are also imposed for offences regarding large quantities of drugs or for grave harm on public health, while a minimum sentence of 10 years and a concurrent fine of € 2,900 to € 290,000 is impossible for the offences of Article 20, when they are committed by a criminal organization (Art. 10); c) establishes administrative liability of legal persons/entities for criminal offences on drugs (Art. 12); d) deals with matters of jurisdiction of Greek courts for drug-related offences (Art. 13); e) provides that the defendant who claims drug addiction must undergo examination within 24 hours of his/her arrest, and also determines the examination procedures for bodily fluids or other biological material (Art. 14); f) delimits quantities of heroin, cocaine, processed and raw cannabis that are assumed to confirm strictly personal use (unless the court decides otherwise) (Art. 15); g) provides that a more austere policy on conditional release and prison leaves is only applied for those convicted for the aggravated circumstances of Articles 23 and 23A Law 3459/2006 and not for the other offences (Art. 18 and 21).

Law 3772/2009 (Government Gazette A' 112): Amends Article 15 Law 3727/2008 as to the quantity of cannabis assumed to confirm personal use (increases weight from 20 to 50 grams for raw cannabis/marijuana and from 2.5 to 5 grams for processed cannabis/hashish).

Law 3811/2009 (Government Gazette A' 231): Article 25 states that an offence committed by a drug-addict deemed a misdemeanor or felony upon criterion of penalty imposed. Also, the procedure for conditional release for those convicted for the aggravated circumstances of Art. 23 and 23A Law 3459/2009 is amended, emphasizing that the defendant's addiction need be accounted for when imposing pre-trial detention.

The bill on the new Code of Laws on Drugs, passed as “Law on Addictive Substances” - Law 4139/2013 (Government Gazette A’ 74): In September 2011, a new bill supposedly replacing the Code of Law on Drugs came into publicity, and a long public debate ensued. The new legislative initiative put the treatment of addicted users in the epicenter, and could be described as a truly ground-breaking stride within the Greek drug policy. After a delay of almost two years, the new bill was passed by the Greek Parliament on March 20th 2013, though not without several modifications as to the original document. The key-points of the initial draft and the new law, as outlined in the explanatory report, are the following: (1) According to the initial draft’s explanatory report, trafficking of drugs is the basic offence, classified as a felony and punishable with life imprisonment or incarceration of 5-20 years and a concurrent pecuniary sentence, while additional penalties -such as forfeiture and prohibition of residence- are preserved with some improvements. The main terminology of the old Code is also retained and the recommendations of the Framework Decision 2004/757 JHA of the EU Council are taken into account. The new law adopted this main trend, but the sanctioning range for the basic offence was changed to incarceration of 8-20 years. (2) The supply and possession of drugs in quantities intended exclusively for personal use were not considered criminal offences according to the initial draft. Only the cultivation of cannabis plants was still prescribed as an offense (punishable by imprisonment up to three (3) months and a fine up to one thousand (1,000) Euros), even in numbers justifying the offender’s personal use. On the other hand, anyone using drugs in public would be punishable by imprisonment of six (6) months and a fine not exceeding two thousand (2,000) Euros. This innovative proposal was considered very ambiguous, and was finally not included in the new law: drug use and cultivation of cannabis for personal use still persist as misdemeanors punishable by imprisonment up to 5 months (more lenient sentencing compared to the previous CLD). (3) The trafficking of small quantities of drugs and the supply of small quantities to familiars for personal use are considered mitigating circumstances of the basic offence of trafficking, according to specific criteria based on the type, quantity and purity of the drug substance, alongside the specific needs of the user. This was an innovative provision finally adopted in Article 22 of the new Law on Addictive Substances. (4) According to the explanatory report of the draft that was also adopted in the new law, more severe penalties are provided for criminal offences committed by certain individuals (e.g. doctors, pharmacists) or in certain locations (military camps, detention facilities, schools, etc.) or against minors. For these aggravating circumstances, incarceration of minimum 10 years (i.e. 10-20 years) and a fine of € 50,000-

500,000 is proscribed. Trafficking by certain professionals, doctors, pharmacists, and recidivists is considered an aggravated circumstance. (5) The most aggravated trafficking offences are punishable by life imprisonment or long-term incarceration (10-20 years) and a fine up to € 600,000. In contrast to the previous Code, judges now have the discretion to avoid life imprisonment in cases when less dangerous offenders are involved. This threatening disposition of the offender must be related (beyond the professional commission of the offence) to the quantity of drugs, which must be determined with respect to the related financial benefit, in order to avoid employing vague concepts such as “very large quantities”, that entails the risk of a very arbitrary interpretation. (6) A multi-evidence basis for the diagnosis of the drug addiction by the judge is provided in the new bill, besides the medical report envisaged in the previous law. Such evidence may include documents proving participation and monitoring in either a counseling and therapeutic program or a substitute-based protocol, other health conditions associated with the use of drugs (e.g. hepatitis, AIDS or pulmonary edema), psychological and social status of the offender (evident from certifications from social services, organizations, etc.), or findings of laboratory tests that reveal drug use over long periods. (7) The statute on organizations, associations and institutions as regards planning, coordinating and implementing drug policy is systematized.

III. Standpoints of relevant stakeholders on drug law reform

Regarding the new law on drugs, the standpoints of relevant stakeholders could be summarized as following³⁵:

For KETHEA, the initial draft for the new law paced towards the right direction concerning possession for personal use and use of drugs, treatment of users and their families, but also the national strategy on drugs. KETHEA is in favor of decriminalizing possession of drugs for personal use, arguing that in such a case users will not be arrested and stigmatized. As the addicted users imprisoned comprise almost half of the total prison population, decriminalizing drug use would be a correct shift, but some reservations are articulated concerning drug use in public places which may increase the extent of the phenomenon. It

35. Initially, the new bill, as presented above, had the support of KETHEA, OKANA and EKTEPN, and of several political parties of the country (SIRIZA, PASOK, DIMAR). A group of experts on drugs were invited by one of the political parties represented in the Greek Parliament to discuss the issue of the Bill on the new law on drugs on 21 September 2011, in order to express their general stance and individual comments on it (more analytically see <http://psychografimata.com/7009/sizitisi-gia-to-neo-nomoschedio-peri-narkotikon/>).

is important that treatment must be provided as an alternative to punishment and imprisonment and that a set of favorable measures exists for drug users. KETHEA has expressed its apprehension and criticism on mergers of organizations and institutions dealing with drugs and drug policy and for the financial cut-downs for drug prevention and therapy.

“18 ANO” believes that the intentions of the drafters were good, though it retains some reservations were on specific issues. With respect to treatment, it was indicated that substitution of drugs is a kind of suppression to which 18 ANO is opposite. On the other hand, until now there have existed specific principles and regulations according to which treatment programs operate; doubts were expressed on whether the new bill would be able to sustain them. As to addiction and treatment, 18 ANO underlined that addicted users, exactly due to the nature of their dependence, must not counter any kind of coercion, such as mandatory treatment.

EKTEPN advocated for the enactment of the new law, as it offers some responses to chronic problems through the decriminalization of personal use, the vesting of in-prison treatment, coordinating of the framework decisions on drugs and the national strategic agenda. The new bill, at least at its draft form, is not only a socially equitable and humanitarian decree for drug users, but also a law that will assist cost-reduction for the state, as a prisoner’s costs are 7-14 times greater than the costs of a user under treatment. It is of vital importance to grant organizations and institutions on drugs the opportunity to preserve their resources, at least as presently, so that they may respond to the demand for treatment that amplifies in times of economic crisis.

As far as OKANA is concerned, the new bill is reckoned favorable for the penal treatment of dependent individuals. According to the previous law, the focal point is drug trafficking and not treatment of drug dependence. On the contrary, the new bill foresees that even a drug user detained for trafficking is granted the opportunity to claim addiction and appeal for proper treatment. Also, expert diagnoses on drug addiction shall be suitably safeguarded according to the new law, so that only the actually addicted users will be characterized as such, thus preventing smugglers and traffickers from pretending addiction en route to a more favorable treatment by the criminal justice system. As to the financial support of prevention programs, it is essential for funds to be allocated therein, because such interventions are significantly prioritized according to the national plan on drug policy. Furthermore, the recruitment of proficient staff is imperative for these programs.

Prevention-oriented Programs are concerned that prevention is not a priority in the new bill, since prevention, rehabilitation and reintegration are linked, co-dependent and cooperating axes: a modification in any one directly affects both others. Regarding the funding of prevention programs, it was suggested that part of the revenue from pecuniary penalties and fines must be allocated for to prevention program in order for them to function more independently. According to the “Initiative for the Rights of Prisoners”, the discussion on any new law on drugs should look into those directly involved, i.e. drug users and inmates, and it is also crucial to envisage a pardon or suspension of sentence to mothers of infants and young children who are detained for drug offences.

Proposals and recommendations for further research and advocacy include:

1. In-prison surveys: research inmate addicted users, evaluate in-prison treatment programs and consider alternative penalties for addicted offenders.
2. Assessment of prevention program.
3. Research on the criminological traits of drug-related offenders and risk-factors for delinquency, inquire on the stereotype of addicted individuals as criminals, but also examine the addicted as victims of crimes.

References:

Anagnostopoulos, I. (2010), Ne bis in idem in European Union after the Lisbon Treatment, *Penal Chronicles* 2010, pp. 796 (in Greek)

Andreou, F. (2002), *Drugs*, 3d edition.

Chatzinikolaou, N., Papakyriakou, Th., Zachariadis, A., Kaiafa-Gbandi, M., Avoiding and Resolving Conflicts of Criminal jurisdiction” Country Report Greece, (forthcoming edition).

Chatzinikolaou, N. (2006), The expulsion of a foreign national as a sanction of criminal law (in Greek).

Chatzinikolaou, N. (2009), The penal repression of illegal immigration (in Greek).

Courakis, N.E. (2010), ‘Aftercare for the released: the most important condition for reducing recidivism but also for a crime policy with a human phase’ in A.G. Pitsela, (Ed), *Criminology: Searching for Answers. Essays in Honour for Professor Stergios Alexiadis* (pp 517-525) Athens, Thessaloniki: Sakkoulas. (in Greek).

Kaiafa-Gbandi, M., Provoking drug trafficking in service of its repression, in Memory Daskalopoulos- Stamatis - Bakas, V. A’ pp. 103 (in Greek).

Kaiafa-Gbandi, M., Chatzinikolaou, N., Giannakoula, A., Papakyriakou Th. (2009), The framework decision on combating trafficking in human beings - Evaluating its fundamental attributes as well as its transposition in Greek criminal law, in A. Weyembergh/V. Santamaria (Ed.), *The evaluation of European Criminal law*, Editions de l' Université de Bruxelles, pp. 131.

Kontaxis, A. (2007), *The penal treatment of drugs* (in Greek).

Kotsalis, L., Margaritis, L., Farsedakis (2007), *Drugs: analysis by Article of Law No. 3459/2006* (in Greek).

Lambropoulou, E. (2003), *Drug Policy in Greece: A Balance between enforcement and persuasion* in *European Journal of Criminology, Criminal Law and Criminal Justice*, vol. 11/1, pp. 18-39.

Manoledakis, I. *General theory of criminal law*, v. 3 (in Greek).

Manoledakis, I., Kaiafa-Gbandi, M., Symeonidou-Kastanidou, E. (2005), *Criminal Law, General Part* (in Greek).

Margaritis L. (2001), *The drug dealers and the new Law No. 2943/2001, Criminal Justice 2001*, pp. 855.

Naziris, I., Chatzikostas, K., (2009), *Legislation and Jurisprudence on drugs* (in Greek).

Mylonopoulos, Ch. (1993), *International Criminal Law*, 2d edition (in Greek).

Paraskevopoulos, N. (2010), *The repression of drugs diffusion in Greece*, 3s edition. Athens, Thessaloniki: Sakkoulas (in Greek).

Paraskevopoulos, N., Kosmatos, K. (2006), *Drugs: analysis by Article of the penal and penal procedure provisions of Code of Laws on Drugs - Law No 3459/2006*, 2d edition (in Greek).

Paulou, S. (2008), *Drugs - Dogmatic and explaining problems of penal provisions of Code of Laws on Drugs* (in Greek).

Reports:

COUNCIL OF EUROPE (2007) *Annual Penal Statistics, Survey 2005*, SPACE 1, Aebi, M.F. & Stadnic, N., Strasbourg.

KTEPN/UMHRI: National Centre for Documentation and Information on Drugs - Greece Reitox Focal Point, *Annual Report of Drugs Problem in Greece 2011 (with data on 2010)* - (in Greek)

EKTEPN/UMHRI: National Centre for Documentation and Information on Drugs - Greece Reitox Focal Point, Annual Report of Drugs Problem in Greece 2010 (with data on 2009) - (in Greek and in English)

EMCDDA (2010). Annual Report 2010. The State of the Drugs Problem in Europe. Lisbon, European Monitoring Centre for Drugs and Drug Addiction.

KETHEA (2011). 2010 Activity Report. Athens, Therapeutic Center for Dependent Individuals.

Explanatory Preamble for the recent Draft on Code of Laws on Drugs (2012) www.hellenicparliament.gr/.../k-drugs-eis.pdf

Web-sites:

www.astynomia.gr (Greek Police)

www.ektepn.gr (EKTEPN/UMHRI: National Centre for Documentation and Information on Drugs - Greece Reitox Focal Point)

www.emcdda.europa.eu/themes/key-indicators/gps (EMCDDA)

www.ministryofjustice.gr (Greek Ministry of Justice, Transparency and Human Rights)

www.okana.gr (OKANA)

www.kethea.gr (KETEHA)

www.hellenicparliament.gr

Country Report Montenegro

Country Report Montenegro

by Vlado Dedovic¹

I. The current national drug strategy and drug legislation in Montenegro

1. National Strategy on Drugs

In 2008 the Government of Montenegro adopted the Strategy: National Strategic Response to Drugs which covers the period from 2008 to 2012. Now, the first phase of drafting the new Strategy with Action plan is in process - as well as the process of evaluation of the previous one, which is implemented in close cooperation with UNODC and EU experts. Montenegro also has a school programs targeting consumption of drugs by youth.

Montenegro has a National Council for the Prevention of Drug Abuse. The Council is chaired by the President of the State and the Minister of Health. Other ministers and representatives of the municipalities participate in the Council's meetings.

At a working level, a network of contact persons exists, with representatives of the central government, municipalities and civil society. Individual authorities responsible for this area have also concluded a range of agreements and memoranda of understanding.

Montenegrin drug policy institutional framework also consists of:

1. Department for Drugs at the Ministry of health;
2. Department for fight against drugs at the police directorate;
3. Ministry of Interior of Montenegro;
4. Ministry of Finance of Montenegro;
5. Customs Administration of Montenegro;
6. Bureau for Education of Montenegro;
7. Capital City Podgorica - Institution for rehabilitation;

1. Teaching Assistant, Faculty of Law, University of Montenegro.

8. Offices for Drug Prevention in local communities - 21 offices in 21 local communities;

9. Ministry of Justice - Institute for execution of criminal sanctions.

Montenegro is party to the main international and Council of Europe conventions on drugs. In the field of the fight against narcotic drugs, Montenegro has acceded to the relevant UN conventions: the 1961 Single Convention on Narcotic Drugs, the 1972 Protocol Amending the Single Convention on Narcotic Drugs, the 1971 Convention on Psychotropic Substances, the 1988 United Nations Convention on the Fight against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the UN Convention against Transnational Organized Crime and Protocols thereto, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and Financing of Terrorism.

Montenegrin legislation is aligned with Joint Action 96/750/JHA concerning the approximation of the laws and practices of the Member States of the European Union to combat drug addiction and to prevent and combat illegal drug trafficking. Legislation is also aligned with the Council recommendations on improving investigation methods in the fight against organised crime linked to organised drug trafficking (2002/C 114/01), and on the prevention and reduction of health-related harm associated with drug dependence (2003/488/EC).

Social aid services are included in the current Drug Strategy framework. Firstly, in the National Strategy there is one of the main principles on which the Strategy is based - the Principle on protection of human rights. This principle means that the right of every person to decent, fair and professional treatment and help in case of illness or any other threatening social situation is guaranteed. This principle is elaborated in details through the Strategy.

NGOs that work in area of drug prevention and other issues related to drugs were fully involved in the process of the creation of the Strategy. Besides that, there is a continuity of involvement of the NGO sector in the consultation process, during the preparation process of the legal framework and the activities related to the prevention of drugs.

Every key issue in the current Strategy is considered, bearing in mind that in the process of its creation all stakeholders from Government to civil society were included. The process of evaluation of the implementation of the Strategy is in progress, after which it will be concluded if there are some missing issues, which will be recognized in the new Strategy.

2. National Substantive Criminal Law

A Misdemeanor is a violation of public order for which the penalty prescribed is determined by the Law of misdemeanors. A Criminal offence is an act laid down by law as a criminal offence, which is unlawful and which has been committed with a guilty mind. An act committed in legitimate self-defense is not deemed a criminal offence. Legitimate self-defense is such defense which is absolutely necessary for a perpetrator in order to avert a concurrent or imminent unlawful attack on his/her or someone else's asset. An offender who has exceeded the limits of legitimate self-defense may be punished more leniently and if s/he has exceeded the limits due to strong excitement or fear caused by an assault, and s/he may also be remitted of penalty.

Criminal sanctions are:

1. Sentences;
2. Warning measures;
3. Security measures and
4. Corrective measures.

Types of sentences envisaged by the Criminal Code are:

1. A forty-year imprisonment;
2. An imprisonment sentence;
3. A fine;
4. Work in public interest.

Custodial sentences are served in prisons according to the Law on the Execution of Criminal sanctions. **Conditional release:** A Convicted person who has served two thirds and exceptionally half of the imprisonment sentence or of the forty-year imprisonment sentence may be released if in the course of serving the sentence there-of s/he has improved so that it is reasonable to expect that s/he will behave well while at liberty and, particularly that s/he will refrain from committing criminal offences until the end of the time the imprisonment sentence had been imposed. While assessing whether to release the convicted person, his/her conduct during the period of serving the sentence, performance of work tasks appropriate to his/her working abilities, as well as other circumstances indicating that the purpose of sentence has been achieved shall be taken into consideration.

A **fine sentence** can not be less than two hundred euros and more than twenty thousand euros, and for criminal offences committed out of greed it may not exceed one hundred thousand euros.

A **fine imposed** as the principal sentence shall be imposed in the following amounts:

1. Up to two thousand euros for criminal offences punishable by an imprisonment sentence not exceeding three months;
2. From four hundred euros to four thousand euros for criminal offences punishable by an imprisonment sentence not exceeding six months;
3. From six hundred euros to eight thousand euros for criminal offences punishable by an imprisonment sentence not exceeding one year;
4. From eight hundred euros to sixteen thousand euros for criminal offences punishable by an imprisonment sentence not exceeding two years;
5. At least one thousand two hundred euros for criminal offences punishable by an imprisonment sentence not exceeding four years;
6. At least one thousand two hundred euros for criminal offences for which a fine is envisaged as the sole sentence.

If a convicted person fails to pay a fine within the deadline set thereof, the court shall replace the fine by an imprisonment sentence by converting each initiated twenty-five euros of the fine into one day of imprisonment provided that the imprisonment sentence may not last longer than six months, and if the fine imposed exceeds the amount of nine thousand euros, the imprisonment sentence may not be longer than one year.

Instead of an imprisonment sentence, an unpaid fine that does not exceed the amount of two thousand euros may be replaced by a sentence of work in public interest, with the consent of the sentenced person, so that eight hours of community service shall be imposed for each initiated twenty-five euros of the fine, provided that the community service may not be longer than three hundred and sixty hours.

If a convicted person pays only one part of the fine, the court shall replace the remaining part by proportionally converting it into an imprisonment sentence, and if a convicted person pays the remaining part of the fine, the enforcement of the imprisonment sentence shall be discontinued.

By implementing the commitments taken from international instruments, generally accepted international standards and solutions in the field of drugs were incorporated by Montenegro into its national system. In terms of criminal law, Title

24 - Crimes against Human Health, the Criminal Code of Montenegro provides for two criminal offenses: unauthorized production, keeping and releasing into circulation of narcotic drugs (Article 300) and enabling the use of narcotic drugs (Article 301).

The criminal offence of unauthorized production, keeping and releasing into circulation of narcotic drugs referred to in Article 300 is committed by anyone who unlawfully produces, processes, sells or offers for sale, or who for the purpose of selling buys, keeps or transports or mediates in the selling or buying, or in some other manner unlawfully releases into circulation substances proclaimed to be narcotic drugs or plants containing such substances. The imprisonment sentence stipulated for this criminal offence ranges from two to ten years. Anyone who brings into Montenegro substances proclaimed to be narcotic drugs or plants containing such substances with the intention to commit the offence referred to in paragraph 1 of this Article, shall be punished by an imprisonment sentence for a term of two to twelve years. Where the perpetrator of the offence referred to in paras. 1 and 2 of this Article organized a network of dealers and middlemen, s/he shall be punished by an imprisonment sentence for a term of three to fifteen years. That sentence shall also be imposed on the one who sells, offers for sale or gives narcotic drugs without fee for further release into circulation to a minor, mentally ill person, a person who has a temporary mental alienation, a person having severe intellectual disabilities or a person getting treatment for narcotic drugs addiction, or who releases into circulation a narcotic drug mixed with a substance which may lead to serious impairment of health, or who performs an act referred to in paragraph 1 of this Article in an educational institution or in its immediate vicinity, or in an institution for the enforcement of criminal sanctions or public facility or at a public event, or if the offence referred to in paras. 1 and 2 of this Article is committed by a person in an official capacity, physician, social worker, priest, teacher or instructor by abusing their position or anyone who uses a minor for the commission of that act.

Article 300 paragraph 5 stipulates that the perpetrator of the offence referred to in paras. 1 to 4 of this Article who reveals who s/he gets the drugs from may be released from the penalty.

Anyone who unlawfully makes, acquires, possesses, transports or gives for use equipment, material or substances knowing they are intended for producing narcotic drugs shall be punished by an imprisonment sentence for a term of six months to five years. In this Article the Code also stipulates the measure of mandatory confiscation and seizure of narcotic drugs and the means used for their production.

The criminal offence of enabling the use of narcotic drugs (Article 301) is committed by a person who instigates another person to take narcotic drugs or gives narcotic drugs to another for his/her or someone else's use, or places at someone's disposal premises for taking narcotic drugs, or in some other manner enables another to take narcotic drugs. The sentence stipulated for this offence ranges from six months to five years. Where an offence referred to in paragraph 1 of this Article was committed against a juvenile, mentally ill person, person with temporary mental alienation, person having severe intellectual disabilities or a person getting treatment for narcotic drugs addiction or against a number of persons, or where it is committed in an educational institution or in its immediate vicinity, or in an institution for the enforcement of criminal sanctions or in a public facility or at a public event, or if the offence in question is committed by a person in an official capacity, physician, social worker, priest, teacher or instructor by abusing their position, the offender shall be punished by an imprisonment sentence for a term of two to ten years. In this Article as well, the Code stipulates the measure of mandatory confiscation and destruction of narcotic drugs.

3. National Drug Laws and Institutions

Criminal Code of Montenegro, under Chapter 24, prescribes criminal offences against human health. This chapter of the Criminal Code provided for the two criminal offences related to drug abuse include: unauthorized production, keeping and releasing for circulation of narcotics (Article 300 of the Criminal Code), and the facilitation of consumption of narcotics (Article 301 of the Criminal Code). Amendments to the Criminal Code of May 2010 prescribe seven paragraphs to Article 300. The main form refers to a number of alternative sets of actions which may comprise unauthorized production, processing, selling or offering for sale the substances or preparations pronounced to be narcotics, or actions of anyone who for the purpose of selling buys, keeps or transports the substances or preparations pronounced to be narcotics. Mediation in selling or buying drugs, and any other unauthorized distribution of drugs is also criminalized. The concept of most of the above mentioned acts of offence is not in dispute. Most problems in practice refer to the act of keeping drugs for sale that has to be distinguished from the act of keeping drugs for one's own use. The most important criterion in practice is the amount and type of the drug, the way of keeping and packaging it, which may indicate the fact whether the person who keeps it is a drug addict or not.

Objects of such criminal acts are substances or preparations proclaimed to be narcotics. Narcotics are substances which may have natural or synthetic origin. Drug use may create a state of dependence that can cause damage to health or otherwise jeopardize the integrity of the individual in physical, psychological and social terms.

As a result of an act referred to in Article 300 Paragraph 1, the offender shall be punished by an imprisonment sentence of two to ten years.

Paragraph 2 refers to a qualified form of a criminal act. Until the entry into force of Amendments to the Criminal Code of May 2010, whether the unlawful bringing of narcotics into Montenegro should refer to the basic offence from Paragraph 1 or it should be treated as a grave offence was in dispute. However, it is clear now that the criminal act which refers to the basic offence- unlawful bringing into Montenegro of substances or preparations pronounced to be narcotics- is qualified as a grave offence referred to in paragraph 2 only if it is performed in order to commit an offence referred to in paragraph 1.

As a result of an act referred to in Article 300 Paragraph 2, the offender shall be punished by an imprisonment sentence of two to twelve years.

If an act as of Paragraph 1 of this Article is committed by the offender who organized a network of dealers and mediators, which is qualified as a grave offence referred to in Paragraph 3, the perpetrator shall be punished by an imprisonment sentence of three to fifteen years.

A Grave offence, referred to in Paragraph 4 is introduced by the Amendments to the Criminal Code of 2010. Actually, it has several forms. The first form of this criminal act refers to anyone who sells, offers for sale or in some other way releases for circulation without compensation the substances or preparations pronounced to be narcotics in relation to anyone especially vulnerable when it comes to narcotic drugs- a minor, mentally ill person, person suffering from a temporary mental disorder, a severely mentally retarded person or person treated for drug addiction. Furthermore, a grave offence also refers to anyone who unlawfully releases for circulation narcotics mixed with substances that can cause severe health damage. A place where the offence was committed may serve as a qualifying circumstance. If an act referred to in Paragraph 1 is committed within a correctional or educational institution, or in the vicinity of such Institution, or within institutions for the execution of criminal sanctions, or in a public facility or during public events, it will be qualified as a grave offence. Finally, the qualifying circumstance which will determine whether the criminal act committed is a grave offence or not is related to the personal role of the perpetrator. If an act referred to in Paragraphs 1 and 2 is committed by an official, a doctor, a social worker, a priest, a teacher or an educator by using their authority, or a person who uses minors for the commitment of a certain criminal act, it shall be considered as a grave offence.

As a result of an act referred to in Paragraphs 1 and 2, the offender shall be punished by an imprisonment sentence of three to fifteen years.

A perpetrator of acts referred to in Paragraphs 1 to 4 who disclose the person from whom h/she obtains the drugs may be released from punishment, according to Paragraph 5 of this Article.

Certain preparations for an act referred to in Paragraph 1 are incriminated in Paragraph 6, which says that anyone who unlawfully makes, acquires, possesses or gives for use equipment, materials or substances which are known to be intended for producing narcotics, shall be punished by an imprisonment sentence of six months to five years.

Paragraph 7 refers to the obligatory imposition of security measures including confiscation of narcotics and substances used for their production, as well as liability for the destruction of narcotic drugs.

The legal characteristics of a criminal offence from Article 301 of the Criminal Code, referring to anyone who enables another to take narcotics, incriminate several criminal acts.

The act of commission refers to inducing another to take narcotics, which means that this is an act of incitement. Other forms of this criminal act refer to: anyone who gives narcotics to another for his/her or someone else's use, or places at someone's disposal premises for taking the narcotics, or in some other way enables another to take narcotics.

For the basic form of this offence, the perpetrator shall be punished by an imprisonment sentence of six months to five years.

Before the entry into force of the Amendments to the Criminal Code of May 2010, the qualified form of the criminal act existed in three cases: if an act is committed against a minor, or more persons, or has caused extremely harmful consequences. However, instead of vague formulation that the act "has caused extremely harmful consequences", Amendments to the Criminal Code of May 2010 provide a number of qualifying circumstances that are the same as for the criminal offence referred to in Article 300 Paragraph 4. Except against a minor or more persons, the qualified form of a criminal act also includes cases if it is committed against a mentally ill person, a person suffering from a temporary mental disorder, a severely mentally retarded person or a person treated for drug addiction. If an act is committed within a correctional or educational institution, or in the vicinity of such Institution, or within institutions for the execution of criminal sanctions, or in a public facility or during public events, it will be qualified as a grave offence. If a criminal act is committed by an official, a doctor, a social worker, a priest, a teacher or an educator by using their authority, or a person who uses minors for the commitment of a certain criminal act, it shall be considered as a grave offense. As a result of this act, the offender shall be punished by an imprisonment sentence of two to ten years.

Paragraph 3 refers to obligatory confiscation and destruction of narcotics and substances used for their production.

Personal drug use is not sanctioned by the Criminal code of Montenegro, nor is drug possession for personal consumption.

In the framework of the description of criminal acts related to drug misuse, the Criminal Code of Montenegro does not classify individual drugs.

It is forbidden to use, produce, circulate or possess drugs for personal use or other means for drugs production, as well as growing plants that can be used for drug production, unless it is stated differently by the Law on combating drugs abuse.

It is strictly forbidden to issue any medications that contain drugs to persons younger than the age of 18.

The Law on precursors for narcotic drugs (Official Gazette of Montenegro, 83/09). This Law regulates the monitoring and control of manufacturing and placing on the market of Substances which can be used in the manufacture of narcotic drugs and psychotropic substances in order to discourage their diversion or use for illicit purposes, as well as to protect people's lives and health and environment from the harmful effects of precursors.

The Law on combating narcotic drugs, which was adopted by the Parliament of Montenegro (Official Gazette of Montenegro 28/11.). This Law sets out the measures for preventing the use of illicit drugs and for dealing with users of illicit drugs. The measures cover informational, medical, educational and consulting activities, medical treatment, measures for rehabilitation, social security services and programs for the resolution of social problems related to the use of illicit drugs and monitoring of the consumption of illicit drugs which will be carried out by the competent ministries. The Act set out the conditions under which the production of and trade in illicit drugs are permitted, and the possession of illicit drugs. By the adoption of this Law the national legal framework for the field of drugs was completed.

The Criminal Code of Montenegro does not proclaim drug addiction as a mitigating or an aggravating circumstance.

It often happens that drug addicts, except for criminal offenses related to drug abuse, are perpetrators of other crimes, mostly in the area of crimes against property, theft and grand theft, which they use as a source for buying drugs. The Criminal Code does not recognize drug addiction as a mitigating or an aggravating circumstance. The Court takes addiction into account in the context of the personal characteristics of the offender. If addiction is founded *in concreto*, the court shall pronounce mandatory treatment to an offender who has committed a criminal of-

fence because of addiction to narcotic drugs and if there is a serious danger that s/he might continue committing criminal offences due to this addiction. If this measure is pronounced alongside the imprisonment sentence, it can last longer than the pronounced sentence but its total duration cannot be more than three years.

There is no difference between 'soft' and 'hard' drugs in regards to the offences in the Criminal Code of Montenegro.

Criminal acts in the area of drugs are defined in articles 300 and 301 of the Criminal Code of Montenegro, and the actions that are sanctioned by Article 300 are the manufacturing and marketing of drugs. For the basic offense under this section a sentence of 2-10 years in prison is prescribed, for paragraph 2 - the importing of drugs into Montenegro in order to continue selling stipulates a sentence of 2-12 years, and paragraph 3 - selling drugs to a group of dealers and brokers or for organizing such groups stipulates a sentence of 3-15 years.

Article 301 refers to the crime of allowing consumption of drugs which means it is punishable to give drugs to another person for use or enjoyment or to facilitate drug use in some different way (by providing drug paraphernalia, giving a space for drug use or other ways of allowing the enjoyment of drugs). For this offense the charge is punishable by 6 months to 5 years, or if it is a particularly serious case, when the drug is given for the enjoyment of a minor, or when extremely serious consequences arise for the person who uses drugs concerning his life and health, or it results in the death of a person, they may face a charge - imprisonment of 2-10 years. When it comes to the height of punishment, it can be concluded that Montenegrin legislation complies with European legislation, as well as the recommendations and guidelines of EU.

There is no difference between small and big drug dealers. Article 300, paragraph 3, provides a qualified form of primary offense, which is related to the organizers, middleman or agent in the production and sale of drugs.

The division could be made if it comes to crime in the area of narcotics abuse committed in an organized manner as in the creation of a criminal organization, where the responsibility of the organizer of a criminal organization and members of criminal organizations is clearly articulated. Otherwise, for underlying crime a wide range of prescribed sentences is available, which leaves the possibility that the court, having found all the circumstances of the offense, individualizes a criminal sanction, as a sentence is from 2 to 10 years of prison.

Articles 300 and 301 of the Criminal Code, prescribe that the crime perpetrators are responsible for committing an offense. In principle, drug related offences fall within the jurisdiction of Higher Courts (First instance) and Appellate Court (Sec-

ond instance). If there is information about the execution of related offenses in another country, it could be treated as an aggravating circumstance.

4. Drug Law Enforcement in Practice

For the basic offense under article 300 in this section a sentence of 2-10 years of imprisonment is prescribed. For the criminal offence from paragraph 2 - the importing of drugs into Montenegro in order to continue selling a sentence from 2-12 years of imprisonment is stipulated, and for paragraph 3 - selling drugs to a group of dealers and brokers or for organizing such groups stipulates a sentence of 3-15 years of imprisonment.

For the basic offense under article 301 a punishment from 6 months to 5 years of imprisonment is prescribed.

The Police gather information and evidence on persons who have committed offenses under articles 300 and 301. Drug users are not arrested and are not criminally prosecuted because drug use or possession of drugs for personal use is not a criminal offense.

Of all the plants that can be used for drug production, poppy and hemp are allowed to be grown, for special purposes and under conditions described by this law. Plants cultivated by individuals that can be used for drug production, have to be destroyed. Any person, who is under any circumstances the owner of land with personally cultivated plants, is obliged to destroy them. According to the Law if a person does not destroy the personally cultivated plants, the state administration unit which is in charge of sanitary measures, will destroy these plants at the owner's expense. The police have no big problems with unauthorized cultivation because it is a rare case in Montenegro, because the drugs are smuggled in from other countries, and production in Montenegro is almost negligible.

Article 30 of the Constitution of Montenegro envisages the basic principles related to deprivation of liberty such as the requirement of a judicial decision, the duration of detention and the right for appeal. Basic grounds for deprivation of a person's liberty as mentioned in the European Convention are also contained in the Criminal Procedure Code (CPC). Among the measures that can be taken against the defendant to ensure his/her presence in the criminal proceeding and its undisturbed conduct is detention, which is, however, the most severe measure foreseen by the CPC. Namely, according to Article 147 of the CPC, detention can be ordered only if the same purpose of the procedure cannot be achieved by any other measure and it is necessary for the undisturbed conduct of the criminal procedure.

Additionally, it is the duty of the authorities involved in the criminal procedure to proceed with exceptional urgency when the person is in detention. According to the mentioned Article of the CPC, in the course of the procedure, detention shall be terminated as soon as the reasons for which it has been ordered cease to exist.

While deciding on ordering detention, each reason foreseen by the law has to be explained and justified by facts. Further, the evolution of the situation has to be considered and as a result the reasons originally used to justify the detention may change. Therefore, depending on the circumstances, the detention may be extended or cancelled. In any way, it is necessary to review periodically the reasons for ordering detention, and terminating or prolonging it, in accordance with the facts and evolution of the situation.

When it comes to mandatory treatment, detention can also be used as a security measure imposed by the court.

According to the Criminal Procedure Code the police may only collect information, and the Prosecutor may question and converse with the suspect. The police can only make an evaluation, if it is asked for by the Prosecutor, but up until now this has not happened in practice. When collecting information the police are not able to accurately determine whether there is dependence on drugs and the degree of dependence, except on the basis of the testimony of the person and his/her behaviour. When there is a need for a precise determination of the fact whether the person uses drugs, an analysis of a sample of blood can be made, but on a voluntary basis.

The Police have the authority to deprive the offender of freedom and keep him/her for not longer than 12 hours, after which the person must be handed over to the competent public prosecutor, with the criminal charge.

Under the Criminal Code, the drug is prescribed as a criminal offense in Article 300, and the struggle to combat this crime is associated with measures for combating organized crime, through the prosecution of criminal offenses, if there are qualifying conditions.

According to article 300 of Criminal Code of Montenegro - unofficial production, possession and trafficking of drugs, in 2011, resulted in 219 verdicts.

According to article 301 of Criminal Code of Montenegro - facilitating the use of drugs, in 2011, resulted in 15 verdicts.

As punishment, the offender may be imposed with the measure of mandatory treatment of drug addicts if the crime was committed due to dependence on the use of narcotic drugs and if there is a serious risk that he will commit a crime in a future period.

A security measure is always implemented first - medical treatment or other measure, which is included in the length of the penalty for a crime, and only after that person is sent to prison during the period that is eventually left after the treatment, or other security measure.

5. Sentencing Levels and the Prison Situation

According to the official Report of the Ministry of Justice, 1,328 persons are incarcerated within the prisons in Montenegro. This number represent 0,21% from total number of citizens of Montenegro.

Organizational units of the Institute for execution of criminal sanctions are the prisons in Podgorica and Bijelo Polje and the Prison for short sentences in Podgorica.

By the end of last year 17,4% of the total number of prisoners were incarcerated for drug-related offences.

In 2009: 222 - 23%

In 2010: 206 - 20%

In 2011: 174 - 17,4%

In 2012: 159 - 20%

In 2011, according to Article 300 of Criminal Code of Montenegro - unofficial production, possession and trafficking of drugs - there were 219 verdicts.

According to article 301 of Criminal Code of Montenegro - facilitating the use of drugs - in 2011, there were 15 verdicts.

Two prosecution offices are in charge of the criminal prosecution of drug-related law offenders - the Higher State Prosecutor in Podgorica and the Higher State Prosecutor in Bijelo Polje. In these two institutions, evidence (such as evidence on criminal charges, investigative procedures, sentences) is kept on individuals reported by the police to the prosecutor's office. This data is collected both electronically and on paper.

In 2010 we can speak of a downward trend in terms of drug related criminal offences, such as - unauthorized production, the keeping and releasing for circulation of narcotics and the facilitation of consumption of narcotics. The total number of reported persons for the alleged criminal offences in 2010 was 26.8% lower than in 2009, while the number of reported persons in 2009 compared to 2008 was 23.8% lower. The total number of reported persons in 2008 was 10.2% lower in comparison to 2007.

In 2010 the total number of reported offences was 10,033, of which 262 were reported for offences under Article 300 and Article 301 of the Criminal Code. Requests for the investigation were initiated against 2,923 persons, of which 259 were for offences according to Article 300 and Article 301 of the Criminal Code. 5,588 persons were convicted, of which 272 persons were convicted according to the Article 300 and Article 301. Judicial decisions have been made against 7,014 persons, of which 343 are for offences under the Article 300 and Article 301 of the Criminal Code.

The number of prisoners has decreased by approximately 160 people compared to the previous year (2011 compared to 2010). Also, spatial capacity to accommodate prisoners has increased by about 100 places, and the previous problem of the inability to receive all of the prisoners, in 2011 was almost solved. In 2011, only 42 prisoners were awaiting execution of criminal sanctions due to the inability of prisons to accommodate them. It is expected that they will be called on to execute their criminal sanctions very soon.

A survey was conducted on a voluntary basis for HIV testing and the results are pending. Persons infected with HIV or HCV can receive treatment at the Clinic for Infectious Diseases in the Clinical Centre of Montenegro.

The Health Centre provides a substitution therapy with methadone.

The Institute for Execution of Criminal Sanctions (IECS) has treated 37 convicted persons who were drug users in the year 2009, or 10% of the total number of treated persons. There were 6 prisoners on methadone treatment during the year 2009, and 8 in 2010. During the detention of persons, or at the time of their coming to serve the sentence, in the first mandatory medical examination by the physician from the Institute for Execution of Criminal Sanctions, those persons indicated in the history of allegations that they were undergoing methadone treatment. Users have an obligation to put their signature after extending therapy, under the presence of a physician. IESC is open for cooperation with the civil sector, and therefore this Institution is cooperating with some NGOs.

After serving sentence, drug users may be sent to an institute for rehabilitation. A Strategy for social reintegration doesn't exist in Montenegro. There are no available statistical data for recidivism of offenders sentenced for drug-related crimes.

II. Initiatives for drug law reform undertaken by the government and/or the parliament in the last 10 years

Montenegro became an independent state on May 21, 2006. In December 2010 the European Council agreed to grant Montenegro the status of a candidate country

for membership of the European Union. The accession negotiations with Montenegro started in Brussels on 29th June 2012. After the European Council had endorsed the decision of the General Affairs Council, the Intergovernmental conference with Montenegro took place in Brussels under the Danish Presidency and the process was officially launched. Most of the initiatives in the period before independence have been undertaken by the Government of Serbia and Montenegro. In the last couple of years (after independence), Montenegro has made huge efforts to establish new policy and legislative frameworks in the field of drugs. In the forthcoming period of negotiations in the process of EU integration, Montenegrin legal and institutional frameworks in the field of drugs will be completely aligned with EU standards and criteria.

III. Standpoints of relevant stakeholders on drug law reform and proposals and recommendations for further research and advocacy work

During research and numerous meetings with relevant stakeholders the following recommendations for further policy improvement and advocacy work were proposed:

1. The compliance of Montenegrin legislation (Law on prevention of drug abuse) with the Recommendation No. 419 of the European Council from 2001 in the area of sample exchange of controlled substances;
2. The adoption of a new National strategy, as well as the Action plan for its implementation, and afterwards, the conducting of continuous monitoring of planned measures;
3. The strengthening of the capacities of police and prosecutorial departments dealing with drug supply reduction, especially in international investigations. It is necessary to sign an operational agreement with Europol that would provide for an exchange of all types of data and determine the representation of Montenegro in EUROPOL;
4. The establishment of a Commission for drugs as an expert body gathering representatives of state institutions. The Commission would examine the issue of drugs in the area of prevention and supply reduction, and produce reports and direct the work of state institutions that are in charge;
5. The further strengthening and supporting of prevention mechanisms through the activities of local offices dealing with the prevention of drug abuse, state institutions and NGOs and working on raising awareness of citizens on the risks of drug abuse, especially among minors and parents;

6. The continuous implementation of activities on the strengthening of the rehabilitation system of addicts, as well as persons that have served their sentences for criminal acts related to drugs, with the aim of their re-socialization and reintegration in the society.
7. The encouragement of NGOs to realize programs of free legal aid for drug addicts in the field of protection of their basic human rights and freedoms in judicial and administrative proceedings in Montenegro.
8. The consideration of possibilities of lowering the financial participation of the clients in rehabilitation and re-socialization centres for users of psychoactive substances.

Country Report Romania

Country Report Romania

by Ecaterina Balica¹

Andrea Păroșanu²

I. The current national drug strategy and legislation in Romania

1. National Strategy on Drugs

The first National Drug Strategy was implemented in Romania in 2003-2004. After evaluation of the results of its implementation, a second National Anti-drug Strategy was developed for the period 2005-2012. (Currently, the government is working on the new National Strategy on Drugs 2013-2020).

The National Anti-drug Agency in cooperation with both public institutions as well as representatives of the civil society (NGOs, the Romanian Patriarchy and the Roman Catholic Church)³ played a coordinating role in the framework of the National Anti-drug Policy for the implementation of the Anti-drug Strategy for the period 2010-2012.

2. Ministries and Departments involved in drug policy and their task/role National Anti-drug Agency (NAA)⁴

NAA is the national coordinator in the fight against illicit drug trafficking and consumption. Under the National Action Plan, the National Anti-Drug Agency is involved in achieving both general and specific objectives. These objectives are listed in the NAA and subsidiary departments within the Agency: Anti-Drug Prevention, Assessment and Counseling Centers (CPECA), National Centre for Training

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3. Action Plan for the implementation of the National Anti-Drug Strategy for the period 2010-2012, approved by Governmental Bill No. 1369 from December 23, 2010 available at <http://www.ana.gov.ro/hg1369.php>

4. According to the National Action Plan for the implementation of the National Anti-Drug Strategy for the period 2010-2012, approved by Governmental Bill No. 1369 from December 23, 2010 available at <http://www.ana.gov.ro/hg1369.php>

and Research in Addictions (CNFCA). Thus, NAA carries out, through its subsidiary departments, *prevention activities in schools, prevention within the family and community based prevention*. For this purpose, NAA is involved in initiating training courses for teachers, educators, parents and other groups of people. Also, NAA conducts, in partnership with other institutions, prevention programs at national, regional and local levels.

NAA participates in achieving other objectives too: *medical, psychological and social assistance; the reduction of risks and social reintegration*. For this purpose, it participates in the implementation of programs and policies designed to reduce risks for drug users both within the care system, outside the system and inside the prison system. NAA carries out programs aimed at developing an integrated system for medical, psychological and social assistance as well as social reintegration of drug users.

NAA is involved in supply and demand reduction, international cooperation, informative research and assessment as well as institutionally coordinated activities.

NAA ensures the implementation of the “Romanian Anti-Drug Grand Alliance” (MARA) Program which represents Romania in international drug related activities, coordinates and monitors supply and demand reduction programs, draws up national reports and sends them to specialized institutions and draws up assessment reports on how the National Anti-Drug Strategy is implemented.

Ministry of Administration and Interior - The Ministry of Administration and Interior is involved, through its subsidiary departments (General Inspectorate of the Romanian Police, General Inspectorate of the Romanian Gendarmerie, National Office for Prevention and Control of Money Laundering, Directorate for Combating Organized Crime, General Directorate for Intelligence and Internal Protection, General Directorate of Bucharest Police), in activities to prevent drug use, activities for drug supply reduction, informative research and assessment activities, training programmes for police officers on measures and services for reducing risks associated with drug use, participation in providing individual medical and psychological care, programmes on social intervention and social reintegration, and international cooperation activities.

Public Ministry - The Public Ministry participates in activities for supply reduction and international cooperation.

Ministry of Justice

The Ministry of Justice participates through the National Administration of Penitentiaries and the Probation Directorate in activities stipulated in the National Action Plan for the National Anti-Drug Strategy.

National Administration of Penitentiaries - participates in activities for the initial training of the socio-educational personnel, projects to prevent drug use, risk reduction activities, activities for medical, psychological, social assistance and social reintegration, activities for the individualization of medical, psychological and social assistance.

Probation Directorate - participates in activities for medical, psychological, social assistance and social reintegration, activities for the individualization of medical, psychological and social assistance, and in international cooperation activities.

Ministry of Education, Research, Youth and Sports

This is involved in drug prevention activities: training of teachers, school counselors and other staff, carrying out prevention programs in schools and universities (e.g. the “Health education in schools”), national information campaigns on risk and protective factors for drug use, drug prevention projects in rural areas, drug prevention programs among athletes, studies on drug user profiles, the implementation of quality standards for prevention programs. At the same time, the ministry participates in activities concerning medical, psychological and social assistance as well as the social reintegration of drug users.

The Ministry is also involved, through the National Authority for Sport and Youth, in activities towards developing a database concerning the prevention of drug abuse within the national school curricula.

Ministry of Labour, Family and Social Protection

The Ministry is involved in activities concerning drug prevention: it participates in programs and projects for drug use prevention in schools, families and communities; participates in training programs for specialists from the child protection system and participates in carrying out studies and intervention strategies at work. Also, it is engaged in activities concerning medical psychological and social assistance, and social reintegration (e.g. it ensures the provision of services such as day centers, therapeutic communities, social service shelters, etc.).

Ministry of Health

This participates in programs to prevent drug abuse by carrying out informative/educational projects concerning alcohol and tobacco use at national, regional and local levels. It implements quality standards for prevention programs. It participates in risk reduction projects within the health care system, outside the system, as well as inside detention and prison systems. It is involved in activities regarding medical, psychological and social assistance as well as social reintegration,

concerning the individualization of medical, psychological and social assistance. It ensures the drug user's access to medical assessment services. It provides information and training for physicians on measures and services for risk reduction, it participates in the elaboration of the national curricula as regards risk reduction, it develops studies on risk behaviors associated with drug use (HIV, hepatitis and sexually transmitted diseases).

Ministry of Public Finance - The Ministry of Public Finance is involved in activities concerning drug use prevention, and medical, psychological and social assistance.

Local public administration - The Local public administration is involved in prevention activities conducted at a local level (school, family, community). It participates in national and local informative campaigns regarding the risks associated with drug use. Local authorities should work with other institutions to provide services such as day centers, therapeutic communities and protected housing.

Professional Associations: College of Physicians, College of Psychologists, College of Pharmacists, National College of Social Workers - These participate in activities concerning medical, psychological, social assistance and social reintegration of drug users.

NGOs

Within the Action Plan there are several references to non-governmental organizations. NGOs appear both as partners as well as in authority. There are references to NGO involvement in activities for drug use prevention and risk reduction, activities for medical, psychological, social assistance and social reintegration, without further elaboration concerning the type of NGOs.

NGOs are involved in programs concerning drug abuse prevention in prisons, in rural areas, clubs, and discos. They participate in national campaigns on informing the public and changing the perception of drug users. They participate in carrying out training courses for prison staff.

NGOs carry out activities to reduce risks within the health care system, outside the system and inside detention and prison systems. They provide services for risk reduction inside centers and in society as a whole. They participate in carrying out studies regarding risk behaviors associated with drug abuse (HIV, hepatitis and sexually transmitted diseases).

They provide services for medical, psychological, social assistance and social reintegration inside the Day Centers for social reintegration of drug and alcohol users,

therapeutic communities and shelters within the social services. They participate in the implementation of the individualized medical, psychological and social intervention (case management) at a consumer level.

They participate in the elaboration of the national curricula designed for training in the field of reducing risks associated with drug use.

There are situations where some indications regarding the type of NGOs are made:

- a) “NGOs with expertise in the field of phone services type help line” are responsible for the implementation of a national telephone system INFO LINE;
- b) “NGOs from the region” that carry out informative/educational projects on alcohol and tobacco use;
- c) “Local NGOs” which are involved in prevention projects conducted locally.

Romanian Patriarchy which is involved in carrying out some local/regional projects for drug abuse prevention.

Roman Catholic Church which is involved in carrying out some local/regional projects for drug abuse prevention.

Religious groups and organizations which is involved in carrying out some local/regional projects for drug abuse prevention.

Mass media which is involved in carrying out projects for the prevention of drug abuse at a local and national level.

National Audiovisual Council which participates in the development of national information campaigns to increase public awareness (designed to change attitudes towards drug users) and the realization of audio-video spots with anti-drug messages.

Private Service providers which are involved in the individualization of the medical, psychological and social intervention (case management) and the continuous professional training in the assistance services field.

The Superior Council of Magistracy which participates in outreach activities, research and evaluation.

The Romanian Center for HIV / AIDS which participates in the elaboration of the national curricula regarding reducing drug use risks.

3. International drug conventions ratified by Romania

Romania has ratified the following international conventions:⁵

1. *1961 Single Convention on Narcotic Drugs*, as amended by the Protocol of 1972
2. *1971 United Nations Convention on Psychotropic Substances*
3. *1988 Convention against Illicit Trafficking of Narcotic Drugs and Psychotropic Substances*
4. *WHO Framework Convention on Tobacco Control*, adopted in Geneva on May 21, 2003
5. *Police Cooperation Convention for South Eastern Europe*, adopted in Vienna on May 5, 2006
6. *Framework Decision 2004/757/JHA establishing minimum provisions regarding the constituent elements of criminal offences and penalties in the field of illicit drug trafficking*, adopted on October 25, 2004 by the JHA (Justice and Home Affairs) Council
7. *Decision 2005/387/JHA on the information exchange, risk assessment and control of new psychoactive substances*, adopted on May 10, 2005 by the JHA Council
8. *European Pact to combat international drug trafficking - stopping cocaine and heroin routes*, approved June 3, 2010 by the JHA Council
9. *European Pact against Synthetic Drugs*, adopted by the JHA Council 27-28.10.2011

4. Social aid services included in the Drug Strategy framework

The National Strategy contains specific references related to social services. The National Anti-Drug Strategy has as an overall objective the *II.2 Medical, psychological and social care, harm reduction and social reintegration*. Thus, with this objective in mind, social assistance services were also established to increase accessibility for drug users to integrated medical and psychological care.

5. As indicated on the NAA website (http://www.ana.gov.ro/legislatie_internationala.php accessed on 9.08. 2012) Romania has ratified the international conventions from point 1 to 5 inclusive. The information on the international conventions referred to in paragraphs 6 and 9 were sent to us by NAA on 08.08.2012.

The “Overall objective is⁶

Increasing accessibility by a qualitative and quantitative development of integrated medical, psychological and social services and measures, individually tailored through evaluation, planning, monitoring and suitable adjustment for each drug user, in order to break off drug use, to free from physical and/or mental addiction and/or reduce drug related risks, with the final aim of reintegrating drug users into society.”⁷

We noticed that this strategy also contains directions of action towards achieving the overall objective stability. These directions were put into operation in specific objectives listed in section II.2.B. *Medical, psychological, social assistance and social reintegration*.

“Overall objective B

Ensuring universal access for drug users and dependant drug users to the integrated programmes of medical, psychological and social assistance, by developing adequate programmes and policies for the general population, drug users and dependant drug users within the medical care system, beyond it and in penitentiaries, with a view to the drug users’ social reintegration and reinsertion.”⁸

NGOs are mentioned in the National Action Plan regarding the execution of the activities necessary for the objective II.2. A. *Harm reduction* and objective II.2.B. *Medical, psychological, social assistance and social reintegration*.

Overall objective II.2.B. *Medical, psychological, social assistance and social reintegration* has 10 specific objectives and NGOs are mentioned in 7 of these objectives:

- ”1. Developing an integrated, three-tier medical care system for drug users and dependant drug users, providing a resource network (following the pattern of the centres of excellence) and guaranteeing access for drug users and universal availability of these services;
2. Enhancing the availability of medical services (with respect to their diversity, multidisciplinary character and location in the territory) and adjus-

6. For further information see <http://www.emcdda.europa.eu/countries/national-drug-strategies/romania>

7. Romanian Strategy 2005-2012, p. 7 <http://www.emcdda.europa.eu/countries/national-drug-strategies/romania>

8. Romanian Strategy 2005 - 2012, p. 8 <http://www.emcdda.europa.eu/countries/national-drug-strategies/romania>

- ting them to the drug users' individual needs and to the type of drug use (single drug use or poly- drug use);
3. Developing necessary resources for active interventions too attract drug users who did not interact with the integrated medical care system nor are prepared for a behaviour change, and providing them with basic medical and social care;
 4. Customizing the medical, psychological and social interventions, based on multidimensional evaluation and case management, applied to drug users who interact with the medical care services in a coordinated framework;
 6. Ensuring and implementing the legal framework for the development and definition of the specific and specialized roles of 3 tier resources as a constituent and essential part of the public system of medical, psychological and social care for the rehabilitation and social reinsertion of drug users in outpatient units;
 9. Developing and implementing the standardization in the medical, psychological and social care system, thus allowing the monitoring and assessment of processes and their outcome.”⁹

5. National Substantive Criminal Law

The current Romanian Criminal Code does not differentiate between felonies and misdemeanours as offences. The law defines an offence as “an act provided in the criminal law, representing a social danger and committed in guilt” (Article 17 (1) Criminal Code).

There will still be no distinction in the new Criminal Code which is planned to be enacted in 2013. The draft Criminal Code slightly changes the definition and sets the following determination: “An offence is an act provided in the criminal law, committed in guilt, unjustified and attributable to the person who committed it (Article 15 (1) new Criminal Code).

The current Criminal Code provides for three categories of penalties for natural persons (?) (Article 53 Criminal Code):

- main penalties
- complementary penalties
- accessory penalties

9. Romanian Strategy 2005 - 2012, p. 8, <http://www.emcdda.europa.eu/countries/national-drug-strategies/romania>

Main penalties include:

- life imprisonment
- imprisonment from 15 days to 30 years
- fines from 100 RON to 50.000 RON.

Complementary penalties are divided into:

- the prohibition of the exercising of certain rights from one to 10 years
- military degradation.

The accessory penalty is the prohibition of certain rights stipulated by the law

(Article 64 Criminal Code). The Criminal Code further provides the main and various other additional penalties for legal entities. The main penalty is a fine from 2.500 RON to 2.000.000 RON (Article 53¹ Criminal Code). Security measures such as admission to a medical facility are also provided by the law.

Regarding minors, special provisions are applicable (Article 99 et seq. Criminal Code). Criminal responsibility starts at the age of 14 years. The age group of 14 and 15 year-olds is criminally responsible if juveniles commit a criminal act with discernment. 16 and 17 year-olds are fully criminally responsible. The Criminal Code sets out educational measures and penalties. Educational measures include reprimand, supervised freedom, admission to a rehabilitation centre or admission to a medical-educational institution. Penalties applicable to minors are imprisonment or a fine. Penalties are reduced by half for juveniles.

According to the new Criminal Code, still in draft form, the classification between main, complementary and accessory penalties will be maintained, without differentiating between natural persons and legal entities. In addition, additional penalties include publication of the judgement. Regarding juveniles, the new Criminal Code will unite the categories of educational measures and penalties under the term 'Educational Measures'. Educational measures are divided into custodial and non-custodial measures. The catalogue of non-custodial measures will be extended.

The Law on the Execution of Criminal Penalties (Law No. 275/2006), further completed and amended, provides the legal framework for custodial sentences. In addition, the Criminal Code sets general regulations for the execution of liberty depriving penalties. The law differentiates between the following treatments for the execution of imprisonment:

- maximum-security treatment
- closed treatment

- partially closed treatment
- open treatment

The execution of the penalty of imprisonment shall be carried out in prisons destined expressly for this purpose.

The Criminal Code provides for the opportunities for conditional release and conditional sentencing.

Conditional release (Art. 59 et seq. Criminal Code) from prison is applicable for persons having executed at least two thirds of the penalty of imprisonment if convicted to a sentence up to ten years. Regarding persons convicted to a penalty of imprisonment exceeding ten years, conditional release is applicable if she/he has executed at least three quarters of the penalty. The persons have to be consistent in their work, well-disciplined and show serious improvement, taking into account any criminal antecedents.

In case one or more acts were committed in negligence, a person sentenced to imprisonment of up to ten years can be released conditionally after having executed at least half of the penalty. When the person was convicted to more than ten years imprisonment, they can be released conditionally after having executed at least two thirds of the penalty. The further conditions mentioned above are also to be met.

Persons convicted to life imprisonment can be released after serving 20 years, if the person is consistent at work, well-disciplined and shows serious improvement, taking into account any criminal antecedents. Male convicts over the age of 60 and female convicts over the age of 55 can be released conditionally after serving 15 years if the other conditions are also met.

Special provisions are applicable regarding offences committed as juveniles and with regard to older offenders. Persons convicted while a minor, when reaching the age of 18, as well as males convicted over the age of 60 years and females convicted over the age of 55 years can be released after serving one third of their sentence, if the penalty was up to ten years. In case the person was sentenced to a penalty of more than ten years imprisonment, conditional release is applicable after having executed at least half of the penalty.

The sentence is deemed executed if during the time interval between conditional release and the expiry of the penalty the offender has not committed a new offence.

The court can impose a conditional sentence to allow the convicted person to serve the sentence in a non-liberty depriving way. The law differentiates between a **conditional sentence** (“suspension of the execution of the penalty”) and the **conditional sentence under supervision** - probation (“supervised suspension of the

execution of the sentence”). A conditional sentence (Art. 81 Criminal Code) is applicable if the following conditions are met:

- the sentence is imprisonment of a maximum of three years or a fine
- the offender has not been previously sentenced to a penalty of imprisonment of more than six months, except for cases relating to the provision of Art. 38 Criminal Code (convictions that do not entail recidivism)
- it is deemed that the aim of the penalty will be achieved even without the execution of the penalty

The period for trial consists of the sum of the penalty to which two years are added.

The conditional sentence under supervision - probation (Art. 86¹ Criminal Code) is applicable in the following cases:

- the penalty applied is imprisonment of no more than four years
- the offender has not been previously sentenced to a penalty of imprisonment (except for cases relating to the provision of Art. 38 Criminal Code - convictions that do not entail recidivism)
- it is deemed that, taking into account the convicted person, his/her behaviour after commission of the act, that the pronouncement of the conviction is a warning for him/her and, even without the execution of the penalty the person will no longer commit offences.

The trial period for the conditional sentence is comprised of the sum of the penalty of imprisonment applied, to which two to five years are added, as decided by the court. During the trial period, the offender has to submit to certain supervision measures. The court may also impose obligations.

Regarding minors, the trial period includes the sum of the penalty of imprisonment, to which six months to two years are added. If the applied penalty is a fine, the trial period is 6 months (Art. 110 Criminal Code).

The court can order the execution of the penalty at a work place or at another location (community service), taking into account the seriousness of the act, the circumstances under which the act was committed, the offender’s professional and general conduct and the possibilities for him/her to be re-educated, and if it deems that there are sufficient reasons for the purpose of the penalty to be attained without deprivation of liberty (Art. 86⁷ Criminal Code). The following conditions must be met:

- the penalty applied is imprisonment of no more than five years
- the offender has not been previously sentenced to imprisonment for more than one year (unless the sentence is one of the cases provided in Art. 38 Criminal Code)

Community service may also be applied to juveniles.

The **new Criminal Code** extends the ability of the courts to refer offenders to re-integration programmes and introduces the **suspension of the application of a penalty**. The court can decide to postpone the sentence (Art. 83 new Criminal Code) if the penalty established is a term of imprisonment not exceeding two years or a fine, the convicted has not been previously sentenced to imprisonment (except for certain cases), he/she has agreed to do community service and the immediate application of the penalty is considered not to be necessary, taking into account the perpetrator, his/her behaviour before committing the act, the efforts to eliminate or mitigate the consequences of the offence and his/her chances for improvement. The probationary period is two years and refers to supervision measures and obligations. Among the directives a court can impose is also community service for a period of between 30 and 60 days. Following the probationary period, the court will not apply the penalty.

The court can order a conditional sentence under supervision if the penalty applied is imprisonment not exceeding three years and the other conditions, see above, are met (Art. 91 new Criminal Code). The period for probation is a term between two and four years. During the probationary period, the offender shall serve community work for a period of between 60 and 120 days. The court orders further supervisory measures and obligations.

The new Criminal Code provides for the conversion of a fine into community service, with the consent of the offender, if he/she is not able to pay the fine partly or in total (Art. 64 Criminal Code).

The provisions for conditional release (Art. 99 et seq. new Criminal Code) in the new Criminal Code are similar to the current legal provisions. In addition to the minimum term served in prison, the law provides that the offender exhibit good behaviour during the period of execution of the penalty, fully meet the obligation established by the court, and the court be convinced the offender improved his/her behaviour and can be reintegrated into society. The new law does not differentiate any more between female and male convicted persons and unites the age group for all at 60 years old in order to be able to apply for earlier release. The new draft law also introduces the opportunity to impose measures of supervision and obligations such as attending a social reintegration course, if the rest of the unexecuted penalty at the time of release is two years or more.

Drug-related offences are regulated by a special law to combat illicit drug use and trafficking. The Criminal Code no longer contains provisions for drug-related offences after the coming into effect of the special law.

6. National Drug Laws and Institutions

In 2000, the Law No. 143 regarding illicit drug use and trafficking¹⁰ came into effect. The law was further modified and amended in following years. Previously, drug use and trafficking was penalized by the Criminal Code (Art. 312¹¹). Law No. 143 regulates drug law offences and sentences.

The law was amended in 2004 by Law No. 522, introducing aspects regarding drug user care, harm reduction measures, distinct provisions on drug use prevention, etc. The law differentiates between drug use and drug addicted persons.

Law No. 339/2005 regulates the legal classification of plants, substances and preparations with narcotic and psychotropic content (it abrogated Law No. 73/1969 on the classification of narcotic substances and products). It provides for the judicial regime regarding cultivation, production, manufacture, storage, trade, distribution, transportation, possession, provision, transmitting, mediation, purchase, use and transporting of plants, substances and preparations defined as drugs in the annex of Law No. 143/2000.

Drug possession and trafficking are penalized. Law No. 143 specifies drug-related offences as cultivation, manufacture, experimentation, extraction, preparation, transformation, provision, sale, procurement and purchase, dealing, delivery under any title, transmitting, transportation, possession and other operations related to drug circulation (Art. 2 (1)).

In 2011, Law No. 194 on combating operations with products likely to have psychoactive effects, other than provided by current laws, entered into force. This law establishes the legal framework for preparations, substances, plants, fungi, or combinations thereof, likely to have psychoactive effects. It provides for measures to prevent and combat the use of these products in order to protect public health.

In Romania, drug use is not penalized, but the possession of drugs represents an offence. Although Law No. 143/2000 (Art. 27 (1)) provides that the use of the nationally controlled substances without medical prescription is prohibited in Romania, the law does not stipulate a sentence for drug use. Persons using drugs can be included, upon prior consent, in integrated care programs (Art. 27 (2)).

10. Law No. 143/2000 *on preventing and combating illicit drug trafficking and consumption*.

11. With the enactment of the Law No. 143/2000, Art. 32, the provisions of Art. 312 Criminal Code regarding narcotic products or substances are abrogated.

The law provides for distinct types of drugs as 'risk' or 'high risk' drugs. High risk drugs are listed in schedule III and risk drugs in schedules I and II of the annex of Law No. 143/2000.

Schedule I includes plants, substances and preparations containing forbidden psychotropic and narcotic substances, without any recognized interest for medicine.

Schedule II refers to plants, substances and preparations containing forbidden psychotropic and narcotic substances, with a recognized interest for medicine, subject to strict control.

The list in schedule III names plants, substances and preparations containing forbidden psychotropic and narcotic substances with a recognized interest for medicine, subject to control.

In addition, the annex in the law contained a list of precursors/substances frequently used in drugs manufacturing in schedule VI.

Regarding risk drugs, the Law No. 143 provides for the above mentioned drug law offences (Art. 2 (1)) imprisonment of three to 15 years and the prohibition of certain rights (Art. 2 (1)). For high risk drug related offences the law stipulates imprisonment of 10 to 20 years and the prohibition of certain rights (Art. 2 (2)).

Bringing risk drugs into the country or taking them out, as well as import and export, are punishable by imprisonment of 10 to 20 years and the prohibition of certain rights. In case the actions refer to high risk drugs, the law provides for imprisonment of 15 to 25 years and the prohibition of certain rights (Art. 3).

For cultivation, production, manufacturing, experimentation, extracting, preparing, processing, buying or possession of risk drugs for one's own consumption the sentence is imprisonment between six months and two years, or a fine. Regarding the mentioned actions involving high risk drugs, the sentence consists of two to five years imprisonment (Art. 4).

Making available a place for public access for illicit drug consumption or tolerating consumption in such spaces is punishable by imprisonment from three to ten years and prohibition of certain rights (Art. 5).

Deliberate prescription of high risk drugs by a physician without medical necessity is sentenced by one to five years imprisonment (Art. 6).

Administering high risk drugs to a person carries a sentence of imprisonment of one to five years (Art. 7).

The supplying of toxic chemical inhalants to a minor, in view of consumption, is penalized by imprisonment from six months to three years (Art. 8).

Regarding the organization, management or funding of the actions set out in Articles 2-8, the maximum limits of punishment shall be increased by three years (Art. 10).

Furthermore, encouragement of illicit drug consumption is punishable (Art. 11). If the actions stipulated in Articles 2, 6-8 and 11 resulted in the victim's death, the offender is sentenced to imprisonment from 10 to 20 years.

Regarding products likely to have psychoactive effects, Law No. 194/2011 provides for sentences concerning offences stipulated by the law.

Persons who, without authorization, perform operations with products knowing that they are likely to have psychoactive effects are to be sentenced with imprisonment from two to eight years and denial of certain rights. Persons performing such operations that should or could anticipate the psychoactive effects are sentenced to one to three years imprisonment (Art. 16). Persons who intentionally perform operations with products likely to have psychoactive effects, claiming that they are authorized or when the sale is permitted, are punishable by imprisonment of three to ten years (Art. 17) and denial of rights. If the offences resulted in injury of one or more persons who require medical care for healing, the penalty is imprisonment from six to twelve, or seven to fifteen years, depending on the seriousness of the injury. If the offence results in the death of a person, the penalty is imprisonment from 10 to 20 years (Art. 18).

Overall, the sentences for drug-related crimes are to be characterized as strict compared to other offences. Some drug law offences (Art.2 (2)) reach the same maximum limits of sentencing as serious offences such as homicide (which is punishable by imprisonment of 10 to 20 years), or even first degree murder (punishable by imprisonment from 15 to 25 years) in the case of offences stipulated in Article 3 (2) Law No. 143. This aspect is also apparent with regard to the treatment for the execution of penalties. Persons sentenced to imprisonment exceeding a term of 15 years, must serve their sentence in a maximum-security treatment facility (Art.20 (1) Law No. 275/2006 on the Execution of Criminal Penalties).

Law No.143/2000 distinguishes between the activities of “offering for sale, sale, distribution, delivery under any title, sending, transportation, procurement, purchasing, holding or other transactions related to **the circulation of risk drugs**, without right” (Article 2 (1)) and the same activities with **high risk drugs**. For these offences the penalties stipulated are different. Whenever trafficking activi-

ties involve risk drugs, the penalties range from 3 to 15 years (Article 2 (1)). The penalties for high risk drugs are from 10 to 20 (Article 2 (2)).

Also, Law No. 143/2000 distinguishes between the activities of “entering or leaving the country and the import or export of *risk drugs*, without right” (section 3 (1)) and the same activities, but involving *high risk drugs* (Article 3 (2)). The penalties for the activities involving risk drugs are from 10 to 20 years (Article 3 (1)), and those for high risk drugs from 15 to 25 years (Article 3 (2)).

Law No. 143/2000 sanctions drug possession. Therefore, a person who is caught holding drugs may be punished for possession of drugs for personal use or for drug trafficking. Law No. 143/2000 does not specify the quantity of drugs considered to be for personal use and the quantity considered drug trafficking. For this reason, in practice judges take into account the person’s intention (they had drugs for their own use or for drug trafficking). In reality, there are many consumers who are caught holding small amounts of drugs and are sanctioned for drug trafficking; many of them tend to “borrow” from one to another. For these drug dealers, the judge gives the sentence for penalty under the supervision of the Probation Service.¹²

The District Court prosecutes the causes because it is considered that drug offences, stipulated by Law No. 143, are of high severity.¹³

In the case of an offender that has previous convictions for drug offences in another country - if the conviction does not appear in the criminal record-, the court does not have knowledge of the conviction, and then the offender is considered as a primary offender.

If the court is aware of it, appropriate steps for the recognition of a judgment from another country must be taken. The procedure is quite complicated.

7. Drug Law Enforcement in Practice

7.1. Types of punishment or law enforcement

The penalties for drug offences have changed over time. Thus, the penalties provided by Law 143/2000 were amended by Law 522/2004. Law 522/2004 has introduced different punishments for “cultivation, production, manufacture, testing, extraction, preparation, processing, purchasing of risk drugs for personal use, without right, which shall be punished with imprisonment from 6 months to 2

12. According to the interview conducted with the head of the Probation Service Bucharest.

13. In Romania, normally, offences are prosecuted in the criminal sections of the First Instance Court and then go to the District Court and the Court of Appeal.

years or a fine”¹⁴. If the above activities involve high risk drugs, the punishment is imprisonment for a period ranging between 2 and 5 years (Art 4 (2)).

Also, by Law 522/2004 situations have been introduced that are considered as aggravating circumstances requiring higher penalties. This is the case of the situations where “drugs were sent or delivered, distributed or offered to a minor, a mentally ill person, to a person in a treatment program or similar activities prohibited by law have been conducted relating to one of these persons or if the offence was committed in a medical facility or institution, educational institution, military facility or institution, detention facility, centers for social assistance, rehabilitation or medical-educational institutions, places where pupils, students and youth carry out educational, sports or social activities, or near these”(Art 14, paragraph 1, letter c).

Law 522/2004 also introduced modifications for those involved in “the cultivation, production, manufacture, testing, extraction, preparation, processing, purchasing of risk drugs for personal use, without right” (Article 4 of Law 143/2000). The following were mentioned: the possibility to “revoke or replace preventive arrest with another preventive measure” (Article 19¹⁵, (3)), the possibility to “be included, with the consent of the accused or defendant, in the integrated circuit of assistance for drug users” (Article 19¹⁶, (2)). In the case of the criminal prosecution being pursued, Law 522/2004 mentioned the possibility of the court to “decide not to apply any penalty or to postpone the punishment” (Article 19¹⁷ (1)) if the defendant complies with the provisions of the protocol of the integrated program he has been included in. If the court decides to postpone a decision, the time until the decision constitutes a probationary period (Article 19¹⁸ (3)). After the trial period, the court may take three types of decisions: a) to apply no penalty - only if the defendant complies with the assistance program (Article 19¹⁹, (5)), b) to postpone the punishment for a period up to 2 years and to include him in the assistance program (Article 19²⁰ (6)) and c) to enforce the punishment (6).

14. Article 4 (1) of Law 143/2000 amended by Article 6 of Law 522/2004 on preventing and combating illicit drug trafficking.

15. Shall take effect together with the new Criminal Code.

16. Shall take effect together with the new Criminal Code.

17. Shall take effect together with the new Criminal Code.

18. Shall take effect together with the new Criminal Code.

19. Shall take effect together with the new Criminal Code.

20. Shall take effect together with the new Criminal Code.

According to the *National Report on Drugs (2011)*, “the legal stipulated provisions for drug users and persons prosecuted for the offence of possession of drugs for personal use were not applied”²¹. According to the legal provisions, there was the possibility that the mentioned persons may not receive imprisonment penalty, if they accepted to be included in an integrated assistance program. The problem was caused by the lack of implementation of the new Criminal Code and the new Code of Criminal Procedure.²²

For drug users who have committed drug related crimes the possibility of suspension of penalty under the supervision of the Probation Service has been provided.²³

7.2. Cultivation of plants containing drugs

For the cases of legally cultivated plants containing drugs, under Article 8(1) of the Regulations for Implementing the Provisions of Law 143/2000 on preventing and combating illicit drug trafficking and consumption, as amended and supplemented, “monitoring the cultivation of plants containing drugs is an activity that involves, on the one hand, checking the permits issued by authorized bodies for crops that are intended for lawful processing, and on the other hand, the requirement for those cultivating and processing such plants based on authorization to declare the purpose of the crops which must be expressly stated in the permit”²⁴.

In Romania, cannabis crops have been identified both inside persons’ residences (apartments, attics) and outside hidden within the woods (near Bucharest, capital of Romania) or within other crops (maize). Cannabis crops were identified during the execution of searches at the residences of persons caught in flagrant drug trafficking. Most cases of crops were identified as a result of information obtained by the police from undercover witnesses or persons involved in drug trafficking wishing to reduce their sentence (according to the legislation of Romania if information about a person who is smuggling/cultivating drugs is provided, the sentence is reduced by half). The specialized police services had identified cannabis crops in localities of Moldova (North-Eastern Romania),

21. National Antidrug Agency, *National Report on drugs (2011)*, p. 20.

22. Law 286 from 17 July 2009 regarding the Criminal Code.

23. Under the Criminal Code, enforced by Government Ordinance 92/2000 published in the Official Monitor 423 of 1.09. 2000 as amended by Law 211/2004 published in the Official Monitor 505/4.06.2004.

24. Government Decision No. 860/2005 published in the Official Monitor of Romania, Part I no. 749 from 17/08/2005.

Maramureş (North-West of Romania), Timișoara (South-West), in Central Romania (Covasna) and Bucharest. The localities are mainly those that are situated in the border areas. A small proportion of the persons identified were cultivating for personal use. Most of the times, the quantity (number of plants and the land cultivated) were quite high. From the investigations it became clear that the drugs were meant to be sold on the international market.

There have been situations where cannabis cultivated inside a residence is destined for trafficking (e.g. inside a residence where cannabis was cultivated 78 plants, 26 kilos of green plants, 10 kilos of dried plants and 4 kilos of dried stems were discovered)²⁵.

7.3. Information about pre-trial detention

Pre-trial detention for drug-related offences can be implemented. As provided by Article 19 index 1 (3) of Law No. 143, concerning offences stipulated under Article 4²⁶, if pre-trial detention has been ordered, it can be revoked or replaced by another preventive measure. Criminal proceedings shall be pursued as stipulated in the Code of Criminal Procedure (Article 19 index 1 (4)). In case the reasons that determined the order of pre-trial detention have changed, pre-trial detention can be replaced by the preventive measures not to leave the locality or the country, as set in Article 139 Code of Criminal Procedure.

The public prosecutor shall order an assessment of the offender by the Center for evaluation, prevention and counseling. Based on the evaluation report received from the center, the public prosecutor may order, with the consent of the accused, the inclusion into an integrated care programme for drug consuming persons (see 4.5.) As Article 2 of Law No. 522/2004 stipulates, the provisions of Article 19 index 1 will come into effect with the coming into force of the new Criminal Code.

25. <http://www.ziare.com/stiri/droguri/aproape-60-de-kilogramme-de-marijuana-intr-un-lan-de-porumb-din-neamt-1190675>, <http://www.ziare.com/stiri/droguri/maramures-tineri-retinuti-pentru-cultivare-si-comercializare-de-canabis-1128416>, <http://www.ziare.com/stiri/droguri/timis-prinsi-in-timp-ce-isi-ingrijeau-cultura-de-canabis-1120403>, <http://www.ziare.com/stiri/droguri/ferma-de-canabis-descoperita-de-politisti-in-covasna-1046511>

26. Article 4 Law No. 143/2000: For cultivation, production, manufacturing, experimentation, extracting, preparing, processing, buying or possession of risk drugs for one's own consumption the sentence is imprisonment between six months and two years, or a fine. Regarding the mentioned actions involving high risk drugs, the sentence consists of two to five years imprisonment.

According to data provided by the Directorate for Investigation of Organized Crime and Terrorism Offences (DIICOT)²⁷, in 2011, 615 drug law offenders (8,09%) including 21 minors out of 7,606 convicted persons were held in pre-trial detention.²⁸ The number of persons held in pre-trial detention slightly decreased compared to 2010. In 2010, 689 charged (10,7 %) including 24 minors out of 6,436 prosecuted drug law offenders were held in pre-trial detention.²⁹

7.4. Assessment of the offender's potential substance dependence

The *Law No. 143/2000 on preventing and combating illicit drug trafficking* supplemented and amended by *Law No. 522/2004 on preventing and combating illicit drug trafficking* define “the assessment-determining of the psychological and social characteristics of the drug user by the Centers for prevention, evaluation and counseling in order to include and monitor the drug consumer in a psychological and social program under case manager supervision.”³⁰

Law No. 522 Article 11 also details on the procedural provisions related to the assessment of drug use: “Article 19 index 1(1) For the offences mentioned in Article 4³¹, the prosecutor may order, within 24 hours after the initiation of the criminal prosecution, the assessment of the consumer by the Center for prevention, evaluation and counseling for the purpose of his inclusion in the assistance circuit for drug users.”

In Romania there are several legal regulations establishing the criteria enabling the units which can provide medical care for drug addicted persons, the selection cri-

27. Directorate for Investigation of Organized Crime and Terrorism Offences (central unit and 15 regional units) within the Prosecutor's Office attached to the High Court of Cassation and Justice. The Directorate carries out the criminal prosecution of drug law crimes and is in charge of the supervision of the criminal prosecution carried out by special subordinated police units (Art. 2 Law No. 508/2004).

28. DIICOT, *Activity Report* 2011, p. 195, available at http://www.diicot.ro/index.php?option=com_content&view=article&id=52&Itemid=69

29. DIICOT, *Activity Report* 2010, p. 179, available at http://www.diicot.ro/index.php?option=com_content&view=article&id=52&Itemid=69

30. *Law No. 522/2004 regarding the prevention and combating of illicit drug trafficking and consumption*, Article 1, Section 5.

31. We are talking about the offences under Article 4 of *Law 143 from 2000 on preventing and combating illicit drug trafficking and consumption* amended by *Law 522 from 2004*: “the cultivation, production, manufacture, testing, extraction, preparation, processing, purchase or possession of risk drugs for personal use without right is punishable with imprisonment from 6 months to 2 years or fine”.

teria for the NGOs that can carry out programs for the prevention of disease transmission among drug users. This is the case of *Order No. 187/2002 of the Minister of Health and Family for defining the types of health facilities that could be authorized to provide medical care for drug addicted persons, as well as the non-governmental organizations that could be authorized to carry out activities to prevent the transmission of pathogens through blood among injecting drug users.*

Since 2006 the *Joint Order No. 1216 from May 18 has come into force, regarding the modalities for carrying out integrated programs of medical, psychological and social care for persons with custodial status, who are drug users.* The order was issued by the Minister of Justice, Minister of Administration and Interior and Minister of Health. This order provides clarifications regarding the medical examination, the evaluation of the drug user, the services offered within the integrated program, the integrated programs of assistance to the drug consumers (see also paragraph 5.7 *Sentencing levels and the prison situation*).

7.4.1. *Assessment of drug use when entering into preventive custody*

In 2009, the Independent Service for Detention and Preventive Custody/Arrest (SIRAP) was established within the General Directorate of Bucharest Police (DGPMB). Initially, this service had all the detention facilities in Bucharest under its subordination. From 2010 onwards, SIRAP has coordinated “the distribution of the persons deprived of liberty within the DGPMB and has under its direct subordination two arresting facilities: the visited one - no. 1 - and Centre no. 12 for the detention and preventive arrest of minors.”³²

When a person is arrested, he is examined by a physician or nurse in the medical office of DGPMB. If an arrested person claims to be a drug user, he is taken for medical examination to the Clinical Psychiatric Hospital “Prof. Al. Obregia”, onto the Addicts ward.

According to the sources studied, “clarifying the status of user/addicted user is determined through a recollection examination, based on markers - signs of injection - as well as a psychiatric exam, in collaboration with the Clinical Psychiatric Hospital “Prof. Al. Obregia”³³. Drug users are kept in the detention Center no. 1.

32. Răzvan Adrian Paiu, Adrian Marcel Iancu (eds), *Conectarea instituțiilor din circuitul juridic și cel de îngrijire pentru reabilitarea consumatorilor de droguri care au comis fapte penale (Connecting the institutions from the legal circuit and the care one for the rehabilitation of drug users who have committed criminal offences)*, p. 24.

33. Răzvan Adrian Paiu, Adrian Marcel Iancu (eds), *Conectarea instituțiilor din circuitul juridic și cel de îngrijire pentru reabilitarea consumatorilor de droguri care au comis fapte penale (Con-*

7.4.2. *The Prosecutor's Office*

This is required to disclose the status of a drug user in the documents that are drawn up and sent to the court. There is the possibility to use a drug use assessment (to CPECA), in accordance with Article 19, index 1 of Law 143 from 2000 amended by Law 522 from 2004. The prosecutor may decide, based on the assessment of CPECA and the forensic expertise, to include the drug user in an integrated program of assistance to drug consuming persons.³⁴

7.4.3. *The court*

The judge has the ability to request the Probation Service to draw up a psycho-social assessment report for a drug user case.

The judge may decide to suspend the execution of the sentence in detention when the following conditions are met: 1) the penalty for the offence committed is not more than four years of imprisonment; 2) has in record a previous prison sentence for less than 1 year - except in cases stipulated by Article 38 of the Criminal Code, 3) the judge considers, based on the data obtained from the criminal files and the psychosocial assessment report drawn up by the Probation Service, that the offender will not commit further criminal acts. Furthermore, the judge may also decide to suspend the execution of the sentence in the case of "concurrency of offences, if the penalty is imprisonment of up to three years and the conditions specified in paragraph 1, letters b and c are met".³⁵

The judge may decide in such cases to suspend the execution of the sentence under the supervision of the Probation Service and to apply Art. 86³ paragraph 3 letter f of the Criminal Code. According to this provision, the person is required "to submit to control measures, treatment or care, especially for the purpose of detoxification."³⁶

necting the institutions from the legal circuit and the care one for the rehabilitation of drug users who have committed criminal offences), p. 26.

34. Law 143 of 2000 amended and completed by Law No. 522 - this provision shall take effect upon the entry into force of the new Criminal Code.

35. Răzvan Adrian Paiu, Adrian Marcel Iancu (eds), *Conectarea instituțiilor din circuitul juridic și cel de îngrijire pentru reabilitarea consumatorilor de droguri care au comis fapte penale (Connecting the institutions from the legal circuit and the care one for the rehabilitation of drug users who have committed criminal offences), p. 31.*

36. Romanian Criminal Code in force.

The sentence ruled by the judge may be revoked if the convicted person does not meet the measures and obligations provided by law for persons entering into the custody of the Probation Service. If the execution of the sentence under probation is revoked, the offender will serve his sentence in prison.

7.4.4. *Assessment of the drug user entered into the custody of the Probation Service (PS)*

A. Prior to entering into the custody of the Probation Service

The Probation Service draws up, at the request of the judge, the psychosocial assessment report of the drug user offender. When collecting the input for the referral, the probation counselor shall consider the following aspects:

1. **Data regarding drug use:** “the drug/drugs used, the history of usage (period of time, the onset of the use, the reasons behind use, the age,
2. the length of use) information regarding the degree of addiction, the frequency and the quantity of drug use (working on a scale of three levels: episodic, occasional and systematic use, operating in these categories with the definitions provided by the World Health Organization)”³⁷
2. **Data regarding the drug user and his relationship within the family environment:** “the way these relationships were affected during consumption, the consumer’s image in the community, the material and moral support from family.”³⁸
3. Data concerning drug use motivations;
4. **Institutions that provided services prior to entering the PS:** “for addiction treatment, as well as for identifying those who can further integrate the drug user into their services.”³⁹

The PS collaborates with several institutions to obtain complete information regarding the drug user situation: the Anti-drug Prevention, Assessment and Counseling Centers (CPECA) subordinated to the National Anti-drug Agency - NAA,

37. Răzvan Adrian Paiu, Adrian Marcel Iancu (eds), *Conectarea instituțiilor din circuitul juridic și cel de îngrijire pentru reabilitarea consumatorilor de droguri care au comis fapte penale (Connecting the institutions from the legal circuit and the care one for the rehabilitation of drug users who have committed criminal offences)*, p. 32.

38. Răzvan Adrian Paiu, Adrian Marcel Iancu (eds), *Conectarea instituțiilor din circuitul juridic și cel de îngrijire pentru reabilitarea consumatorilor de droguri care au comis fapte penale (Connecting the institutions from the legal circuit and the care one for the rehabilitation of drug users who have committed criminal offences)*, p. 32.

39. Idem, p. 33.

non-governmental organizations - NGOs, hospitals and other institutions with which it signed cooperation agreements.

B. After a drug user offender has received a ruling from the judge to execute the sentence under the supervision of the Probation Service

In case a drug user receives a ruling with the execution of the sentence under the supervision of PS, his case is assigned to a probation counselor that becomes the case manager. The probation counselor will undertake all legal steps generally provided for the persons entering into custody and the necessary steps provided for that particular individual (the judge may, according to the law, specify various obligations and measures appropriate to the situation of the person concerned).

If the obligation “to submit to control measures, treatment or care, especially with the purpose of detoxification”⁴⁰ is mentioned, the probation counselor undertakes all the necessary steps to comply with it.

When entering into the custody of the Probation Service, the convicted person is informed about the judge’s sentence, the measures and the obligations stipulated by law for those entering into PS custody.

Next, the counselor shall draw up a surveillance plan adjusted to the person convicted. For the production of a monitoring plan, he takes into consideration the measures and obligations imposed by the sentence, as well as the needs identified during the evaluation.

The probation counselor also makes an assessment of the person based on 12 areas: “family and social environment, education level and provisional experience, state of health and, of course, addiction problems that the convicted person is facing.”⁴¹

If the person entered into the custody of the Probation Service has not been assessed (an evaluation report was not drawn up by PS) or the counselor appreciates the need for a reevaluation, then a written request from the SP is sent to the NAA. The request will be sent if the drug user gives his written consent for evaluation. The CPECA case manager sends the Probation Service “the initial assessment report, the individual support plan and the agreement of medical, psychological

40. Romanian Criminal Code in force.

41. Răzvan Adrian Paiu, Adrian Marcel Iancu (eds), *Conectarea instituțiilor din circuitul juridic și cel de îngrijire pentru reabilitarea consumatorilor de droguri care au comis fapte penale*, (*Connecting the institutions from the legal circuit and the care one for the rehabilitation of drug users who have committed criminal offences*), p. 34.

and social care signed by the drug user, as well as the consumption screening test if necessary.”⁴²

7.4.5. Assessment of the drug user at the National Anti-drug Agency

According to *Law No. 143/2000 on preventing and combating illicit drug trafficking and consumption* subsequently amended and supplemented with *Joint Order no. 1216 from May 18, 2006 regarding the modalities for carrying out integrated programs for medical, psychological and social assistance for persons with custodial status, which are drug users*, the drug using evaluation is carried out by CPECA subordinated to the NAA.

The drug user may enter evidence for evaluation by CPECA if this is requested by the prosecution, the court of law, the Probation Service or the National Administration of Penitentiaries.

7.4.6. In case the drug user is arrested or enters the prison system

When entering into custody or prison a mandatory medical examination is carried out. During this evaluation several situations could be identified. There is the possibility that the detainee states he has a history of drug use whereby the doctor announces the unit management to contact CPECA (Article 12 (1) of Joint Order). There is the possibility that the detainee declares that he is already included in an integrated program of support and then the necessary arrangements to his reintegration to the CPECA program are made (Article 16 of the Joint Order). The possibility exists that the physician has some suspicion that the detainee is a drug user. In this case, the detainee is informed about the CPECA and, after obtaining the prisoner agreement, the arrest or prison management is informed. The arrest or prison management contacts CPECA (Article 7 (1) and (2) of Joint Order). The same happens if the prisoner declares he is a drug user during detention.

CPECA makes the assessment of the consumer at the request of the custody unit or prison management. A case manager is assigned for each inmate. The case manager goes to the detention centre or prison to carry out the assessment. If the consumer is in custody, the evaluation is carried out by the case manager and the staff that provides medical and psychological care. If the consumer is in prison, the

42. Răzvan Adrian Paiu, Adrian Marcel Iancu (eds), *Conectarea instituțiilor din circuitul juridic și cel de îngrijire pentru reabilitarea consumatorilor de droguri care au comis fapte penale (Connecting the institutions from the legal circuit and the care one for the rehabilitation of drug users who have committed criminal offences)*, p. 37.

assessment is made by the case manager, the medical staff and the staff providing psychological and social assistance (Article 8 (2) of Joint Order).

The assessment is carried out according to the rules established by the *Government Decision No. 860/2005 for approving the Regulation of the application of Law 143 of 2000 on preventing and combating illicit drug trafficking and consumption, as subsequently amended and supplemented*. Article 14 states that “the assessment identifies the individual characteristics of the consumer in order to select the program and individualized medical, psychological and social services.” The assessment is to obtain information in the following areas:

- a) personal and consumption history and specific signs of intoxication and/or withdrawal syndrome;
- b) biomedical conditions and current complications which, although not related to the intoxication or withdrawal syndrome, require treatment because they can entail risks or may complicate the care and rehabilitation process;
- c) psychological condition and/or psychiatric complications, as well as other conditions that may generate risks or complications that can occur in the care and rehabilitation process, such as acceptance/resistance to treatment, potential relapse, further use, etc.;
- d) social and family conditions that may be sources of individual, family or community support or may hinder/prevent the care and rehabilitation process;
- e) legal status.”⁴³

7.4.7. Assessment of the drug user in prison

In the penitentiary system there are other activities for the assessment of drug users. In 2011 the *Guide to best practices for psychologists working in prison was drawn up*. A chapter of this guide is intended for psychologists carrying out activities with detainees that have a history of drug abuse. In this chapter the activities that must be completed within the psychological interventions and the assessment activities that shall be made are mentioned: 1) “the initial evaluation made during the period of quarantine and observation, in order to identify individual needs and risks. At this stage it is essential to identify the risk of withdrawal and its treatment, providing support and developing a therapeutic

43. Article 14 (2) lit. a-e from *Government Decision No. 860/2005 for approving the Regulation for the application of Law No. 143 of 2000 on preventing and combating illicit drug trafficking and consumption, as subsequently amended and supplemented*.

relationship, in order to elaborate an individualized plan of intervention during the execution of the prison sentence, 2) psychological evaluation throughout the execution of the sentence in prison, 3) psychological evaluation at the end of the sentence of imprisonment.”⁴⁴

The intervention of the psychologist working with people with a history of substance abuse involves using the following methodology: “screening assessment, semi-structured interview SCID I and SCID II, motivational interview, personality questionnaires, questionnaires of completing phrases and behavioral, projective tests and analysis of other documents (individual file).”⁴⁵

7.5. Framework for the so-called police entrapment

Law No. 143/2000 on preventing and combating illicit trafficking and drug use contains provisions regarding the “carrying out of deliveries under surveillance, with or without the total replacement of drugs or precursors”⁴⁶ authorized by the Prosecutor Office within the Supreme Court of Justice. Another article of the law states the conditions under which undercover investigators may be used, “the prosecutor may authorize the use of undercover investigators to discover the facts, identify authors and obtain evidence in cases where there are serious indications that an offence referred to in this law has been committed or is about to be committed”⁴⁷. Within this law the formalities which must be completed are mentioned: written authorization for the use of undercover investigators, the period of the authorization of up to 60 days and the possibility of prolonging the authorization for 30 days (Article 21 (2)).

For carrying out “undercover” activities necessary to identify criminals and criminal activities, police officers working as “undercover agents and their collaborators can purchase drugs, chemicals, essentials and precursors with prior authorization of the prosecutor”⁴⁸. The Law also provides, in Article 22 (2), that “the documents produced by the police officers and their collaborators may constitute evidence”.

44. Corduneanu Loredana, Sorescu Oana, Ionescu Cristina, Mucioniu Ana Maria, Ciobanu Natalia, Marian Nicolae, *Derularea activităților psihologice cu persoanele private de libertate cu antecedente în toxicomanie* în: “Ghid de bune practici pentru psihologul care lucrează în penitenciar”, Iași, 2011, pp. 147- 148.

45. Corduneanu L, Sorescu O, Ionescu C, Mucioniu A M, Ciobanu N, Marian N, *Derularea activităților psihologice cu persoanele private de libertate cu antecedente în toxicomanie* în: “Ghid de bune practici pentru psihologul care lucrează în penitenciar”, Iași, 2011, p. 148.

46. Article 20 of *Law No. 143/2000 on preventing and combating illicit trafficking and drug use*.

47. Article 21 (1) of *Law No. 143/2000 on preventing and combating illicit trafficking and drug use*.

48. Article 22 (1) of *Law No. 143/2000 on preventing and combating illicit trafficking and drug use*.

Also, the law provides for the possibility of monitoring the telecommunications systems and the IT systems with the prosecutor's authorization when "there are serious indications that a person who is preparing to commit of an offence under the current law (Law 143/2000) or who has committed such an offence uses systems of telecommunication or IT"⁴⁹. The same law also mentions that these systems may be monitored for a limited period, without actually specifying the period. References to the undercover agents, under surveillance deliveries and the conditions for carrying out these activities may also be found in *Law no. 508/2004 regarding the establishment, organization and functioning within the Public Ministry of the Directorate for Investigating Organized Crime and Terrorism*⁵⁰, published in the Official Monitor of Romania, Part I, no. 1089 from November 23, 2004, subsequently amended and supplemented.

The Emergency Ordinance No. 131 from December 21, 2006 amending and supplementing Law no. 508/2004 regarding the establishment, organization and functioning within the Public Ministry of the Directorate for Investigating Organized Crime and Terrorism amends Article 17 of Law 508/2004 and provides clarifications regarding the conditions under which the undercover investigators, the collaborators and the informants of the judicial police may be used:

"ARTICLE 17

(1) If there is probable cause that an offence has been committed or is being prepared to be committed and conferred by this Law within the jurisdiction of the Directorate for Investigating Organized Crime and Terrorism, which cannot be found or whose perpetrators cannot be identified by other means, undercover investigators or collaborators and informants of the judicial police may be used, under the conditions provided by the Criminal Procedure Code and other special laws.

(2) Undercover investigators are officers or agents of the judicial police specifically designated for this purpose and, with the motivated authorization of the prosecutors of the Directorate for Investigating Organized Crime and Terrorism, they may carry out investigations for the offences referred to in

49. Article 23 (1) of *Law No. 143/2000 on preventing and combating illicit trafficking and drug use*.

50. According to Law No. 508/2004, the Directorate for Investigating Organized Crime and Terrorism (DIICOT) has in its attributions - Article 12 letter f - "the offences under Law No. 143/2000 preventing and combating illicit trafficking and drug use, as subsequently amended and supplemented, and Law. 300/2002 regarding the legal status of precursors used in the illicit manufacture of drugs, as subsequently amended and supplemented."

this Law. The acts concluded by the undercover investigators and their collaborators may constitute evidence.”⁵¹

The DIICOT prosecutors also have the possibility to have at their disposal and to authorize motivated deliveries under surveillance (Article 17 (3) and (5)), to order protective measures for witnesses, experts and victims (art. 17 (4)), to authorize motivated covert activities carried out by investigators, collaborators and informants of the judicial police (Article 17 (5)). The authorizations can be given by reasoned order for a period of 60 days and prolonged for 30 days but not more than one year (Article 17 (6)).

The ordinance authorizing the activities of the undercover investigator must also contain - under the Emergency Ordinance no. 131 of December 21, 2006 - data regarding:

Article 8

“a) solid and concrete indications justifying the measure and the reasons why the measure is necessary;

b) activities that the undercover investigator may conduct;

c) persons against whom there is the assumption that they committed an offence;

d) the identity under which the undercover investigator plans to conduct the authorized activities;

e) the period for which the authorization is given;

f) other references prescribed by law.

(g) In urgent and duly justified cases the authorization may also be requested for activities other than those for which the authorization has already been given, about which the prosecutor following must decide immediately.”⁵²

8. Data regarding the imposed sentences from the courts

In recent years, the number of prosecuted drug law offenders has been increasing. The number of drug related offences solved by DIICOT rose from 2,906 criminal

51. EMERGENCY ORDINANCE no. 131 from December 21, 2006 for the amending and supplementing of Law no. 508/2004 regarding the establishment, organization and functioning within the Public Ministry of the Directorate for Investigating Organized Crime and Terrorism.

52. EMERGENCY ORDINANCE no. 131 from December 21, 2006 for the amending and supplementing of Law no. 508/2004 regarding the establishment, organization and functioning within the Public Ministry of the Directorate for Investigating Organized Crime and Terrorism.

cases in 2009 to 3,360 cases in 2010 and reached 4,087 in 2011.⁵³ Thus, the number of cases has increased by 21.64% in 2011 compared to 2010.⁵⁴ In 2011, 1,060 persons out of a total number of 7,606 prosecuted persons were referred to the courts, out of which 615 persons (including 21 minors) were held in pre-trial detention, see above 4.4. In 436 cases charges were laid. In addition, there were 603 cases with decisions to waive prosecution due to the low level of seriousness of the case (according to Art.18¹ Criminal Code) and 3,048 cases with decisions to waive prosecution.⁵⁵

Data available by the EMCDDA show that in the period from 2002 to 2008, the number of suspected persons related to drug law offences has doubled from 2002 with 1,420 to 2,936 in 2008.⁵⁶

Regarding convicted persons, the courts have convicted 718 persons for offences related to Law No.143/2000 on preventing and combating drug use and trafficking out of a total of 41,891 convicted persons in 2010. Out of these, 17 persons were minors.⁵⁷ There has been an upward trend in recent years regarding the number of persons convicted for drug possession for personal use and for drug trafficking. Regarding minors, the number decreased in 2010 compared to 2009. The overwhelming majority of minors were convicted for drug trafficking offences.⁵⁸

According to the National Anti-drug Agency National Report on Drugs, almost all convicted offenders were given custodial sentences (n=705 out of 718). Criminal fines were given to 13 offenders. About half of the convicted persons (n=354) were sentenced to imprisonment. In most of these cases, a sentence of

53. See National Anti-drug Agency, *National Report on Drugs*, 2011, p. 149 and DIICOT, *Activity Report 2011*, p. 22.

54. DIICOT, *Activity Report 2011*, p. 22.

55. *Idem*, p. 195.

56. EMCDDA *Statistical Bulletin 2012*, Table DLO. Drug law offences, 1995 to 2010, Part (ii) Number of reports of persons. <http://www.emcdda.europa.eu/stats12/dlotab1b>, accessed on 06.08.2012.

57. National Anti-drug Agency, *National Report on Drugs*, 2011, p. 152, for the number of convicted persons for drug law offences and *Justice Status Report of the High Council of Magistracy 2010*, for the total number of convicted offenders in 2010, p. 87, available at <http://www.csm1909.ro/csm/index.php?cmd=24&lb=ro>. Note that the figures relating to drug law offenders mentioned in the High Council of Magistracy *Justice Status Report 2010* slightly differ from those in the *National Report* of the National Anti-drug Agency: they refer to 712 convicted drug law offenders, including 18 minors, pp. 87, 89.

58. National Anti-drug Agency, *National Report on Drugs*, 2011, pp. 152-153.

1 to 5 years imprisonment was given to adult offenders (n=350). In about one third of cases, a sentence of 5 to 10 years imprisonment was imposed on adults. A majority of the offenders sentenced to imprisonment were convicted because of drug trafficking (n=241). A small proportion (n=32) of offenders were convicted for drug possession for personal use. The further share of custodial sentences imposed on convicted persons was made up of conditional discharge orders (17,6%) and licensed supervision orders (32,2%). The number of persons sentenced to imprisonment decreased in 2010, while the number of persons serving their sentence in the community was rose. The National Anti-drug Agency emphasized the trend of the courts over recent years to give licensed supervision orders including detoxification treatment, which is related to the increasing number of convicted drug law offenders within probation services.⁵⁹

9. Sentencing levels and the prison situation

Year	Total number	Persons held in pre-trial detention, convicted in first instance	In %	Persons sentenced to imprisonment, finally convicted	In %	Persons in rehabilitation centers	In %
2007	29,390	2,947	10.03	26,231	89.25	212	0.72
2008	26,212	3,112	11.87	22,937	87.51	163	0.62
2009	26,716	4,430	16.50	22,145	82.89	163	0.61
2010	28,244	4,630	16.39	23,435	82.97	179	0.64
2011	30,694	3,313	10.79	27,213	88.66	168	0.55

Source: National Administration of Penitentiaries, Activity Report 2011

Since 2008, an increase in the number of persons sentenced to imprisonment (finally convicted) can be observed. The number of persons serving pre-trial detention was on the rise from 2007 to 2010 and decreased from 2010 to 2011. Regarding the long term trend however, since 1992, when the total prison population was 44,011⁶⁰, the number of inmates decreased considerably by almost one third by 2011.

59. *Idem*, pp. 152-154.

60. International Centre for Prison Studies, *World Prison Brief Romania*, <http://www.prisonstudies.org/info/worldbrief/wpbcountry.php?country=161>, accessed on 05.08.2012.

The prison population rate at the end of July 2012 was 150. Regarding the long-term trend, from 1992 to 2010 the prison rate decreased with oscillating numbers from 193 to 132.⁶¹

In Romania, there are distinct categories of prisons. The legal framework regarding imprisonment is provided by the Law on the Execution of Criminal Penalties (Law No. 275/2006), further amended and modified.

At present, there are 45 detention facilities in the country.⁶² According to the National Administration of Penitentiaries Activity Report 2011, 15 prisons are open and half-open, with a further 15 prisons set as closed and maximum security types of imprisonment. Furthermore, there are special prisons: one women's prison and four prisons for minors and young adults in the country. In addition, there are six prison hospitals for persons with special health care needs. Regarding juveniles, they may also serve their sentence (in terms of an educational measure) in one of the three re-education centers. Three therapeutic communities for former drug users were established (two in Bucharest and one in the women's prison Târgșor). With regards to pre-trial detention, 21 custody units/departments exist in Romania.⁶³

In 2011, 1,471 offenders (4,8%) out of 30,694 offenders were imprisoned for the possession of drugs or for drug trafficking.⁶⁴

According to the Activity Report 2011 of the National Administration of Penitentiaries⁶⁵, 102 former drug users were included in the three rehabilitation communities in the country: 66 persons in the Bucharest-Jilava Prison, 22 detainees in Bucharest-Rahova and 14 in the Târgșor Women's Prison.

Regarding self-declared drug users in penitentiaries, there were 2,043 (7,6%) self-declared drug user inmates out of a total of 26,721 incarcerated persons in 2010. In the period from 2001 to 2010 the number of self-reported drug user inmates doubled, whereas the total prison population decreased by half.⁶⁶

61. Idem.

62. National Administration of Penitentiaries, <http://www.anp-just.ro/frame.php?page=dinamica.php>, accessed on 05.08.2012.

63. See National Administration of Penitentiaries, *Activity Report 2011*, p. 2, available at <http://www.anp-just.ro/infogen/Bilant2011/Bilant%20activitate%20ANP-%202011.pdf>

64. Idem, p. 3.

65. Idem, p. 2.

66. See National Anti-drug Agency, *National Report on Drugs*, 2011, citing data from the National Administration of Penitentiaries, p. 156.

The majority of drug law offenders were sentenced for drug trafficking (see also 4.7. on convictions).

According to the EMCDDA Statistical Bulletin 2012, there were 76 convicted persons for use-related offences (10.6%) and 479 for supply-related offences (66.7%) out of a total of 718 convicted persons for drug-related offences in 2010. 163 persons were convicted for other types of offences (22.7%).⁶⁷

In recent years, Romanian authorities carried out various reformatory measures in order to improve detention conditions. Regarding the legislative situation, the enactment of the Law on the Execution of Criminal Penalties (Law No. 275/2006) provided for different conditions in penitentiaries, according to the prison regime (see 5.2.). Ministry of Justice Order No. 433/C/2010 approved the minimum compulsory rules on accommodations in penitentiaries. It provides a minimum of 4 m² per person for inmates in a closed or maximum security regime (including minors, young adults and remanded persons) and 6 m³ per person for persons within an open or half-open regime. In principle, these regulations are in line with the recommendations of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT, see report CPT/Inf (2008)41). However, the European Court consistently stated that the living space for inmates is at the minimum limit accepted by the CPT. The European Court also found that Romanian courts had acknowledged the systematic nature of overcrowding in Romanian penitentiaries.⁶⁸

When the new Criminal Code comes into effect, authorities expect an improvement of the detention conditions, as the new code emphasizes the enlargement of educational measures, criminal fines and alternatives measures to imprisonment and lowers the limits of prison sentences regarding numerous offences.⁶⁹

67. EMCDDA *Statistical Bulletin* 2012, Table DLO-2. Offence type in reports for drug law offences, 2009 or 2010, Part (i) Number and percentage of all reports for drug law offences. <http://www.emcdda.europa.eu/stats12#display:/stats12/dlotab2a>, accessed on 06.08.2012.

68. See *Group of cases Bragadireanu against Romania - 23 cases concerning conditions of detention in prisons and police detention facilities*, Memorandum prepared by the Department for the execution of judgements and decisions of the European Court of Human Rights, Ministers' Deputies Information Documents, CM/Inf/DH(2011)26, 10 May 2011, available at <https://wcd.coe.int/ViewDoc.jsp?id=1937977&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

69. See *ibidem*.

The occupancy level as of 31.7.2012 regarding all detention facilities, including rehabilitation centers and prison hospitals was 119.5% and 123.1% in penitentiaries.⁷⁰

10. Information on drug use inside prisons

Information on drug use inside prisons in Romania have been presented in the studies carried out in 2006 and 2011 by the National Antidrug Agency and the National Administration of Penitentiaries.

10.1. The presence of drug use among the prison population

The *Study regarding the consumption of drug, alcohol and other psychoactive substances in the prison environment in Romania* (2011) shows the presence of drug use among the prison population prior to and after entering the prison system. Carried out on a representative sample for the prison population aged between 15-64 years (2,100 inmates interviewed), the study⁷¹ highlights that 25.1% of all persons in the prison system stated they had used drugs throughout their life.⁷² The results of the study from 2011 show a growing share of drug users in prison (in 2006 there were 18.5%).⁷³

The same studies reveal the distribution of drugs users in prison, depending on the period they used substances: prior to entering the prison, throughout detention, in the last 12 months and in the last 30 days.

70. National Administration of Penitentiaries, <http://www.anp-just.ro/frame.php?page=dinamica.php>, accessed on 05.08.2012.

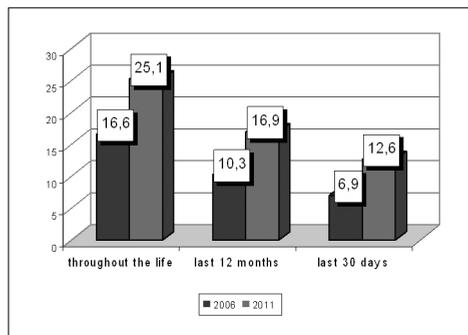
71. The National Anti-drug Agency, *National Report on Drugs*, 2011, p. 181.

72. According to the *National Report on Drugs*, have been considered drugs “all types of illicit drugs, as well as psychoactive substances sold as “legal drugs or ethnobotanical plants”: marijuana, ecstasy, inhalants, cocaine, crack, amphetamine, ketamine, hallucinogens, heroin or opiates, mephedrone, spice other ethnobotanical plants.” (National Anti-drug Agency, 2011:181).

73. The National Anti-drug Agency, *National Report on Drugs*, 2011, p. 181.

Diagram 1

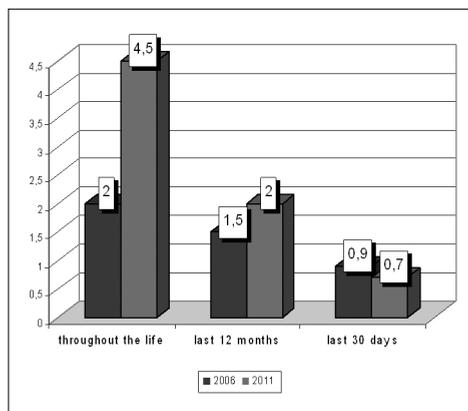
Data regarding the use of new substances with psychoactive/ ethnobotanical properties (SNPP) and illegal drugs, prior to the period of detention



Source: The National Anti-drug Agency, National Report on Drug Situation, 2011, p. 181

Diagram 2

Data regarding the use of SNPP (new substances with psychoactive/ ethnobotanical properties) and illegal drugs, during the period of detention



Source: The National Anti-drug Agency, National Report on Drug Situation, 2011, p. 181

The same study gives us data on the types of drugs used throughout life and during detention. (see Table 1).

Table 1
The types of drugs used throughout life and during detention

Type of drug used	2011* Prior to the detention	2011* Inside prison	2011* Total	2006** Total
Heroin	11.1	2.2	11.7	8.4
Cocaine	9.1	0.4	9.3	6.2
Hashish	9	0.8	9.4	7.6
Cannabis	9.2	0.7	9.3	9.6
SNPP	5	0.6	5.3	0
Ecstasy	4.5	0.1	4.5	5.2
Methadone	3.2	0.3	3.2	2.9
Amphetamines	1.9	0	1.9	1.5
LSD	1.7	0	1.7	1.2

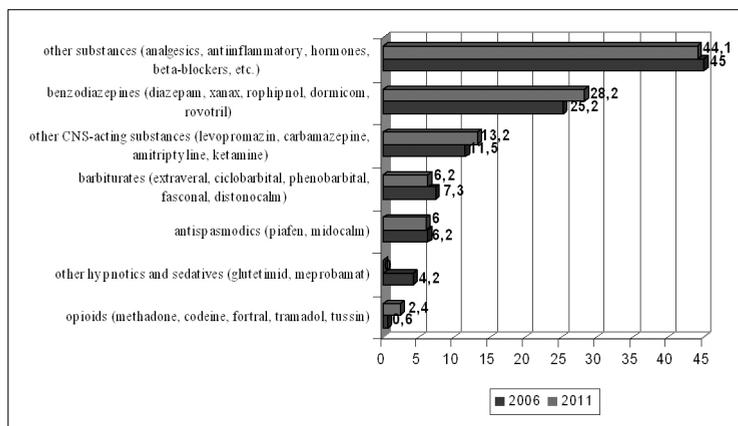
* The data were provided by the National Anti-drug Agency, *National Report on Drug Situation, 2011*, p. 182

** The data were provided by the National Anti-drug Agency, *The prevalence of drug use inside the prison system, 2006*, p. 29

Inside the prison system the presence of medicine use without prescription has also been reported.⁷⁴ This statement was made in a publication within the project “*Enhancing the functional capacity of the integrated social services offered to addicts and former addicts for labor market integration through actions for developing innovative tools and working methods and implementation of training programs*”.

74. Țucă Elena Carmen, *Despre droguri de la A la Z. Ghid practic de prevenire și informare în doomeniul adicțiilor (About drugs from A to Z. A Practical Guide to Prevention and Information in Addictions)*, University of Bucharest, Oscar Print, 2012.

Diagram 3
 The distribution of detainees who use medicines
 without medical advice in detention



Source: Țucă E C, *About drugs from A to Z. A Practical Guide to Prevention and Information in Addictions*, University of Bucharest, Oscar Print, 2012, p. 63

10.2. Data on drug injecting inside prison

According to data provided by the National Anti-drug Agency and the National Administration of Penitentiaries, 5.5% of the detainees interviewed in the survey conducted in 2006⁷⁵ stated that they were injecting drug users. The same study mentioned that 4.3% of the interviewed inmates started injecting drugs in prison. Approximately one third of them stated that they shared the injection instruments: syringes (29.3%) and needles (31.1%)⁷⁶.

According to data provided by the National Administration of Penitentiaries through Address 7153/DRS/06.08.2012, on the Health Department records, at the end of 2011, there were 2,328 detainees registered that declared themselves as former drug users. Furthermore, the studies conducted inside prisons⁷⁷ showed that

75. The data were provided by the National Anti-drug Agency, *The prevalence of drug use inside the prison system*, 2006, p. 46.

76. Ibidem.

77. The survey was carried out on a sample of 2800 subjects (approximately 10% of all persons deprived of liberty).

“5.7% of them reported drug use prior to the arrest, and 3.7% reported sharing injection equipment”⁷⁸.

According to the “Behavioural and Serological Survey on the Prevalence of Infectious Diseases among IDUs”, made in 2010⁷⁹, 44% of the subjects interviewed executed their prison sentence. Of these, “19% - have injected drugs in prison during their detention.”⁸⁰

10.3. The presence of hepatitis C and B among drug users

The National Administration of Penitentiaries indicates there is “evidence of a higher prevalence of infection with hepatitis C and B among the detainees who were former drug users, compared to the prison population in general, therefore it was decided to implement services to reduce the risks related to drug use inside prisons in Romania.”⁸¹

10.4. Data on drug trafficking in prisons and the violence generated by it

According to the research⁸² conducted by the Division for Crime and Terrorism Prevention of the National Administration of Penitentiaries (2010), there is drug trafficking within the Romanian penitentiary system. The survey performed at the level of all directors of prisons (42) and at the level of the staff of the territorial offices of the Directorate for Prevention of Crime and Terrorism (55) highlighted the peculiarities of drug trafficking in prisons. Drug trafficking is carried out by drug trafficking networks involving prisoners convicted for offences related to drug use and trafficking, as well as prisoners who have committed other crimes. There is a hierarchy of the network members. The heads of the drug networks and the persons convicted for drug related offences are less “visible”. The inmates most active on the drug market are those who have greater freedom of movement inside prison, because of the regime of execution of the sentence, or inmates who are in-

78. National Administration of Penitentiaries through the address 7153/DRS/06.08.2012.

79. The survey was conducted by UNODC, the Romanian Angel Appeal and the National Anti-drug Agency.

80. “Behavioral and Serological Survey on the Prevalence of Infectious Diseases among IDUs” made in 2010 and cited by the National Anti-drug Agency, *National Report on the Drugs*, 2011, p. 178.

81. National Administration of Penitentiaries through the address 7153/DRS/06.08.2012.

82. National Administration of Penitentiaries, Division for Crime and Terrorism Prevention,, *The phenomenon of consumption and trafficking of prohibited substances in the prison environment. Elements for diagnosis and prognosis*, 2010, available at: <http://www.scribd.com/doc/30563012/Studiu-Consumul-si-traficul-de-droguri-in-penitenciare>

volved in activities (those working in the canteen or in workshops and other prison specific workstations).

Regarding the violence generated by drug trafficking/drug use inside prisons, the authors of the report provide information about the sources and forms of manifestation of the violence. The acts of violence between prisoners are generated by: restricted access to drugs, accumulation of debts and the increased interest of the traffickers to recover their money. Among the forms of manifestation of violence related to drug trafficking are “acts of intimidation/violence exercised between detainees or acts of violence manifested by inmates against the prison staff amid frustration (due to difficult accessibility to prohibited substances)”⁸³. More than half of respondents (60%) “consider that drug trafficking generates violence to a very large extent”⁸⁴.

11. Treatment facilities and harm reduction services available in custodial settings

According to the handbook⁸⁵ drawn up under the project “Creating the national integrated system for the rehabilitation of drug users who have committed offences”, financed through the Program for pre-accession projects MATRA MPAP 2009, reference number MAT09/RM/9/1, there are a number of documents and standards regulating the assistance activities intended for drug users in custodial status:

Joint Order of the Ministry of Justice no. 1216/C from May 18, 2006, the Ministry of Administration and Interior no. 1310 from May 19, 2006 and the Ministry of Health no. 543 from May 18, 2006 *regarding the modalities for carrying out integrated programs for medical, psychological and social assistance for persons with custodial status, who are drug users;*

2011 MAI - Operational Standards no. 8032 concerning the *Integrated assistance for drug users that are in detention and preventive arrest centers.*

83. National Administration of Penitentiaries, Division for Crime and Terrorism Prevention., *The phenomenon of consumption and trafficking of prohibited substances in the prison environment. Elements for diagnosis and prognosis*, 2010, p. 14 available at: <http://www.scribd.com/doc/30563012/Studiu-Consumul-si-traficul-de-droguri-in-penitenciare>

84. Ibidem.

85. Răzvan Adrian Paiu, Adrian Marcel Iancu (eds.), *Conectarea instituțiilor din circuitul juridic și cel de îngrijire pentru reabilitarea consumatorilor de droguri care au comis fapte penale (Connecting the institutions from the legal circuit and the care one for the rehabilitation of drug users who have committed criminal offences)*, 2012, p. 23.

Also, currently being finalized are *The standards concerning the integrated assistance of juvenile drug users*.⁸⁶

11.1. Programs to reduce drug-related risks

According to the data provided by the National Administration of Penitentiaries, within the penitentiary system the following programs to reduce drug-related risks are carried out:

“informative activities regarding the risks associated with drug use, especially intravenous administration, training peer educators among inmates, methadone substitution program, needle exchange program, counseling and voluntary testing program for HCV, HBV and HIV”⁸⁷.

The analysis of the information on programs conducted in prisons highlights the existence of the following types of programs:

2008 - The methadone substitution program, developed by the National Administration of Penitentiaries in partnership with UNODC.⁸⁸

In the initial stage, the program was intended only for the inmates of the Penitentiary Hospital Bucharest-Rahova and the Penitentiary Bucharest-Rahova. Currently it is available in 10 units of the penitentiary system (3 penitentiary hospitals, 6 penitentiaries for men and 1 women penitentiary). During 2008-2011, 65 inmates have benefited from the methadone substitution program. The methadone administered is in tablet form and is taken crushed by grinding or milling. The treatment is carried out under strict supervision.

Furthermore, 30 detainees were included in the detoxification program of the Penitentiary Hospital Bucharest-Rahova. Most of them continue the substitution treatment started before the arrest.

2008 - The syringe exchange program was implemented in partnership with UNODC.⁸⁹

86. Răzvan Adrian Paiu, Adrian Marcel Iancu (eds.), *Connecting the institutions from the legal circuit and the care one for the rehabilitation of drug users who have committed criminal offences*, p. 23.

87. National Administration of Penitentiaries through address 7153/DRS/06.08.2012

88. National Administration of Penitentiaries through address 7153/DRS/06.08.2012

89. National Administration of Penitentiaries through address 7153/DRS/06.08.2012

The initial phase was carried out in the Penitentiary Bucharest - Jilava. The access to the program is done based on code. Prisoners receive disposable syringes and alcohol wipes.

	Number of persons that have accessed the program	Number of disposable syringes distributed
2008	60	2150
2009	107	10704
2010	83	18383
2011	29	5036

Source: National Administration of Penitentiaries through address 7153/DRS/06.08.2012

11.2. Programs for inmates who are former drug users

In the period December 2008 - November 2009, the Criminal Justice Reform Foundation and the National Administration of Penitentiaries carried out the project “Development of community mental health assistance for persons deprived of liberty”, with the financial support of the European Union through the Phare Program 2006. Under this project, with the support of the Directorate of Social Reintegration within the National Administration of Penitentiaries, a ***Specific program for psychosocial assistance intended for persons with history of substance abuse has been developed***. The intervention program addressed the former drug user inmates who met the following conditions: 1) have not used drugs in the last 3 years or are in the period of withdrawal and 2) after conducting psychological assessments were recommended to participate in programs intended for former drug users⁹⁰.

The program was structured in two modules: an educational module and a therapeutic one. Each module lasted 12 weeks. The educational module had as a target audience active drug users and former drug users. The objectives of the educational module were: “1) to inform consumers about the consequences of drug use; 2) to inform on issues related to infectious and contagious diseases, HIV-AIDS, hepatitis, tuberculosis; 3) to encourage the integration in a group, the active participation and explaining of ideas; 4) to identify and prepare persons deprived of liberty for the therapeutic module, 5) to identify and present to the participants potential

90. These evaluations are made periodically and their results are included in the *Individualized plan for educational and therapeutic assessment and intervention* (according to Corduneanu L, Petrescu S C, *Specific program for psychosocial assistance intended for persons with history of substance abuse*, Print & Grafic, 2009, p. 12).

social support networks available in the area of residence that could support the efforts to prevent relapse, in penitentiary and after release.”⁹¹

The therapeutic module included the participation of former users at 1-2 weekly meetings of the group during the 12 weeks. The multidisciplinary teams of specialists⁹² of the program had to: “1) maintain the motivation for abstinence, 2) provide the beneficiaries with information allowing the formation of coping abilities, 3) provide the beneficiaries information capable of identifying and reducing drug related habits and replacing them with sustainable and positive activities, 4) to transmit and form techniques for the recognition and management of situations with acute need of consumption; 5) provide information to identify social support networks in risk situations.”⁹³

According to data provided by the National Administration of Penitentiaries⁹⁴, in year 2010, the Directorate for Social Reintegration within the National Administration of Penitentiaries implemented the ***Specific program for psychosocial assistance intended for persons with history of substance abuse in all penitentiaries***. Up to the completion of this report, the program was attended by 1,924 inmates. Furthermore, during 2010 - July 2012, 2,219 former drug user detainees have benefited from specific psychological counseling.⁹⁵

In the period April 2009 - April 2012, the project RO 0034 “The establishing of 3 therapeutic communities in the Penitentiaries Rahova, Jilava and Târgșor was carried out”⁹⁶. The program lasted 36 months and was funded by the governments of Iceland, The Principality of Liechtenstein and the Kingdom of Norway through the European Economic Area Financial Mechanism. The program was carried out by the General Inspectorate of the Romanian Police and the National Antidrug Agency in collaboration with the Ministry of Justice, the Ministry of Health and Social

91. Corduneanu Loredana, Petrescu Sven Cristian, *Specific program for psychosocial assistance intended for persons with history of substance abuse*, Print & Grafic, 2009, p. 11.

92. The multidisciplinary teams consisted of: psychologists, social workers, educators, physicians, sports monitor, representatives of the safety of detention service and penitentiary system (Corduneanu and Petrescu, 2009: 15).

93. Corduneanu L, Petrescu S C, *Specific program for psychosocial assistance intended for persons with history of substance abuse*, Print & Grafic, 2009, p. 12.

94. National Administration of Penitentiaries through address 7153/DRS/06.08.2012

95. National Administration of Penitentiaries through address 7153/DRS/06.08.2012

96. Istrate G. C., Răileanu L. D., Verdeș C., Călin C. F., Țone M., Teoroc C., Medeleț L. M., Nedelcu F., *Therapeutic community - a method of treatment for drug users in prison*, C.N.I. Coresi SA, Bucharest, 2012

Services the Organization PHOENIX Hague from Norway, the National Administration of Penitentiaries and the Probation Directorate. The program aimed to “provide support and social reintegration services for drug users that have committed offences”⁹⁷. From 1 January 2011 to 30 April 2012, 197 persons deprived of liberty were included in the created therapeutic communities.⁹⁸

12. Potential to develop or expand mechanisms for the diversion of drug users from prison into community based treatment

With the enactment of the new Criminal Code, a range of diversionary measures will be enlarged. Prosecutors can decide to suspend prosecution in case a drug user has not committed other offences. The offender will then be sent to a Center for drug prevention, evaluation and counseling for the assessment and referred for treatment.⁹⁹

13. Strategy for social reintegration of the offenders

Currently there is no national strategy for the reintegration of inmates.

In 2010 work on the draft of the *National Strategy designed for the reintegration of inmates started*.: The National Administration of Penitentiaries, the National Anti-drug Agency and NGOs were involved in the elaboration of the strategy. Although initially it was foreseen that in 2011 the strategy would “be promoted and implemented by the end of 2011”¹⁰⁰, from discussions with representatives of the Directorate for Social Reintegration of the National Administration of Penitentiaries it became clear that the workings are still in progress.

In the Romanian prison system, detainees that are former drug users have access to educational programs and activities conducted by specialized personnel from the Directorate for Social Reintegration. According to the data provided by C. Pripp¹⁰¹, during detention former drug users have the opportunity to participate in educa-

97. Istrate G. C., Răileanu L. D., Verdeș C., Călin C. F., Țone M., Teoroc C., Medeleț L. M., Nedelcu F., *Therapeutic community - a method of treatment for drug users in prison*, C.N.I. Coresi SA, București, 2012, p. 9.

98. National Administration of Penitentiaries through address 7153/DRS/06.08.2012

99. See EMCDDA, Country legal profiles, Romania. <http://www.emcdda.europa.eu/html.cfm/index5174EN.html?pluginMethod=eldd.countryprofiles&country=RO>, accessed on 06.08.2012.

100. National Antidrug Agency, *National Report on Drugs*, 2011, p. 189.

101. Pripp C, *Unpublished documentary material*, Psychosocial Assistance Services, Directorate for Social Reintegration, the National Administration of Penitentiaries, 26.07. 2012.

tional activities (school and vocational training) designed to facilitate social reintegration through continuing school education, vocational qualifications, requalification or initiation in handicrafts.

At the same time, inmates have access to educational programs:¹⁰² programs for family life education, civic education, health education, literacy for detainees who cannot be schooled, training programs for liberation, general education programs “The Universe of Knowledge” (divided into 4 sections: literature, history, environmental education, economics). In addition to these, there are semi-structured educational activities (inmate culture development and artistic activities), individual informative talks on various topics requested by the detainees, library activities, exits/ excursions in the community (participation in competitions, shows, sporting events, visits to cultural institutions), religious activities according to the doctrine and worship practices specific to each prisoner (knowledge and respect for moral-religious values, ethical and civic spirit development, strengthening links with the family and the parish) and volunteering.

By Order of the Minister of Justice no. 420/22.01.2011 public interest activities in which prisoners can be involved as volunteers have been established: “cultural, artistic, educational, sporting, religious and environmental protection activities are organized by central and local authorities, non-governmental organizations or other legal persons (e.g. planting and reforestation of public lands, waste collection, development of flood defence works, works to combat soil erosion, expansion of irrigation, public roads landscaping, snow removal activities, activities for the developing of shelters for stray animals)”¹⁰³

The analysis of the information presented in the “National Report on Drugs” revealed the existence of programs that aimed at the social reintegration of drug users.

In 2010 a project meant to contribute to the labor market integration of former drug users was initiated: “*Enhancing the functional capacity of the integrated social services offered to addicts and former addicts for labor market integration through actions for the development of innovative tools and working methods and implemen-*”

102. Ibidem.

103. Pripp C, *Unpublished documentary material*, Psychosocial Assistance Services, Directorate for Social Reintegration, the National Administration of Penitentiaries, 26.07. 2012.

tation of training programs”¹⁰⁴. Within this project a Center for Social Inclusion inside the Giurgiu Penitentiary was established.¹⁰⁵

According to information provided by the National Antidrug Agency¹⁰⁶, in 2010 the program MATRA MPAP PROJECT - MAT09/RM/9/1 “*Creating the National Integrated System for the rehabilitation of drug users who have committed offences continued.*” Partners: the National Antidrug Agency, the Public Ministry, Department for Probation, National Administration of Penitentiaries and the General Inspectorate of Police.¹⁰⁷

14. Data concerning the recidivism of the offenders sentenced for drug-related crimes

There are no statistical data regarding recidivism of drug law offenders available.

II. Initiatives for drug law reform undertaken by the government and/or the parliament in the last 10 years

During 2009 there were three members of parliament who had legislative initiatives related to banning ethnobotanics. Initiatives have not passed debates in Parliament. However, in February 2010 the Romanian Government issued an emergency ordinance forbidding 36 substances and then another 8 substances.

RHRN had a legislative initiative in 2010 proposing the amendment of Law 143 of 2000, changing Articles 2, 4 and 16. Changes aimed at the decrease of penalties for drug users, the introduction of a minimum threshold for the quantities of drugs that constitute evidence for better delimitation of cases of drug trafficking and the cases of consumption. Also, the initiative aimed at the elimination or clarification of Article 16, which allowed the investigator to put pressure on the consumer involved in drug trafficking for the purpose of purchasing the necessary drugs for his own consumption. They wanted also the orientation towards a therapeutic direction and to remove the criminal penalties of imprisonment of Article 4. The initia-

104. The project is developed by the University of Bucharest in collaboration with the Association “Promoting the Right to Health”, Siveco Romania and Go Business Solutions. The project is co-financed by European Social Fund through the Sectoral Operational Programme “Human Resources Development 2007 - 2013 Invest in people!”

105. Ibidem.

106. National Anti-drug Agency, *National Report on Drugs*, 2011, p. 190.

107. Ibidem.

tive stayed with the Ministry of Justice (apparently there are no specialists to analyze criminal details).

The National Anti-drug Agency mentioned in the “National Report on drugs” (2011) that two legislative proposals were issued and submitted in 2010 to the Romanian Senate.¹⁰⁸

The proposals aimed at the amending of *Law no.143/2000 for preventing and combating traffic and illicit drug use* and of *Law no.339/2005 regarding the legal status of plants, substances and preparations containing narcotic and psychotropic substances*¹⁰⁹. The first legislative initiative proposed the introduction of the medium risk drug term, the increase of penalties for offences provided by Law no. 143, the establishment of medical centers for ethnobotanical consumers. This initiative was rejected by the Senate.

The second legislative initiative aimed at prohibiting and punishing with imprisonment the persons involved in activities that dealt with substances, herbs or preparations which posed high risk for the consumers. The initiative passed the Senate and the Chamber of Deputies.¹¹⁰ In 2011 10 legislative proposals that amended Law no. 143/2000 for preventing and combating illicit drug trafficking and consumption and for introducing new regulations for ethnobotanical commercialization were registered.¹¹¹

III. Standpoints of relevant stakeholders (political parties, scientific community and civil society organizations) on drug law reform

The interviews conducted with the representatives of the institutions having in custody persons convicted of drug trafficking and related crimes¹¹² enabled the identification of proposals for amendments to the legislation that would allow to improve the activities intended for drug users: a) the amendment of the legislation so that the probation counselor may request the judge rule that the consumer be obligated to follow treatment (when drug use during the period of surveillance is

108. National Anti-drug Agency, *National Report on Drugs*, 2011, pp. 18 - 19.

109. National Anti-drug Agency, *National Report on Drugs*, 2011, pp. 18 - 19.

110. National Anti-drug Agency, *National Report on Drugs*, 2011, pp. 18 - 19.

111. National Anti-drug Agency, *National Report on Drugs*, 2011, pp. 18 - 19.

112. Probation Service Bucharest and Social Reintegration Department of National Administration of Penitentiaries.

revealed) and b) the multiplication and diversification of services for drug users - development and multiplication of therapeutic communities for drug users.

On the other hand, the representatives of some non-governmental organizations that conducted similar programs for drug users¹¹³ have also made, in addition to the proposals to provide multiplication and diversification of services for drug users, proposals on:

1. Allocation of increased amounts of money from the state budget for treatment services provided to drug users or liberalization of the use of methadone.
2. The financing from the state budget of services provided by NGOs in order to ensure the stability and continuity of these services ensured up to now from international financing sources (project financing).
3. Clarifying the Public Procurement Law as to allow the purchase of services for drug users existent on the market. Organizing auctions for these services.
4. Amending Law 143/2000 - removal of the provisions that sanction drug possession for personal use (decriminalization of drug possession for personal use).
5. Amending the law under NAA is operating: passing the Agency under the authority of the Ministry of Health or the Prime Minister. For better functioning and ensuring the confidentiality of the relationship between the patient and the care personnel. The separation of police structures operating criminal investigation activities (supply reduction) from structures dealing with treatment, prevention, care and policies (demand reduction).

113. Romanian Harm Reduction Network and Alliance to Fight Alcoholism and Addiction.

Country Report Serbia

Country Report Serbia

by Dragoljub Jovanović¹

I. The current national drug strategy and drug legislation in the Republic of Serbia

1. National Strategy on Drugs

The Serbian strategy in the fight against drugs in the Republic of Serbia was adopted in 2009 and covers the period from 2009 through 2013 (hereafter referred to as the National Strategy) It was made with the aim of promoting and preserving the health of the population and reducing drug use and harm caused by drug abuse. The National Strategy indicated that the economic losses due to drug trafficking, illegal money flows, the high cost of medical treatment and social welfare are huge. In the fight against illicit drugs, it is clear that the whole community in all its parts must be organized, on top of which should be the highest state institutions with intersectional collaboration. The Strategy in the fight against drugs for the period from 2009 to 2013 in the Republic of Serbia is an act which contains all the important and relevant issues related to the fight against drugs. Based on the strategy, the Government of the Republic of Serbia in April 2009 adopted the Action plan for implementing the strategy.

The guiding principles of the National Strategy are the following: *Strengthening institutional capacity; Respect of constitutionality and legality; Protecting the citizens of the Republic of Serbia; Protecting the community; Protection of human rights; Right to information; Multidisciplinary; Comprehensive and continuous work and approaches to the problem; Availability of services - services to help addicts; Decentralization; Ethics and Professionalism; De-stigmatization;*

The Action Plan was adopted in order to implement the national strategy, the definition of concrete measures. The goals of the Action Plan are the following: *Effective and coordinated fight against illicit drugs; Improvement of measures to protect families; The involvement of all sectors of society in activities related to the fight against illicit drugs; More efficient use of measures that achieve a reduction of health*

1. Graduate special educator at the Special hospital on addiction; postgraduate student at the Faculty of special education and rehabilitation, University of Belgrade, department of Prevention and treatment of behavioral problems.

and social consequences of drug abuse in society and a reduction of drug use in society, especially among children and young people.

The goal of the strategy is a coordinated and structured plan to combat drugs, prevent and treat substance abuse with balanced and structured goals and actions that will be implemented to achieve the strategy, and strengthen international cooperation in all sectors in the fight against drugs. The strategy aims to clearly define how the state will coordinate the fight against drugs, and the resources which the state plans to use in this fight. For each of the fields of the strategy there are clearly defined objectives and actions that will be applied for the realization and implementation of the strategy. On the basis of the strategy in 2009 an action plan for the implementation of the strategy for the fight against drugs in the Republic of Serbia for the period from 2009 to 2013 was adopted. The measures envisaged in the action plan are based on the Strategy and are in accordance with the Strategy of the European Union in the field of drugs for the period from 2008 to 2012. The Strategy and Action Plan foresees multidisciplinary activities of all sectors (state, local, religious, non-governmental) in achieving the stated goals.

The goals to be achieved by not only the strategy but also the action plan are: Efficient and coordinated fight against drugs in the Republic of Serbia; More efficient use of measures that achieve a reduction in the health and social consequences of drug abuse in society and reducing the use of drugs in society, especially among children and young people; The advancement of measures to protect families; Involvement of all sectors of society in the activities related to the fight against drugs.

As the fight against drugs is a multidisciplinary problem it requires a multidisciplinary approach, and it is necessary to coordinate all government sectors in the fight against drugs. The Action Plan provides coordinated activities at all levels in this effort and the inclusion of all relevant ministries and institutions in the area of its operations. The institutions that participate in the fight against drugs are; the Ministry of Health, Ministry of Defense, Ministry of Internal Affairs, Ministry of Finance, Ministry of Culture, Ministry of Youth and Sports, Ministry of Labor and Social Policy, Ministry of Education, Ministry of Justice, etc. The Action Plan through its objectives, activities and indicators determine which ministry, organs of state administration or local governments coordinate and work to achieve them. Based on the adopted strategy and action plan it provides clear coordination of all state institutions and non-governmental sectors in the fight against illicit drugs. The Serbian Government as activity coordinator in 2009 established a Commission to combat abuses of illicit drugs, which aims to control the implementation of the strategy. The **RS** government is responsible for activities aimed at harmonizing the EU position in the implementation of the strategy.

The Ministry of Health activities are focused on the maintenance of regular, periodic meetings of the joint bodies and the competent administrative authority to oversee the fulfillment of the objectives of the Strategy. In cooperation with other stakeholders they make action plans that are in accordance with the approved action plan. It organizes research strategies for achieving the goals of the various ministries, organizing a series of training sessions in the area of drugs and precursors. In cooperation with other ministries it makes proposals on amendments to the legal framework within the legal provisions related to illicit drugs, working on improving the areas related to the control of production and trade of narcotics and precursors. In cooperation with the Ministry of Police it worked to establish control among those participating in trafficking. Also, in cooperation with the Ministry of the Interior it designated storage for the disposal of seized drugs and precursors, and participated in the establishment of the destruction of seized illicit drugs. In cooperation with other ministries and NGOs the Ministry of Health is working continuously to achieve the objectives and activities in the field of prevention, early detection and treatment of the addicts. **The Ministry of Defense** participates in activities in the implementation of the Strategy. It adopts the action plans within its jurisdiction, in cooperation with other ministries and in cooperation with relevant ministries involved in the amendment of legal acts. The Ministry of Defense is also participating in the establishment of new doctrines in the treatment of substance abuse, as well as linking experts in the fields of drug research. It carries out research on the prevalence of drug use in the army of Serbia, as well as cooperating in the service areas of narcotics and precursors. **The Ministry of Interior** deals with the tasks of reducing drug supply and also prevention. Plans and objectives are implemented through the Police, while the Ministry of Interior has the task of setting up international cooperation (EUROPOL, EMCDDA, INTERPOL), the coordination of bodies within the country, training and education of law enforcement agencies, working in the field of illicit drugs, leadership of law enforcement, as well as analytical and intelligence activities for the detection of offences, related to illicit drugs. The Interior Ministry conducts joint investigations with Bosnia-Herzegovina, Slovenia, and Croatia and provides intelligence to Western European countries. The Drug Smuggling Department continues to develop a database for crimes, arrests, and seizures of drugs, and chemical precursors. The Security Information Agency hosts law enforcement liaison officers from Bulgaria, Romania, Croatia, Italy, Austria, and other countries in the region. The **Police** carry out different duties: protection of lives, personal safety detection and investigation of crimes and offences, arresting the perpetrators, protection of national borders, supervision and regulation of the traffic etc. Tasks, which are performed by uniformed police, criminal police and other specialized police units, also include work in the field of illicit drugs. Among the many directorates under the Police, the Criminal Police Directorate

plays an important role in the field of illicit drugs. The **Illicit Drugs Section** which is specialized in the task of detection and prosecution of crimes related to illicit drugs operates within the police. **The Ministry of Justice** participates in activities in the implementation of the Strategy. It adopts the action plans within its jurisdiction, in cooperation with other ministries and in cooperation with relevant ministries involved in the amendment of legal acts. It works on improvement in the areas competent for the control of production and trade of narcotics and precursors. In cooperation with the Ministry of Police it worked to establish control among those participating in trafficking. Also, in cooperation with the Ministry of the Interior and Ministry of Health it designated storage for the disposal of seized drugs and precursors. It deals with the tasks of reducing drug supply and also prevention. **The Prison Administration** of the Republic of Serbia performs administrative and professional assignments concerning the enforcement of prison sanctions, organization of prisons and correctional facilities, personnel and other conditions for the functioning of the prisons and the correctional facilities. The task of the Prison Administration is to enforce the rights and obligations of the persons who have been deprived of liberty. **The Ministry of Finance** provides an action plan within its jurisdiction, in accordance with the adopted strategy and action plan, as well as providing a draft according to the guidelines of the strategy. In cooperation with other ministries it is involved in strengthening the control and punishment of the illegal manufacture of drugs and precursors, as well as strengthening the control and punishment of the illegal import and export of drugs and precursors. **The Ministry of Culture**, in cooperation with other ministries participates in intensifying the involvement of citizens in the implementation of the strategy. It is involved in achieving the goal of reducing drug supply and drug demand. **The Ministry of Youth and Sports** encourages the involvement of citizens in activities related to the fight against illicit drugs. It participates in early detection and intervention, and in the rehabilitation and reintegration of drug addicts. It brings its own action plan in accordance with the Action Plan. It participates in activities aimed at reducing the demand for illicit drugs. **The Ministry of Labor and Social Affairs** coordinates the work of the institutions under its jurisdiction in dealing with high-risk groups (Prevention, early detection, intervention) in the field of social protection. The strategy for the fight against drugs in the Republic of Serbia has foreseen local communities, social services and NGOs playing a significant role. Unfortunately, this topic has not been elaborated on in appropriate regulations, and therefore there no greater implementation has been put into practice since 2001. The practice was introduced to permit NGOs to visit the institutions for the enforcement of sanctions, with the aim of monitoring within the institution. As one of the major challenges in the process of improvement and change, programs of reformation (treatment programs) are based on evaluations provided by NGOs and international organi-

zations and detected deficiencies that are considered to be changed. As part of a strategy for reform of the enforcement of institutional sanctions in 2005, one of the planned activities was the improvement of the mechanisms of control and supervision, inspection and the monitoring system of the NGO. NGO representatives participated in the drafting of the Strategy for reform of the enforcement of institutional sanctions and key documents in it. In comparison to previous periods in this area, a trend in increasingly significant progress has been noted. NGOs participate in activities aimed at reducing the demand for drugs. They participate in the realization of rehabilitation and social reintegration of treated addicts as well as ongoing efforts to reduce the harm caused by illicit drugs.

In the field of International Law, The Republic of Serbia signed the following international treaties:

United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) Former Yugoslavia signed and ratified the Convention on 20 December 1988 and 3 January 1991. The Republic of Serbia 2001 Succession Law

The Republic of Serbia ratified the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted in Vienna 1988 (“Official Gazette of SFRY-International Treaties”, No. 14/90),

The Convention on Narcotic Drugs since 1961, ratified in 1964 (“The Official Gazette SFRY” - Addendum No. 2/64),

Convention on Psychotropic Substances since 1971 (“Official Gazette of SFRY”, No. 40/73). Law ratifying the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, (“Fig. SFRY International Treaties, no.14/90).

In addition to the above Convention, the Republic of Serbia has signed a number of bilateral agreements. The Strategy and action plan against drugs in the Republic of Serbia for the period 2009-2013 is in line with EU legislation in this area.

2. National Substantive Criminal Law

Republic of Serbia Criminal Cod recognizes two types of crimes, misdemeanours and criminal offences. Drug related offences are considered as criminal offences. The Criminal Code deals with all drug related crimes.

Criminal Code chapter one basic provision: **Article 1:** No one shall be punished and no criminal sanction shall be imposed for an offence which did not constitute a criminal offence in law before it was committed, nor shall punishment or other criminal sanction not prescribed by law before the criminal offence was commit-

ted be imposed on anyone. **Article2:** Punishment and admonitions shall only be imposed on offenders found culpable of criminal offences. **Article 3:** The protection of human beings and other fundamental social values constitute the basis and limitations for defining criminal offences, prescribing criminal sanctions, and their application, to a degree required for the suppression of those offences.

Misdemeanor law one basic provision: **Article1:** This Law shall regulate: the notion of a misdemeanor, requirements for misdemeanor liability, requirements for prescribing and enforcement of misdemeanor sanctions, the system of sanctions, misdemeanor proceedings, and the procedure of enforcement of a decision. **Article2:** A misdemeanor is an unlawful culpably committed act that is stipulated as a misdemeanor by a regulation of the competent authority. There shall be no misdemeanor if unlawfulness or guilt is excluded although there are all the essential elements of a misdemeanor. **Article3:** No one may be punished for a misdemeanor or other misdemeanor sanctions may be applied against him/her, if such an act, before it was committed, was not stipulated as a misdemeanor by a law, or by a regulation based on a law, and for which it was not prescribed, by a law or other regulation based on a law, by what type and degree of sanction the misdemeanor offender may be punished.

Criminal sanctions according to Article 4 paragraph1 are the following:

- Punishment,
- Admonitions,
- Security measures
- Corrective measures

The following sanctions may be pronounced to perpetrators of criminal offences according to Article 43:

- Imprisonment;
- Fines;
- Community service;
- Revocation of driver's licences.

Cautionary measures according to Article 64 paragraph 1:

- Suspended sentence and
- Judicial admonition

Security measures according to Article79 of Criminal Code are the following:

- Compulsory psychiatric treatment and confinement in a medical institution article 79 paragraph 1;
- Compulsory psychiatric treatment while at liberty article 79 paragraph 2;
- Compulsory drug addiction treatment article 79 paragraph 3;
- Compulsory alcohol addiction treatment article 79 paragraph 4;
- Prohibition from practising a profession, activity or duty article 79 paragraph 5;
- Prohibition to operate a motor vehicle article 79 paragraph 6;
- Confiscation of objects article 79 paragraph 7;
- Expulsion of a foreign nationals from the country article 79 paragraph 8;
- Publication of the judgement article 79 paragraph 9;
- Restraining orders prohibiting physical proximity and communication with aggrieved parties article 79 paragraph 10;
- Bans on attending specific sports events article 79 paragraph 11.

Law on juvenile criminal offenders and criminal protection of juveniles diversion orders according to Article 7:

- Settlement with the injured party so that by compensating the damages, apology, work or otherwise, the detrimental consequences would be alleviated either in full or partly;
- Regular attendance of classes or work;
- Engagement, without remuneration, in the work of humanitarian organizations or community work (welfare, local or environmental);
- Undergoing relevant check-ups and drug and alcohol treatment programs;
- Participation in individual or group therapy at suitable health institution or counseling centre.

Educational measures, juvenile detention and security measures, stipulated by Article 79 of the Criminal code may be pronounced to juvenile offenders, with the exception of restraint to be engaged in his occupation, business activities or duties.

Educational measures according to Article 11 are the following:

- Warning and guidance: Court admonition and alternative sanctioning;
- Measures of increased supervision: increased supervision by parents, adoptive parent or guardian, increased supervision in foster family, increased supervision

by guardianship authority, increased supervision with daily attendance in relevant rehabilitation and educational institution for juveniles;

- Institutional measures: remand to rehabilitation institution, remand to correctional institution, committal to special institution for treatment and acquiring of social skills.

Alternative Sanctioning according to Article 14:

The Court may order the juvenile:

- To apologize to the injured party;
- To compensate for the damages caused, within his personal capacity;
- To regularly attend classes and work;
- To qualify for an occupation commensurate with his abilities and talents;
- To participate, without remuneration, in the work of humanitarian organizations or perform community work of social, local or environmental character;
- To involve in particular sports activities;
- To undergo relevant check-ups and drug and alcohol treatment programs;
- To participate in individual or group therapy in relevant institution or counseling centers and to act in accordance with work programs created for him in these institutions;
- To attend vocational training classes or to prepare for the exams in a designated field of study;
- Not to leave his place of permanent or temporary residence unless guardianship authority or the court grants him special permission to leave; increased supervision:
- Increased supervision by parent, adoptive parent or guardian Article 15
- Increased supervision in a foster family Article 16
- Increased supervision by guardianship authority Article 17
- Increased supervision with daily attendance in relevant juvenile rehabilitation and educational institution Article 18
- Alternative sanctioning together with increased supervision measures Article 19

Institutional measures are the following:

- Remand to educational institution Article 20

- Remand to a correctional institution Article 21
- Remand to a special institution for treatment and acquiring of social skills Article 23

Juvenile Prison Sentence is provided in Article 29.

Criminal Code and criminal-law regulative of Republic of Serbia contains statutory provisions related to alternative sanctions which can be delivered to offenders charged with drug related sentences and / or for some other criminal offences which fall within the scope of these sanctions. Article 65 paragraph (2) The court may order in a suspended sentence that the penalty shall be enforced if the convicted person fails to restore within a specified period of time material gain acquired by the commission of the offence, fails to compensate damages caused by the offence, or fails to fulfil other obligations provided in provisions of criminal legislation. The court shall set the period of time for fulfilling such obligations within the framework of the specified probationary period. Security measures ordered together with conditional sentences shall be enforced, Article 65 paragraph (3). During sentencing, the court, in certain cases prescribed by law, may impose a convicted parole. (Article 65 CCRS). Probation and court sanctions may be imposed on the perpetrators of minor crimes, in situations where the court decides that only the imposition of these sanctions will have a positive effect on the perpetrator not to commit new crimes. Probation or a conditional sentence cannot be less than one nor more than five years, Article 65 paragraph 1. In addition to the suspended sentence it shall be determined if the sentence shall not apply if the convicted probation (probation) does not commit a new criminal act. By applying the Article 65 paragraph 2 a sentence may be carried into execution if he does not fulfill his obligations as ordered by Article 65 paragraph 2. The court may order in a suspended sentence that the penalty shall be enforced if the convicted person fails to restore within a specified period of this material gain acquired by the commission of the offense, fails to compensate damages caused by the offense, or fails to fulfill other obligations provided in provision of criminal legislation. The court shall set the period of time for fulfilling such obligations within the framework of the specified probationary period. Security measures ordered together with conditional sentences shall be enforced section mark Article 65 paragraph 3 Criminal Code of the Republic of Serbia. Application of Article 66 defines the conditions when you can pronounce a suspended sentence. Article 66 Criminal Code of the Republic of Serbia specifies the conditions when it can impose a suspended sentence. Article 66: 1) A suspended sentence may be pronounced where a custodial penalty in duration of less than two years has been determined for the perpetrator of a criminal offence. 2) For criminal offences punishable by terms of imprisonment of ten years or more, the sentence may not be conditional. 3) A suspended sentence may not

be pronounced if not more than five years have elapsed from the time the sentence pronounced to a perpetrator for premeditated criminal offence became final.4) In determining whether to pronounce a suspended sentence the court shall, having regard to the purpose of suspended sentence, particularly take into consideration the personality of the offender, his previous conduct, his conduct after committing the criminal offence, degree of culpability and other circumstances relevant to the commission of crime.5) If both a term of imprisonment and a fine are imposed, only the custodial sentence may be suspended.

The application of the Article 71 defendant to the court may impose suspended sentence with protective supervision. Protective supervision includes assistance, care, supervisory and protection measures provided by law. Article 73 defines protective supervision. Article 73: Protective supervision may comprise one or more of the following obligations: 1) Reporting to competent authority for enforcement of protective supervision within periods set by such authority; 2) Training of the offender for a particular profession; 3) Accepting employment consistent with the offender's abilities; 4) Fulfilment of the obligation to support family, care and raising of children and other family duties; 5) Refraining from visiting particular locations, establishments or events if that may present an opportunity or incentive to re-commit criminal offences; 6) Timely notification of the change of residence, address or place of work; 7) Refraining from drug and alcohol abuse; 8) Treatment in a competent medical institution; 9) Visiting particular professional and other counselling centres or institutions and adhering to their instructions; 10) Eliminating or mitigating the damage caused by the offence, particularly reconciliation with the victim of the offence. Closer to the statutory provisions which define further requirements related to Chafe supervision are defined using the Article CCRS 74-76

Judicial Admonition Article 77 CCRS:

(1) Judicial admonition may be pronounced for criminal offences punishable by imprisonment under one year or fine, which have been committed under such extenuating circumstances that they render them particularly minor. (2) For particular criminal offences and under conditions provided by law, a judicial admonition may be pronounced even when such offences are punishable by imprisonment up to three years. (3) The court may pronounce admonition for the joining of offences, provided requirements referred to in paragraph 1 and 2 of this Article have been established for each of them. (4) In deliberating whether to pronounce a judicial admonition, the court shall, having regard to the purpose of the admonition, particularly take into consideration the personality of the offender, his past conduct, his conduct after commission of the offence, and specifically his attitude to the

victim of the offence, degree of culpability and other circumstances under which the offence was committed. (5) Judicial admonitions may not be pronounced to members of armed forces for criminal offences against the Army of Serbia. Another mechanism that applies is a conditional release. Criminal Code RS Article 46 as one of the mechanisms used is parole. All rights and obligations relating to conditional release are regulated by the **Criminal Code Article 46**: (1) The court may conditionally release convicted persons who have served two-thirds of their prison sentences if in the course of serving the prison sentence they have improved in such a manner that it would be reasonable to assume that they will behave well while at liberty, and, in particular, that they will refrain from committing new criminal offences until the expiry of the prison sentences imposed. In deliberating whether to conditionally convict persons, consideration shall be given to their conduct during service of their sentences, performance of work tasks, relative to their abilities, and other circumstances indicating that the purpose of punishment has been achieved. (2) In its decision on conditional release, the court may order the convicted person to fulfil obligations envisaged by provisions of criminal law. (3). In the case referred to in paragraph 1 of this Article, unless conditional release is revoked, it shall be considered that the convicted person has served his sentence.

Revocation of Conditional Release Article 47: (1) The court shall revoke conditional release where convicted persons while on conditional release commit one or more criminal offences punishable by custodial sentences of six months or longer. (2) The court may revoke conditional release, where convicted persons while on conditional release commit one or more criminal offences punishable by custodial sentences of up to six months, or does not fulfil one of the obligations ordered by the court in accordance with Article 46 paragraph 2 of this code. In determining whether to revoke conditional release, the court shall particularly take into consideration whether criminal offences are related, their motives, and other circumstances indicating that revocation of conditional release is justified. (3) The provisions of paragraphs 1 and 2 of this Article shall also apply when the person conditionally released is tried for a criminal offence committed prior to conditional release. (4) When the court revokes conditional release it shall pronounce a penalty by applying provisions of Articles 60 and 62, paragraph 2 of this code, taking the previously pronounced sentence as already established. The part of the sentence served by the convicted person for the preceding conviction shall be calculated into the new sentence, whilst time spent on conditional release shall not be included. (5) If the person on conditional release is convicted to a term of imprisonment of less than one year, and the court does not revoke conditional release, the conditional release shall be extended for the period of imprisonment for such sentence served by the convicted person. (6) In the cases referred to in paragraphs 1 to 3 of

this Article, conditional release may be revoked not later than two years from the date the conditional release expired.

In certain cases provided for by law, the perpetrator of the offense may be imposed with a fine . Criminal definition of the terms and conditions about the fine article can be found by using CCRS 48-51.

Community service may be imposed for criminal offences punishable by imprisonment of up to three years or a fine (Article52 paragraph1). Community service may not be pronounced without the consent of the offender. In imposing these sanctions the court must take into account the purpose of the punishment and the type of offense committed.

Special provisions relating to offenses related to drugs are reflected in the possibilities of the court in criminal and misdemeanor proceedings to impose drug treatment. Treatment of drug addicts is voluntary, but the state as a mechanism of defense against drug and substance abuse measures has introduced compulsory treatment (Article 83 CCRS). When an adult person is in question, measure of compulsory treatment can be at liberty and open. Compulsory medical treatment at liberty shall be ordered to the defendant to a suspended sentence and cannot exceed 3 years, or until healing. The measure of compulsory treatment is imposed for the defendant who has committed a crime when there is a danger that the defendant due to dependencies is going to commit a new criminal offense. In case the defendant willfully fails to undergo the treatment, or treatment is interrupted, measure of compulsory treatment from freedom will be replaced with measure of the closed type of compulsory treatment. **Law on offenses** of the Republic of Serbia stipulates that the application of Section 46 of the violator may impose protective measures of compulsory treatment of alcoholics and drug addicts (Section 46, paragraph6), and applying the **law on misdemeanors** section 53 can impose compulsory treatment of alcoholics and drug addicts. By applying article 68, paragraph 4 of the **juvenile offenses** person may impose a special obligation to undergo rehab and treatment of alcohol dependency, drug or other substance abuse and addiction. Special obligations that are imposed against a minor, the application of this article may not last longer than six months and must not interfere with a minor's education or employment. Execution of special obligations is carried out under the supervision of the Center for Social Work who has an obligation to regularly inform the court imposed on the execution of special duties. Where minors are concerned by the **Law on Juvenile Offenders and Criminal Protection of Juveniles** court for juveniles with application of Article 14 against a minor may impose one or more special obligations if it determines that the relevant requirements or prohibitions are needed to affect the minor and his or her behavior. One of the spe-

cial obligations that the juvenile court may impose to a minor is “to submit to examination and treatment of addiction caused by the use of alcoholic beverages or narcotic drugs” (Article 14, paragraph 7). Article 39 of the law on juvenile offenders requires that a minor can be imposed with security measures only when they pronounce educational measures or a juvenile prison sentence. Security measures of mandatory treatment of alcoholics and security measures of compulsory drug treatment cannot be imposed with warning measures and directives. Article 146 of the juvenile offenders are required to carry out security measures of mandatory psychiatric treatment and confinement in a medical institution, compulsory treatment of alcoholics and drug addicts. Compulsory treatment must be adapted to the age and personality of minors.

3. National Drug Laws and Institutions

Law related to Psychoactive Controlled substances: Stated by law, this determine the terms for the production of controlled traffic psychoactive substances, and the conditions and procedures for issuing permits for the manufacture, distribution, export, import and transit of controlled psychoactive substances. The law is setting up conditions for the cultivation and processing plants from which traffic can get controlled psychoactive substances, and use of psychoactive controlled substances. Article 2 of the said Act provides that controlled substances are psychoactive substances that are on the list of controlled psychoactive substances. Psychoactive substances controlled under paragraph 1 of this article are:

- 1) Narcotic drugs or narcotics,
- 2) Psychotropic substances,
- 3) Products of biological origin that have psychoactive effects,
- 4) Other psychoactive controlled substances.

Law related to substances used for illegal manufacture of intoxication drugs psycho damaging substances: This law regulates the conditions for the production and wholesale distribution of substances used in unauthorized production of narcotic drugs and psychotropic substances (hereinafter referred to as the precursors), supervision in this area in order to prevent their abuse or exploitation of an improper purpose, as well as other issues of importance to this issue.

Law on Drugs and Medical Supplies (“Official Gazette of RS”, br.30/2010): This law regulates the terms and procedure for obtaining marketing authorization, or entry of drugs into the registers by the Agency for Medicines and Medical Devices Agency of Serbia, production and marketing of drugs and medical devices and

monitoring in these areas, the Agency for Medicines and Medical Devices Agency of Serbia and other issues relevant to drugs and medical devices.

Criminal Code (“Official Gazette of the RS”, Nos. 85/2005, 88/2005 - corr., 107/2005 - corr., 72/2009 and 111/2009): This Code regulates all matters relating to criminal offenses (Type of crime offenses, stipulated penalties, etc.).

Criminal Code of Republic of Serbia incriminates:

Unlawful Production and Circulation of Narcotic Drugs (Article 246 CCRS):

(1) Whoever unlawfully produces, processes, sells or offers for sale, or whoever purchases, keeps or transports for sale, or who mediates in sale or buying or otherwise unlawfully puts into circulation substances or preparations that are declared narcotics, shall be punished by imprisonment of from three to twelve years. (2) Whoever unlawfully has grown poppy seeds or psychoactive hemp or other plants used to manufacture narcotic drugs, shall be punished by imprisonment of from six months to five years. (3) If the offence referred to in paragraph 1 of this Article is committed by a group, or if the offender has organized a network of dealers or middlemen, the offender shall be punished by imprisonment of five to fifteen years. (4) If the offence referred to in paragraph 1 of this Article is committed by an organized criminal group, the offender shall be punished by imprisonment of a minimum of ten years. (5) The offender referred to in paragraphs 1 through 4 of this Article who discloses from whom he obtained narcotics may be remitted from punishment. (6) Whoever unlawfully manufactures, obtains, possesses or gives for use equipment, material and substances that are known to be intended for production of narcotics shall be punished by imprisonment of six months to five years. (7) All narcotics and means for production and processing shall be seized.

Unlawful Keeping of Narcotics (article 246a CCRS): (1) Whoever unlawfully keeps for their own use small quantities of substances that are declared narcotics, shall be punished by a fine or imprisonment up to three years, or may be remitted from punishment. (2) The offender referred to in paragraph 1 of this Article who reveals from whom he purchases narcotics may be remitted of punishment. (3) The narcotics shall be seized

Facilitating the Use of Narcotics (article 247 CCRS): (1) Whoever induces another person to take narcotics or gives him narcotics for his or another’s use or places at disposal premises for taking of narcotics or otherwise enables another to take narcotics, shall be punished by imprisonment of six months to five years. (2) If the offence referred to in section mark 1 of this Article is committed against a juvenile or several persons or has resulted in particularly serious consequences, the offender shall be punished by imprisonment of from two to ten years. (3) If the offences referred to in section mark 2 of this Article results in death of a person, the

offender shall be punished by imprisonment of from three to fifteen years. (4) For criminal offence referred to in paragraphs 1 and 2 of this Article, health-care workers who provide medical assistance to enable the use of narcotic drugs shall not be punished. (5) The narcotics shall be seized.

Drug addiction does influence the sentence that the addicts receive. During the sentencing consideration is given to beneficial and detrimental circumstances surrounding the case, together with the mental condition of the offender and his ability to understand the importance of the committed offence. This is particularly important because in instances where drug addiction is present or during the trial it becomes known that offender is a drug addict, a psychiatric evaluation is required to establish level of liability, which can have a significant influence on the sentence. Where drug addiction is suspected during the trial or it becomes known that offender is a drug addict, a psychiatric evaluation is required to establish level of liability, which can have a significant influence on the sentence. While psychiatric evaluation has a significant influence on instructing of mandatory treatment, courts are not formally bound by its findings. Formally there is no difference in law between 'soft' and 'hard' drugs in the Criminal Code of Republic of Serbia. Criminal Code Republic of Serbia does not recognize light and heavy drugs. All drugs were also sanctioned in the criminal code. RS legislative system does not distinguish between narcotics, dividing them into light and heavy, but puts them in the same category, which means that the abuse all kinds of drugs prescribed by the same criminal sanctions are related

Penalty policy in relation to drug related offenses range from several months to many years of imprisonment and prison sentences. Compared with some other sentences imposed for murder for example there is overlapping in length of the penalties. The longest sentence for crimes related to drug is from five to fifteen years, while the penalties for murder is punished by a term of imprisonment of between five and fifteen years duration, penalty for aggravated murder is ten to forty years, etc. Compared to the general sentencing level in Republic of Serbia treatment of offenders for drug related crime is less strict. There is a substantial discrepancy between the sanctions provided for in the law and the actual sanctions imposed by the courts. Over the last years, in the cases instituted in connection with drug-related offences, suspended sentences have outnumbered effective custodial sentences. Applying Criminal Code courts have sentenced, in addition to a suspended sentence, and imposed a measure of compulsory treatment of drug addicts in custody. The practice shows that the courts in most cases apply imprisonment with a suspended sentence and a measure of freedom to the treatment of drug addicts. This aspect is regulated by Criminal code. Organised manufacture and distribution of intoxicating drugs is considered as a more serious criminal offense (ar-

ticle 246 Criminal Code of Republic of Serbia paragraph (3, 4). *Article 246 CCRS Paragraph 3:* If the offence referred to in paragraph 1 of this Article is committed by a group, or if the offender has organized a network of dealers or middlemen, the offender shall be punished by imprisonment of five to fifteen years. *Article 246 CCRS Paragraph 4:* If the offence referred to in paragraph 1 of this Article is committed by an organized criminal group, the offender shall be punished by imprisonment of a minimum of ten years. All actions related to drugs are considered criminal. Depending on the type of the offense, Criminal Code of Republic Serbia applies article 246, 246a and article 247. Depending if the offense is related only to drugs, or there are other types of crimes which are part of the trial, addiction is considered as one of the relevant reasons for crime being committed. Criminal legislation does not look favourably on repeated crimes. In addition to considering drugs as a criminal offence, criminal legislation (criminal code, offence law...) as a legal protector of society and the individual, implemented specific obligations and measures for treatment of drug addicts and alcoholics regardless of whether they are imprisoned or free. During sentencing, most appropriate treatment is considered with the aim of yielding the best results.

4. Drug Law Enforcement in Practice

Since 2000 there has been a significant change in the Criminal Code of Republic Serbia. In accordance with European standards and as it is approaching and entering the European Union, the Republic of Serbia is continually changing legislation in the field of justice. As the finest example of change in the criminal law is the abolition of the death penalty, then the introduction of alternative sanctions etc. Within a decade of its existence, the NGO "VEZA" has presented in its bulletin information that they received from an inquiry into police procedure towards intravenous addicts. Their research record indicates that there is an inadequate relationship between the police and judicial authorities against drug addicts. As stated, 72% of them think that the police actions caused injuries which endangered their health. Also 72% experienced abstinence crisis in prison or under arrest and most of them were not treated, 34% of them have never received some kind of treatment for abstinent crises while being incarcerated. Through implementation of appropriate criminal - legal regulation, Ministry of internal affairs, in cooperation with Prosecutor's Office, organizes supervisory, tracking and custody actions against persons who unlawfully cultivate and produce narcotics. When we speak about unlawful production and circulation of narcotics by one person, Criminal Code of Serbia, in Article 246, paragraphs 1 and 2, regulates this field by definition:

Article 246 CCRS Paragraph 1: Whoever unlawfully produces, processes, sells or offers for sale, or whoever purchases, keeps or transports for sale, or who mediates

in sale or buying or otherwise unlawfully puts into circulation substances or preparations that are declared narcotics, will be punished by imprisonment of from three to twelve years.

Article 246 CCRS Paragraph 2: Whoever unlawfully has grown poppy seeds or psychoactive hemp or other plants used to manufacture narcotic drugs, shall be punished by imprisonment of from six months to five years.

When we speak about several persons acting in conspiracy or about organised criminal group, Criminal Code of Serbia, in Article 246, Paragraph 3 and 4, regulates this field by this definition:

Article 246 CCRS Paragraph 3: If the offence referred to in paragraph 1 of this Article is committed by a group, or if the offender has organized a network of dealers or middlemen, the offender shall be punished by imprisonment of five to fifteen years.

Article 246 CCRS Paragraph 4: If the offence referred to in paragraph 1 of this Article is committed by an organized criminal group, the offender shall be punished by imprisonment of a minimum of ten years.

One of the key questions in criminal - legal regulations is pretrial detention and how it functions.

Pretrial detentions as a way of reaction, may take place only when there are reasonable suspicions indicating that the person/persons committed the criminal act and there is an actual danger that if the person/persons stay free, it could endanger preliminary proceeding. Pretrial detention, as a way of governmental institutions reacting, is regulated by the Criminal Procedure Code of the Republic of Serbia, Chapter VIII (measures to secure the presence of the defendant and for unobstructed conduct of criminal proceedings). Criminal Procedure Code of Republic of Serbia in Article 188 paragraph 7 says that one of the measures which may be undertaken against a defendant in order to secure his presence and unobstructed conduct of criminal proceedings may be detention. Detention may be ordered only under the conditions specified in Criminal Procedure Code, Paragraphs 210-223. Detention, as a criminal - legal mechanism, is used in Republic of Serbia a lot. Total number of those in detention is constantly increasing. In Serbia in period from 2005-2011 there was more than 46,500 persons in detention. Law on Police of Republic Serbia, in paragraphs from 53-54, defines conditions and possibilities of police detention. Violation Code of Republic Serbia, in Paragraphs 165-168 also defines conditions and possibilities of detention. In cases where it is suspected that there is an addiction with people who are in custody for the commission of the offense, in order to incorporate all

the circumstances surrounding the crime was committed psychiatric expertise is used. The practice so far shows that this kind of expert evidence is good, but clinical practice suggests that long-term trials often leads to individual prisoners being subjected to medical treatment after several years of abstinence from all psychoactive substances, (There is a large gap of time between the crime-part trial-verdict-implementation measures of treatment), which in many ways makes it difficult and impedes not only the justice system, but also a system of execution of criminal sanctions and social medical systems that deals with the treatment of addiction. Criminal Code of Republic Serbia Article 246, 246a, 247 regulates all problems related to the drug trade. Applying article 246 paragraph(3) of the Criminal Code of Republic Serbia regulates the drug-related offenses that make up an organized group or individual who is part of an organized group or has organized a network of resellers or middleman. Article 246 paragraph (4) of the Criminal Code of Republic Serbia refers to the offense being committed by organized criminal groups. The law on organized crime contained a number of positive innovations in the battle against illegal production and trafficking of narcotics. The data indicate that about 60% percent of organized criminal groups in Serbia is engaged in illegal drug trafficking. In Republic of Serbia, there are neither general provisions dealing with the issue of police entrapment nor specific rules for the offence of drug trafficking. As in most countries statistics on the execution of penal sanctions are kept. Department for Execution of Criminal Sanctions publishes annual statistics on the work of the institutions under its jurisdiction. Judicial authorities (courts) as referral authorities have an opportunity to monitor the dynamics of the implementation of the sanctions imposed. The Law on execution of criminal sanctions in its provisions requires that the institutions for execution of criminal sanctions to regularly submit reports to the courts. Bureau of Statistics of the Republic of Serbia in reports is publishing information relevant to this issue.

5. Sentencing Levels and the Prison Situation

The prison population ranges between 8000 - 10000 prisoners. According to report of ICPS (International Centre for Prison Studies) prison population rate per 100.000 of national population was 153 (based on an estimated national population of 7.25 million at 31.12.2011). The type of prison offenders are sent to depends on their crime and their sentence. The risk of harm to the public and how likely offenders are to try to escape are also important considerations. Population in certain prisons depends on the seriousness of their convictions. Prisoners are sorted by the type of openness of prisons, and type and seriousness of their sentences. There are 28 prisons in Republic of Serbia under supervision of Prison Sentencing

Office operating under framework of Ministry of Justice. These prisons are split into the following types:

- 17 semi-open prisons
- 1 high security closed prison (KPZ Pozarevac)
- 1 closed prison
- 1 training prison for juvenile offenders
- 2 closed male prisons (KPZ Nis and KPZ Sremska Mitrovica)
- 1 semi-open female prison in Pozarevac
- 4 open male prisons, and
- 1 prison hospital (KPD Hospital in Belgrade).

Table 1
Number of registered drug addicts among prisoners

	Number of registered drug addicts among prisoners						
	2005	2006	2007	2008	2009	2010	2011
Detained	706	2143	3208	2801	1534	2151	1770
Convicted	1654	1724	3019	2948	2528	3286	2811
Juveniles	96	98	112	34	32	60	20
Punished for minor offence	103	224	241	280	401	714	328
Total	2559	4189	6580	6063	4495	6211	4929

Source: Ministry of Justice Annual Report Prison Administration Operation

Under the Criminal Code of the Republic Serbia, all drug-related offenses are characterized as a criminal offense. At this point it is quite difficult to distinguish whether the persons were deprived of their liberty for possession and sale, or for personal use. It is evident that almost all prosecuted indicate that the drug was for personal use.

Table 2
Total number of prisoners per category from 2005-2011

Received during the 2005		received during the 2006		received during the 2007		received during the 2008		received during the 2009		received during the 2010		received during the 2011	
Con-victed	11917	Con-victed	12711	Con-victed	13668	Con-victed	14214	Con-victed	9023	Con-victed	7660	Con-victed	7925
Treatment measures	314	Treatment measures	273	Treatment measures	316	Treatment measures	278	Treatment measures	73	Treatment measures	76	Treatment measures	79
Detained	9903	Detained	10014	Detained	10461	Detained	12086	Detained	9299	Detained	8585	Detained	8510
Juvenile imprisonment	46	Juvenile imprisonment	50	Juvenile imprisonment	49	Juvenile imprisonment	50	Juvenile imprisonment	12	Juvenile imprisonment	4	Juvenile imprisonment	9
Educational measure	242	Educational measure	240	Educational measure	213	Educational measure	243	Educational measure	84	Educational measure	80	Educational measure	98
Punished for minor offences	5530	Punished for minor offences	5744	Punished for minor offences	5388	Punished for minor offences	6093	Punished for minor offences	6829	Punished for minor offences	7567	Punished for minor offences	10235
Total	27952	Total	29032	Total	30095	Total	32964	Total	23972	Total	23972	Total	26856

Source: Ministry of Justice Annual Report Prison Administration Operation

Table 2 shows only the data on the number of people during those years arriving at execution sanctions. Onto the specific number must be added those that are already in prison and therefore the number of inmates in one year are far higher. Data show that, on average, in prisons in Serbia there are between 8000 to 10,000 inmates at any moment (Estimated maximum capacity of institutions in Serbia 8887 persons deprived of their liberty). In relation to the anticipated capacity of institutions for execution of criminal sanctions it is evident that here is a problem of congestion of the institutions. Number of persons deprived of their freedom in the Republic of Serbia from year to year is increasing which has led to overcrowding of institutions. In addition to this problem there is an evident problem with the adequate redistribution of persons deprived of their freedom in the institution, which results in certain institutions having a higher number than the capacity of the institution allows. While on the other hand, some institutions have a smaller number of persons deprived of their liberty than they could receive by capacitive conditions. Although prisons are a closed system controlled drug use is present inside the controlled system. Drug use creates dependence, so from that it can be concluded that one part of the prison population continues to take drugs inside prison (during a prison sentence).

Table 3

Type and quantity of illegal substances and objects found in searches

Type and quantity of illegal substances and objects found in searches							
	2005	2006	2007	2008	2009	2010	2011
Narcotics (heroin, cocaine)	87 gr.	370 gr.	470 gr.	194 gr.	209 gr.	139 gr.	132 gr.
Narcotics (marihuana and hashish)	370 gr.	310 gr.	520 gr.	127 gr.	419 gr.	177 gr.	180 gr.
Non-allowed medications, tablets etc.	11 pieces	1876 pieces	> 4000	2993 pieces	4456 pieces	4634 pieces	5131 pieces
Alcohol	19 liter	30 liter	22 liter	157 liter	142 liter	141 liter	131 liter

Source: Ministry of Justice Annual Report Prison Administration Operation

Based on data from seized illegal and legal psychoactive substances shown in Table 3 (shown in the table are only statistical data relating to legal and illegal psychoactive substances, it does not diminish the existence of other prohibited items into prisons, which are the subject of this paper). From these data in Table 3 it can be concluded that there is continued use of drugs in prisons. It often happens that

when using the drugs within the prison prisoners share equipment, and consequently the risk of transmission of infectious diseases is bigger. The problem of infectious diseases within prisons is evident and it increases the frequency of certain infectious diseases. Determining diseases that were obtained prior to arrival or during the prison sentence is difficult to clearly define (Health Education of the Republic of Serbia's population is low, there is no developed habit of keeping control of health).

Table 4
Type and rate of infectious diseases

INFECTIOUS DISEASES	2005	2006	2007	2008	2009	2010	2011
HEPATITIS C	528	1400	1784	1349	2097	1570	3187
HIV	22	19	27	47	70	46	60

Source: Ministry of Justice Annual Report Prison Administration Operation

Table 4 presents data on infectious diseases related to HIV and hepatitis C, but this does not diminish the existence of other infectious diseases (hepatitis A, hepatitis B, tuberculosis, etc). In relation to the number of people in institutions for the enforcement of sentences of deprivation of liberty for alleged period there was a dramatic increase in people suffering from hepatitis C (Statistics for the period 2005-2011 have shown that patients with the diagnosis of an infectious disease hepatitis C is the most common infectious disease). Number of people diagnosed with hepatitis C in the period 2005 to 2011 was six times higher. When it comes to harm reduction programs in correctional institutions these programs are used to a minimum, and this type of treatment is not sufficiently exploited.

Table 5
Persons on substitution program

Persons on substitution program	
Number of persons on substitution program as at 31 Dec 2008	66
Number of persons on substitution program as at 31 Dec 2009	103
Number of persons on substitution program as at 31 Dec 2010	119
Number of persons on substitution program as at 31 Dec 2011	128

Source: Ministry of Justice Annual Report Prison Administration Operation

There is great potential for these mechanisms to be much more developed and / or extend the application of alternative sanctions. Currently in institutions for the

enforcement of the sanctions program works the “department without drugs” that were established in cooperation with and support of OSCE mission, which aims at absolute abstinence from all psychoactive drugs without substances.” Department without drugs” entered into the strategies of the Republic of Serbia in the fight against drugs to expand and improve the program by linking it to make it easier to facilitate the implementation of treatment.

Table 6
Persons on Drug-free Unit

Drug-free Unit		
Capacity of Drug-free Unit 2011 332 persons	Number of persons in the Unit as at 31 Dec 2011 169 persons	Average number of persons in the Unit in 2011 225 persons
Capacity of Drug-free Unit 2010 43 persons	Number of persons in the Unit as at 31 Dec 2010 15 persons	Average number of persons in the Unit in 2010 12 persons

Source: Ministry of Justice Annual Report Prison Administration Operation

First basic of public prosecution in Belgrade signed an agreement with the Special hospital on addiction, Theodore Drajzera 44, in Belgrade on implementation institutes of the Opportunity (Delayed prosecution). By applying the Law on Criminal Procedure article 283 (Public Prosecutor may postpone prosecution for criminal offenses for which fines or imprisonment of up to five years, if the suspect accepts one or more obligations). The application of article 283, paragraph (5). Law on Criminal Procedure the public prosecutor may face in the process to delay prosecution if the suspect agrees to undergo rehab for alcohol or drugs. In the case that the agreement is complied with and it produces good results (Terminated with the use of psychoactive substances) in the legally stipulated time (Deadline is set by public prosecutors, with the provision that this deadline cannot be longer than a year) does not come up to the institution of the criminal proceedings. At the moment there is no comprehensive strategy for dealing with the reintegration of offenders after the execution of prison sentence in Republic of Serbia. Preparation of legislation to regulate this area is ongoing. Whether a person gives to others or sells abuses or is dependent on the substance is in relation to the legal and moral norms in the conflict. Crime of the Narcotics-offenders can be viewed in two ways: as a criminal act and the type of offenses addicts commit to reach drugs and crime as addicts under the influence of drugs. According to data presented at the National Commission for the Prevention of substance abuse held on 11.04.2008, the ¾ robbery in Serbia are offenses that have been committed by drug addicts. If we add

the fact that the RS is partially covered by Smuggling routes, the so-called “Balkan route” then the data on the prevalence of criminal activities related to drugs is even more alarming. With regard to the geographical position of our country, it occupies one of the major places as a transit zone for illegal distribution of narcotics. All this leads to the fact that the rate of recidivism in connection with drug trafficking or criminal offenses were committed under the influence of drugs are high.

II. Initiatives for drug law reform undertaken by the government and/or the parliament in the last 10 years

The Republic of Serbia is a major transit country for the movement of narcotics. Serbia took measures to improve its capacity to combat drug trafficking through new laws and law enforcement initiatives that tend the regulations on narcotics, corruption, organized crime. Serbia’s updated drug laws are adequate. However improved communication and strategic coordination among law enforcement and judicial bodies can considerably enhance the comprehensive law enforcement landscape.

2001: Practice was introduced to permit NGO to visits facilities for the prison administration

2002: A special law was passed(Law on the fight against Organized Crime).

2004: Department for Execution of Penal Sanctions established a commission for the health care of prisoners.

2005: The Ministry of Justice of the Republic of Serbia adopted the Strategy for the reform of the penal system in Serbia.

2005: Decision on establishing a national strategy to fight corruption.

2005: A law on juvenile offenders and criminal protection of juveniles was adopted.

2006: The Law on Execution of Criminal Sanctions was adopted.

2008: The Serbian parliament adopted a set of laws to improve efforts to combat illicit drug trafficking, organized crime and corruption.

2008: The Serbian Parliament passed a set of laws in October 2008 to enhance Serbia’s law enforcement’s efforts to combat narcotics smuggling, organized crime, and corruption. The package of laws includes a law to regulate immigration and movement of people through the country, an asset seizure law, and a law creating a new Anticorruption Agency.

2009: The government of RS adopted a strategy for the fight against illicit drugs in the Republic of Serbia for the period 2009 to 2013.

2009: Amendment of the Criminal Code of the Republic of Serbia was performed.

2009: Established the National Commission for the Fight Against illicit Drugs.

2010: The law on controlled substances psychoactive was adopted.

2010: A strategy to reduce the overload accommodation in the institutions for execution of criminal sanctions in the Republic of Serbia for the period since 2010 - 2015 was adopted.

2012: First basic of public prosecution in Belgrade signed an agreement with the Special hospital on addiction, Theodore Drajzera 44, in Belgrade on implementation institutes of the Opportunity (Delayed prosecution).

III. Standpoints of relevant stakeholders on drug law reform and proposals and recommendations for further research and advocacy work

- Criminal Code shall be in accordance with EU law
- Amendments to the Criminal Code of RS. There was a change in the criminal law relating to illicit drug offenses
- The Criminal Code is in line with the current trend in the world.
- The Criminal Code RS does not recognize the division of light and heavy drugs and criminalize all acts related to illicit drugs
- In years to come there must be significant investment in institutions that deal with treatment of addicts.
- Issues related to illicit drugs should not be regulated only at the state level, but there should be an international collaboration of all sectors
- On the basis of the strategy and action plan implementing a series of preventive programs has been initiated.
- In years to come a lot of work has to be done in raising the level of professional public awareness about the disease of addiction in order to reduce stigmatization of addicts.
- In the next years there must be intense and more cooperation and communication between the state and NGOs in the field of drugs.
- The next period in RS must open several methadone centers in support of the harm reduction program, all in order to help the addicts.

- At this point, agreements on cooperation for an even better health care system- the system of execution of criminal sanctions and social system in order to facilitate the social reintegration of addicts when they are released from prison are under discussion.
- Continuous education will continue in health, police, etc. on addiction.
- To strengthen citizen's awareness that drug addiction is a disease and there is no need to stigmatize addicts.

References:

Criminal Code (Official Gazette of the RS, Nos. 85/2005, 88/2005 - corr., 107/2005 - corr., 72/2009 and 111/2009)

Delibašić, V. (2010). Krivično delo neovlašćena proizvodnja i stavljanje u promet opojnih droga iz Člana 246. Krivičnog zakonika. *Branitelj - časopis Advokatske komore Srbije*, 123 (3-4), 80-95.

Ministry of justice (2005). *Penal Reform Strategy for Serbia*. Belgrade: Republic of Serbia, Ministry of Justice, Administration for the Execution of Penal Sanctions.

Ministry of justice (2005). *Annual Report on Prison Administration Operation*. Belgrade: Republic of Serbia, Ministry of Justice, Prison Administration

Ministry of justice (2006). *Annual Report on Prison Administration Operation* Belgrade: Republic of Serbia, Ministry of Justice, Prison Administration Operation Republic of Serbia, Ministry of Justice, Prison Administration

Ministry of justice (2007). *Annual Report on Prison Administration Operation* Belgrade: Republic of Serbia, Ministry of Justice, Prison Administration Operation Republic of Serbia, Ministry of Justice, Prison Administration

Ministry of justice (2008). *Annual Report on Prison Administration Operation* Belgrade: Republic of Serbia, Ministry of Justice, Prison Administration Operation Republic of Serbia, Ministry of Justice, Prison Administration

Ministry of justice (2009). *Annual Report on Prison Administration Operation* Belgrade: Republic of Serbia, Ministry of Justice, Prison Administration Operation Republic of Serbia, Ministry of Justice, Prison Administration

Ministry of justice (2010). *Annual Report on Prison Administration Operation* Belgrade: Republic of Serbia, Ministry of Justice, Prison Administration Operation Republic of Serbia, Ministry of Justice, Prison Administration

Ministry of justice (2011). Annual Report on Prison Administration Operation Belgrade: Republic of Serbia, Ministry of Justice, Prison Administration Operation Republic of Serbia, Ministry of Justice, Prison Administration

Republic of Serbia, Ministry of Justice, Law on enforcement of penal sanctions, Official Gazette of the Republic of Serbia, No. 85/05.

Republic of Serbia, Ministry of Justice, The Law on Juvenile criminal offenders and criminal protection of juveniles, "Official Gazette of the Republic of Serbia" No. 85/05

Law related to substances used for illegal manufacture of intoxication drugs psycho damaging substances

Law related to Psychoactive Controlled substances

Law on the execution of the prison sentence for criminal offences of organized crime, Published in "Official Gazette of the Republic of Serbia" No. 72/09

Law on Drugs and Medical Supplies ("Official Gazette of RS", br.30/2010)

Serbian Government (2010).Strategy reduction of accommodation Overload Capacity in correctional institutions for criminal sanctions in the Republic of Serbia in the period from 2010. 2015. *Official Gazette of the RS, No. 53/2010*

Serbian Government (2009) Strategy on Fight against Drugs in the Republic of Serbia in the period from 2009 By 2013 Official Gazette of the RS

NGO "VEZA" *Magazine Ten years of Harm Reduction in Belgrade*

Country Report Slovenia

Country Report Slovenia

by Bojan Dobovšek, Ph. D.¹

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I. The current national drug strategy and drug legislation in Slovenia

1. National strategy on Drugs

The Resolution on National Program on Drugs is a strategic document, which plans to involve governmental and non-governmental (NGO) institutions in the field of illicit drugs. By 2009 the Resolution on National Program on Drugs 2004-2009 was in use; the new resolution for the next period (probably 2013-2020) was prepared and put in process for implementation. The new resolution on national program on drugs provides - as did the previous resolution - an important role for NGOs in tackling illicit drugs. The draft of the new resolution dedicates a whole section to NGOs. Resolution on National Program on Drugs 2004-2009 was well prepared and accepted, but it was difficult to put into operation. A Proposal for a new resolution was adjusted and improved in cooperation with the ministries, their bodies, NGOs and other public institutions and experts, so that any important issues wouldn't be missing.

Drug policy in Republic of Slovenia is coordinated and implemented by government, ministries and their organizational units, public and other institutions. The **Commission of the Government of the Republic of Slovenia for illicit drugs** is in charge of promotion, monitoring and coordination of government policies, measures and the national program. The Commission is one of the two bodies at the strategic level (the second one is the Ministry of Health), which create, modify and coordinate the drug policy. It is composed of representatives of ministries (Ministry of Health, Ministry of the Interior, Ministry of Education, Science, Culture and Sport, Ministry of Labour, Family and Social Affairs, Ministry of Justice and Public Administration, Ministry of Finance, Ministry of Defence, Ministry of Agriculture and the Environment, Ministry of Foreign Affairs) and chaired by a representative of the Ministry of Health.

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With the abolition of the Office on Drugs in 2004 the **Ministry of Health** took over a leading role in the coordination of drug policy. The Ministry of Health coordinates the work of all professional bodies, NGOs, governmental organizations and all other persons or entities involved in creating or changing the drug policy. It is responsible for the preparation, financing and implementation of the national program on drugs, coordination of other programs with the national program, leading an inter-ministerial coordination of policy making and providing estimates and proposals for specific programs. It also encourages research work, monitors international issues on drugs and cooperates with international organizations. In addition to leadership on drug policy the main task of the Ministry of Health is providing health care by conducting a wide range of programs, treatments and other forms of assistance. Health care is implemented in public institutions and other organizations under the Ministry of Health. There are two organizational units within the Ministry which play a special role in the field of illicit drugs. The first organizational unit is the **Directorate for Public Health**, which prevents diseases in the population by working on a strategic level and thus reducing the burden of diseases, both for individuals and for society as a whole. Such protection and enhancement of mental and physical health is carried out through organized social activities. Those tasks include the design and implementation of health policies at the population level, including drug policy. The second important organizational unit is the **Health Promotion and Healthy Lifestyle Division**, organizational unit of the Directorate for Public Health. Monitoring living habits of the population is the basis for the preparation of strategic documents on health promotion and promoting a healthy lifestyle - without drugs. The division cooperates with other governmental and non-governmental organizations in the coordination and implementation of policies and measures that affect the improvement and promotion of health.

National Chemicals Bureau is an agency within the Ministry of Health and it performs technical and administrative functions and tasks of inspection on the basis of the Chemicals Act and other acts. Its work also relates to the production, distribution and use of substances that may be precursors for illicit drugs, in order to prevent their misuse or use for unauthorized purposes.

The **Institute of Public Health (IPH)** plays a central role in public health activities as it carries out such activities at a national level. As a central national institution it studies, protects and increases the level of health of Slovenia's population by raising the awareness of the population and taking other preventive measures. In addition to the central role in public health activities in Slovenia, IPH actively participates in international projects, which cover different areas of health and public health problems in the general population. IPH represents an expert level in supporting decisions, taken by the state at a national and local level and which have direct or indirect

impact on health. It is also responsible for the preparation of national reports on the drug situation, which are then forwarded to the European Monitoring Center for Drugs and Drug Addiction (EMCDDA). It performs the duties under the programs Reitox and EWS and also participates in the preparation of action plans in the area of illicit drugs, risk assessments and professional development, training and field coordination. In 2010, the IPH formed a strategic development plan of IPH for the period 2010 - 2015. The document sets out the strategic development areas in 2010 - 2015 and forms strategic objectives and actions to achieve the goals: to provide quality data and information, evidence-based policy planning and programs, participation in creating health policies, program development, cooperation in implementing policies and programs into practice, and monitoring the effectiveness of measures taken. IPH has a well developed area of prevention, addiction treatment and harm reduction. **Information Unit for illicit drugs** is a part of the IPH, which has the task of providing a national information network, interagency-coordinated data collection and information sharing at national and international levels (one of the conditions for cooperation with EMCDDA). The Information Unit collects and analyses information on illicit drugs, illicit drug users and the consequences of their use for national and international needs and sends data to the EMCDDA. In carrying out its tasks the information unit includes all the relevant ministries, government departments, public institutions and NGOs.

Ministry of the Interior deals with the tasks of reducing drug supply and also prevention. Plans and objectives are implemented through the Police, while the Ministry of Interior has the task of setting up international cooperation (EUROPOL, EMCDDA, INTERPOL), the coordination of bodies within the country, training and education of law enforcement agencies, working in the field of illicit drugs, leadership of law enforcement, as well as analytical and intelligence activities for detection of offences, related to illicit drugs.

The Police carry out different duties: protection of lives, personal safety and property, prevention, detection and investigation of crimes and offences, arresting the perpetrators, maintaining law and order, protection of national borders, supervision and regulation of the traffic etc. Tasks performed by uniformed police, criminal police and other specialized police units also include work in the field of illicit drugs. The Criminal Police Directorate plays an important role in the field of illicit drugs. Within the **Criminal Police Directorate** - specifically, **Organized Crime Division** - operates the **Illicit Drugs Section**, specialized in operational and tactical tasks involving the detection and prosecution of crime related to illicit drugs. Its other tasks are planning, directing, implementation and supervision of investigative activities and other tasks. In addition to the Criminal Police Directorate (Illicit Drug Section) operates the **National Bureau of Investigation**, specialized

criminal investigation unit of the Criminal Police, which investigates particularly difficult crimes, especially white collar crime, economic crime, corruption and organized crime - crimes which require special skills, organization and equipment for investigation or specifically directed operation of state bodies and institutions in the areas of taxes, customs, financial management, security, money laundering, corruption, other crimes, and also illicit drugs.

Within the Ministry of Finance are two bodies which perform some tasks in the field of illicit drugs: Customs Administration and the Office for Money Laundering Prevention.

In the field of illicit drugs the **Customs Administration** takes some measures, in order to prevent the trade in illicit drugs and precursors, which represent a significant risk to public health. Customs established a system of e-learning for control of precursors for illicit drugs, which in 2011 included 336 employees of mobile divisions, departments for investigation, inspectors and customs officers at border crossings. Customs can only detect and search for illicit drugs (illicit drugs can be seized only by the police).

Office for Money Laundering Prevention detects money laundering and terrorist financing. The office plays an important role in the detection of suspicious and illegal transactions or exchange or transfer of any money or other property, which derives from criminal activity (also in cases of trade in illicit drugs).

The Prison Administration of the Republic of Slovenia is a part of the Ministry of Justice and Public Administration which performs administrative and professional assignments concerning the enforcement of prison sanctions, organisation and management of prisons and the correctional facility, ensuring provision of financial, material, personnel and other conditions for the functioning of the prisons and the correctional facility, and the enforcement of rights and obligations of the persons who have been deprived of liberty. In performing tasks in the field of illicit drugs the Prison Administration cooperates with external health organizations and NGOs.

Ministry of Labour, Family and Social Affairs organizes programs for the social rehabilitation of addicts, including prevention of risks and problems associated with drug use and other addictions, reduction of social harm caused by illicit drugs and reduction of the number of addicts. Activities are conducted in day care centers, therapeutic communities, communes, or offices for advice and information. Personal assistance, social assistance and family support are provided especially to people with problems related to illicit drugs. It cooperates with NGOs in the field of prevention, harm reduction, risk reduction and reintegration.

Ministry of Education, Science, Culture and Sport works in the field of drug prevention, especially in the field of education.

In Slovenia there are 21 **Centers for the prevention and treatment of drug addiction**; 20 centers are organizational units of the health centers, and 1 center is a part of the University Psychiatric Hospital in Ljubljana (Center for the treatment of drug addiction). Centers provide technical assistance to individuals in drug treatment and help them achieve abstinence.

Basic preventive care is (in addition to IPH) also conducted by 9 **Institutes of Public Health**. They carry out the national program's strategic directions in the field of preventive medicine and public health.

Local action groups (LAGs) prepare and coordinate the different actions, related to illicit drugs, at the local level. They are set up by the mayors of local communities. Their work serves as an addition to public service activities, since LAGs operations often also include NGOs.

In the field of international law, Slovenia signed the following international treaties (only some of them are listed): International Opium Convention (1925), Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs (1931), Convention for the Suppression of the Illicit Traffic in Dangerous Drugs (1936), Declaration on the Control of Drug Trafficking and Drug Abuse (1984), Declaration on the Guiding Principles of Drug Demand Reduction (1998), Single Convention on Narcotic Drugs (1961), The Convention on Psychotropic Substances (1971), Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990), Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of terrorism (2005), Protocol (1946) - (1948) - (1953), Protocol amending the Single Convention on Narcotic Drugs (1972), Resolution 59/160: Control of cultivation of and trafficking in cannabis (UN, General Assembly, 2005), EU Drugs Strategy 2005 - 2012 (2004), EU Drugs Action Plan Declaration of European Cities on Drug Policy (1998), Regulation (EC) No. 273/2004 of the European Parliament and of the Council of 11 February 2004 on drug precursors (2004), Council Regulation (EC) No. 111/2005 of 22 December 2004 laying down rules for the monitoring of trade between the Community and third countries in drug precursors (2005).

2. National Substantive Criminal Law

Slovenian criminal law makes a distinction between misdemeanors and felonies. **Misdemeanor** is any act that violates the law, government regulation or local community regulation defined as a misdemeanor and for which the penalty is prescribed. **Felony** is any unlawful act carried out by a person, which is by the Criminal Code recognized as a crime, in order to protect the legal values set by the law.

Felonies are divided into minor and major felonies: minor felonies are those for which the Criminal Code prescribes a fine or a prison sentence of up to 3 years, while major felonies are those for which the Criminal Code prescribes a prison sentence of 5 years or more.

Sanctions for misdemeanors are: fine, warning, termination of the driver's license, ban from driving a motor vehicle, expulsion from the country, confiscation, exclusion from public procurement procedures and disciplinary actions. If the fine has not been fully paid, compliance detention can be used against the offender in order to force him to pay the fine. Compliance detention may not exceed 30 days and the enforcement of compliance detention does not stop the obligation to pay the fine.

Article 3 of the Criminal Code specifies types of sanctions for felonies or attempted felonies: warnings, penalties and security measures:

- a) Warnings includes conditional sentence, supervision (assistance, supervision or protection), and judicial warning.
- b) Penalties are divided into main and side penalties. The main penalty is imprisonment³ (fine can also be the main penalty), and the fine and ban from driving a motor vehicle represent side penalties.
- c) Security measures imposed by the court set guidance, which the offender must abide. When determining appropriate security measures the court takes into account the age of the offender, his psychological characteristics, motives from which he has committed an act, personal situation, his previous life, the circumstances in which the crime has been committed, and his behavior after committing the crime. Guidance of the court may also include the task of rehabilitation in an appropriate medical facility, but for the treatment of the alcohol and/or drug addiction the consent of the offender is required.

Conditional sentence may be imposed if the offender is sentenced to a fine or a prison term of up to two years but it cannot be imposed for offenders, who are sentenced to prison for at least three years. The court can impose a conditional sentence if the personality of the perpetrator, his earlier life, his behavior after committing the crime, the degree of culpability and other circumstances in which the offence is committed show that it can be expected that the offender will not commit other crimes. The offender is sentenced to prison, but the sentence will not be im-

3. Imprisonment may not last less than fifteen days and not more than thirty years. Perpetrator of genocide, crimes against humanity, war crimes and aggression, two or more crimes of terrorism/murder/assassination of the President of the Republic, and taking lives of persons under international protection or hostages can be punished by a **sentence of life imprisonment**.

posed if the convicted person, during a period of time (determined by the court), which shall not be less than one year nor more than five years ('conditional sentence period'), does not commit other crimes. The court may determine that sentence will be imposed if the prisoner fails to return money or other assets gained by the offence, does not pay the damage caused by the offence or fails to comply with other provisions foreseen in the penal obligations.

Instead of imprisonment the convict may also be granted other forms of sentence imposed by the Criminal Code. The imprisonment of up to 9 months may be replaced with serving the sentence at home (house arrest), and a prison sentence of up to 2 years can be replaced by work in the general interest of the public of at least 80 or a maximum of 480 hours over a maximum period of 2 years. The Enforcement of Criminal Sanctions Act provides that the penalty of imprisonment up to three months may be replaced with work for humanitarian organizations and local communities; such work is directed and supervised by the administration of prison in collaboration with the Center for Social Work.

Slovenian criminal legislation recognizes 'conditional release'. A convict may be released conditionally if it can be reasonably expected that he will not repeat the crime. In assessing whether to conditionally release the convict, recidivism is a primary consideration, followed by any criminal proceedings pending against the offender for crimes committed before the onset of imprisonment, the relation of the offender to the committed crime and the victim, the perpetrator's behavior while serving the sentence, success in drug treatment and conditions for inclusion in life outside prison. Conditional release is possible if the person has served 1) half the sentence, 2) three quarters of the served sentence if the person is convicted to more than 15 years imprisonment, and 3) 25 years of imprisonment when sentenced to life imprisonment. Exceptionally, the convict may be conditionally released if he has served only a third of the sentenced penalty and it can be reasonably expected that he will not repeat the crime, and if special circumstances relating to the personality of the convicted person show that he will not repeat the offence. The court may (along with conditional release) also impose the task of treatment in an appropriate medical facility but only with convict's agreement if the treatment of addiction to alcohol or drugs is set.

The Criminal Code contains two articles (Article 186 and 187) concerning offences in the area of illicit drugs. Both articles belong to the category of 'Criminal offences against public health'. Article 186 refers to the illegal production and trade in illicit drugs, illicit substances in sport and precursors for illicit drugs, while Article 187 refers to the inducing of others to use illicit drugs or illicit substances in sport. Penalties imposed by both articles are listed in the following section.

3. National Drug Laws and Institutions

Drug use is not penalized in the Republic of Slovenia but the possession of illicit drugs, production of and trade in illicit drugs and inducing other persons to use illicit drugs are illegal. Classification of drugs and the conditions for the production and trade in illicit drugs are set by the Production of and Trade in Illicit Drugs Act. Illicit drugs are divided into three groups:

- Group I: plants and substances, which are very dangerous to human health due to the severe consequences that can be caused by their abuse, and are not used in medicine
- Group II: plants and substances, which are very dangerous because of the severe consequences that can result in their abuse, and can be used in medicine
- Group III: plants and substances, which are hazardous because of secondary effects which can be caused by their abuse, and can be used in medicine

Division of illicit drugs into "soft" and "hard" drugs is practically no longer in use in Slovenia (only occasionally in the media and the public). Instead, the classification of United Nations and World Health Organization is used: stimulants, depressants of central nervous system, hallucinogens and cannabis. However, the classification by the law is different: plants and substances are divided into groups I, II and III. In criminal law all the drugs are listed in a single group, regardless of their impact on health - illicit drugs.

Production of, trade in and possession of illicit drugs from Group I may be done only for scientific research and teaching purposes. Production of, trade in and possession of illicit drugs from Group II and III may be done only for medical, veterinary, educational and scientific research purposes. Licence for these activities can be given only by the Minister of Health.

By the term 'production of illicit drugs' all the processes are considered, in which illicit drugs can be obtained (including cultivation, processing and final preparation). Production of illicit drugs can be performed only by individuals and legal entities, who qualify for production, but only with a license obtained from the Minister of Health. Requirements and conditions for production are provided by a special law. Persons convicted for illegal production and trade in illicit drugs (Articles 186 and 187 of Criminal Code) cannot obtain a license for the production of drugs for five years, starting from the date of final judgment of the court.

Illicit drugs may be traded in only under license from the Minister of Health. In order to legally trade in illicit drugs individuals and legal entities must fulfill the following conditions: 1) they must have adequate facilities and equipment for the

storage and dispensing of drugs that meet technical and sanitary conditions, and 2) drugs must be kept in special rooms in which there may not be other products; such premises must be secured against unauthorized access. Imports and exports are permitted only if the drugs are intended for medical, veterinary, educational or scientific research purposes, if the quantity of drugs is in accordance with the estimated annual needs (imports) or if the application is accompanied by an import permit from the competent authority of the importing country (exports).

Any production or trading, which is in contrast with the provisions for legal production and trade in illicit drugs and does not have a required license from the Minister of Health, is punishable under the Article 186 of the Criminal Code.

Penalties for committed misdemeanors and felonies related to illicit drugs are prescribed by the Production of and Trade in Illicit Drugs Act and the Criminal Code. The Production of and Trade in Illicit Drugs Act provides penalties for the following misdemeanors:

- possession of a small quantity of illicit drugs for personal use: 41.73 - 208.65 EUR⁴ (offender may be punished less severely if he voluntarily enters a treatment program of drug users or other social security programs)
- possession of illicit drugs contrary to Production of and Trade in Illicit Drugs Act: 208.65 - 625.94 EUR
- if an individual produces or trades in illicit drugs without obtaining a license from the Minister of Health: 417.29 - 20,864.63 EUR (legal entity: 4,172.93 - 41,729.26 EUR; responsible person of a legal entity: 417,29 - 2,086,46 EUR)
- if an individual, who produces and trades in drugs:
 - o does not keep the drugs in specific areas and does not protect those areas from unauthorized persons: 417.29 - 12,518.78 EUR (legal entity: 1,251.88 - 20,864.63 EUR, responsible person of a legal entity: 208.65 - 2,086.46 EUR)
 - o has not sent the copies of licenses for the import and export of drugs to the Ministry of Health within 15 days: 417.29 - 12,518.78 EUR (legal entity: 1,251.88 - 20,864.63 EUR, responsible person of a legal entity: 208.65 - 2,086.46 EUR)
 - o does not keep the required records or fails to keep them properly: 417.29 - 12,518.78 EUR (legal entity: 1,251.88 - 20,864.63 EUR, responsible person of a legal entity: 208.65 - 2,086.46 EUR)

4. For comparison: the minimum monthly salary, set by law, is 584,29 EUR; the average monthly salary in May 2012 was 996,62 EUR (Source: Statistical Office of the Republic of Slovenia).

- o does not send the reports or other prescribed information to the Ministry of Health within the prescribed period, or if the information was incorrect: 417.29 - 12,518.78 EUR (legal entity: 1,251.88 - 20,864.63 EUR, responsible person of a legal entity: 208.65 - 2,086.46 EUR)
- o does not allow supervision of the authorities or access to records and documents, or if he fails to submit all the information and materials which are necessary to perform inspection: 417.29 - 12,518.78 EUR (legal entity: 1,251.88 - 20,864.63 EUR, responsible person of a legal entity: 208.65 - 2,086.46 EUR)

Article 56.a of Misdemeanors Act provides that the offender, who does not file a request for a judicial review against the decision of the misdemeanor, shall pay only **half of the fine** if the fine is **paid within eight days** after the finality of the decision. Sanctions for felonies related to illicit drugs are set in Articles 186 and 187 of the Criminal Code:

Article 186 (Unlawful Manufacture and Trade in Illicit Drugs, Illicit Substances in Sport and Precursors to Manufacture Illicit Drugs):

- 1) 1-10 years of imprisonment for unlawfully manufacturing, processing, selling or offering for sale; or for purchasing, keeping or transferring with a view to resell; or negotiating for buying or selling; or otherwise unduly putting in trade plants or substances, that are classified as drugs, illicit substances in sport, or precursors used to manufacture illicit drugs
- 2) 3-15 years of imprisonment:
 - selling, offering for sale or handing out free of charge illicit drugs or precursors to manufacture illicit drugs to a minor, mentally disabled person, person with a temporary mental disturbance, person with severe mental retardation or a person who is in the rehabilitation, **or**
 - if the offence is committed in educational institutions or in their immediate vicinity, in prisons, military units, public places or public events, **or**
 - if the felony under point 1) is committed by a civil servant, priest, doctor, social worker, teacher or educator by exploiting his position, **or**
 - if for the felony under the point 1) minors are used
- 3) 5-15 years of imprisonment if any of above mentioned felonies is committed within a criminal organization, or if the offender organized a network of drug resellers or drug agents
- 4) 6 months to 5 years of imprisonment for manufacturing, buying, possession of or furnishing other persons with the equipment, substances or precursors for

production of illicit drugs or illicit substances in sport without the license of the Ministry of Health

Article 187 (Rendering Opportunity for Use of Illicit Drugs or Illicit Substances in Sport):

- 1) 6 months to 8 years of imprisonment for inducing a person to use illicit drugs/illicit substances in sport; providing illicit drugs/illicit substances in sport to others, giving a place or other facility for the use of illicit drugs/illicit substances in sport
- 2) 1-12 years of imprisonment if felony under point 1) is committed:
 - against a minor, mentally disabled person, person with a temporary mental disturbance, person with severe mental retardation or a person who is in rehabilitation, **or**
 - in educational institutions or in their immediate vicinity, in prisons, military units, public places or public events, **or**
 - by a civil servant, priest, doctor, social worker, teacher or educator by exploiting his position
- 3) the committed act is not against the law if the offender commits it within the treatment program or program for controlled drug use, which is in accordance with the law, approved and implemented within the framework or under the supervision of public health institutions

The penalty for a felony under the Article 186 of the Criminal Code is about the same or slightly less strict than the penalty for manslaughter (5-15 years of imprisonment). The difference between manslaughter and trade in illicit drugs (not committed within a criminal organization) is small, so opinions among the public and experts are divided. Some question the effectiveness of strict sentences while others argue that the sentences are appropriate or too low. A similar division of views concerns the comparison of felonies from Articles 186 and 187 of the Criminal Code with the felony of 'Dangerous driving on the road' (Article 324 of the Criminal Code), which contains the following provision: «The driver of a motor vehicle, who causes immediate danger to life or body of any person /or driving under the influence of narcotic drugs, psychoactive medications or other psychoactive substances / ... / and in doing so:

- disregards the rules of driving or safety distance, or
- on the road, that has two or more marked lanes for driving in one direction, drives in the opposite direction, turns or drives in reverse or attempts to drive so, or
- does not adjust the speed on less visible parts of roads, at intersections, pedestrian crossings, bicycle lanes or crossings, railway crossings, shall be punished by fine or up to three years of imprisonment.«

Slovenian legislation has no provisions regarding the impact of dependence on the sanctions. The court has the right to conduct independent decision-making, taking into account all the evidence, personal characteristics of the offender, the aggravating and mitigating circumstances and any other factors that may affect the judicial decision. The offender's drug dependence may or may not be considered as a mitigating factor, but it may especially have the impact on the court's decision to send the offender for alcohol or drugs treatment in an appropriate medical facility. The legislation also does not make provisions for special treatment for offences of 'secondary crime' ('cravings to use') - the offenders of 'secondary crime' offences are treated the same as offenders of all other crimes, which are not committed by addicts.

There is no difference in the law between small and big drug dealers. The only division which refers to the 'type' of dealer is between those involved in organized criminal groups and those, who are not. For those, involved in an organized criminal group, the higher penalty is prescribed. The law does not specify which quantity of illicit drug is considered as a small quantity of illicit drugs. The Production of and Trade in Illicit Drugs Act does not lay down limits of minimum allowed possessed quantity of illicit drugs nor how much the quantity of illicit drugs for personal use is. It is at the discretion of the police and court to decide in a particular situation how much the 'small quantity' of illicit drugs is. There are differences in practice: some police officers and judges punish offenders for a possession very small quantity of illicit drugs very strictly, while others do not see a possession of a certain quantity of illicit drugs as a misdemeanor or as an offence.

Misdemeanors and felonies are processed by different courts. District courts deal with the misdemeanors; therefore, violations of the Production of and Trade in Illicit Drugs Act are processed by district courts. District courts also deal with crimes for which the maximum sentence would not exceed three years of imprisonment, while the offences for imprisonment of over three years fall under the jurisdiction of county courts. All offences under the Articles 186 and 187 are punishable by imprisonment of more than three years; therefore the county courts deal with crimes related to illicit drugs. There are no specialized courts in Slovenia which would deal with felonies related to illicit drugs.

The principle of universality in the Slovenian judicial system does not apply to crimes related to illicit drugs; it applies only to certain serious crimes against humanity known to the international community which are prosecuted in all countries, regardless of where they were committed. The Criminal Code of the Republic of Slovenia also applies to aliens who committed a crime against a foreign country or its citizen if they are caught in the territory of the Republic of Slovenia and are not extradited to a foreign country. In that case, the court is not allowed to im-

pose more severe penalties than those prescribed by the law of the country where the offence was committed. If the offender has already served the sentence for a crime, which was executed abroad, or it has been decided with an international treaty to execute the sentence in the Republic of Slovenia **or** if the offender abroad was found not guilty or the execution of the sentence was barred **or** if the offence was prosecuted under foreign law at the request of the victim, and such a requirement has not been filed or was withdrawn, the offender cannot be prosecuted for the same crime (principle *ne bis in diem*).

4. Drug Law Enforcement in Practice

In the field of combating crime associated with illicit drugs the Police and its organizational units (uniformed and criminal police, National Bureau of Investigation) play a major role. The police act in accordance with the law, strategies, plans and guidelines. Control over the production, possession of and trade in illicit drugs is carried out on a regular basis; especially in areas where presence of illicit drugs is expected. It also sends patrols to areas, where drug dealers and drug users frequent.. Harassment of drug users is not the practice of police because drug use is not illegal.

The police can, in cases and under conditions laid down by law against a person who exercises certain crimes (among them are also felonies from Articles 186 and 187 of the Criminal Code), use covert investigative measures (secret surveillance, monitoring of electronic communications, control of letters and other parcels, wire-tapping and recording of conversations, secret pursuit etc.). Such measures also include measures of feigned purchase, feigned acceptance of or giving gifts, or feigned acceptance of or giving bribes, but the police and its co-workers must not provoke criminal activity with implementation of before-mentioned measures ('police entrapment'). If the criminal activity is provoked, such a circumstance excludes the initiation of criminal proceedings for committed felonies. Other than that, there are no specific provisions for crimes which would relate (also) to illicit drugs.

One of the police tasks is also detection of cannabis farms and laboratories for the production of other illicit drugs. Recently, there has been a rapid increase in the discovery of a number cannabis farms and drug laboratories.. The most frequent are cannabis farms. The equipment of such farms depends on the purpose of growing cannabis - in cases, where the cultivation of cannabis is meant for personal use or small sale, farms are poorly equipped. In cases of greater sales or involvement of organized crime, farms are professionally equipped with expensive equipment. The Police also use covert investigation measures and information of police informers to find farms and laboratories. Another source of information are citizens who help to notify the police about suspicious activities in their area/neighborhood (common and unusual power cuts,

the smell of cannabis, discovered illegal connections to the public electricity supply, suspicious activity in and around abandoned buildings, etc.).

Police detention and pre-trial detention are not dependent on drug use/addiction. Article 43 of the Police Act provides that a police officer may detain a person who disrupts or threatens public order, if public order cannot be established otherwise or if the threat cannot be averted in any other way. In that case, police detention can last up to 48 hours. Pre-trial detention can be ordered only by the court if: 1) the person is hiding, if it is not possible to determine the person's identity, or if other circumstances indicate a risk of absconding, or if 2) there is a legitimate fear that the person will destroy traces or evidence, related to the crime, or if special circumstances indicate that the person will interfere with the conduct of criminal proceedings and so affect the witnesses, or if 3) the weight, method or the circumstances, in which the felony was committed, and the offender's personal characteristics, previous life, environment and the living conditions of the offender or any other special circumstances show the danger that the offender will repeat the offence, complete the offence or attempt to commit the offence which the offender threatens. Pre-trial detention may last up to 48 hours (the law allows for the possibility of prolongation if the conditions are met and there are reasons for it). A detained person has the right to appeal against the detention. Alternative forms of detention are the promise of the person not to leave the home, restraining order, reporting to the police station, bail and house detention. Slovenian law contains no compulsory or voluntary treatment at this stage to compensate pre-trial detention or any mild form of ensuring the presence of the accused.

The legislation does not regulate the status of drug addicts during the hearing. The perpetrator's dependency does not affect the imposition of pre-trial detention or other actions of the court and law enforcement in the criminal proceedings. If the offender is under the influence of alcohol or illicit drugs, the hearing must not be conducted. If the hearing is conducted while the offender is under the influence of alcohol or illicit drugs, the court may not base its decision on testimony from the accused. Each confession of the offender, given under the influence of alcohol, illicit drugs or other psychotropic substances, is regarded as a violation of the privilege against self-incrimination. Police officers and an investigating judge are not allowed to enable the offender/addict use of illicit drugs at the hearing, as this would be contrary to the Article 187 of the Criminal Code. In addition, the Criminal Procedure Act forbids any force, threat or other similar funds (medical procedures or substances) to be used toward a defendant, in order to achieve his statement or confession. If these provisions are violated, the court may not base its decision on testimony from the accused and the testimony must be eliminated from the court file.

5. Sentencing Levels and the Prison Situation

Slovenia has 6 institutions of incarceration (with 7 additional sections in other locations) and a correctional institution for juveniles. 4 institutions are prisons for men, 1 prison is for women, and 1 prison is for adults and juveniles (together in the same prison, but physically separated). There were 1404 persons in prisons on the 26th July 2012. Compared with international standards, Slovenian prisons are overcrowded. On the 19th November 2012 1412 person were imprisoned (the official capacity of all prisons is 1,309). The prison population rate is 69 prisoners per 100.000 citizens (based on an estimated national population of 2.06 million citizens). The table below (Table 1) shows the prison population and occupancy of prisons in 2011.

Table 2

Prison population in prisons and capacity and occupancy of prisons in 2011 (The Prison Administration of the Republic of Slovenia, 2012)

Prison	1.1.2011	ac- cepted	total	in- flow	re- leased	out- flow	31.12.2011	average number	ca- pacity	occupan- cy(%)
Dob	400	198	598	37	98	92	445	442	420	100,48
Slo. Vas	57	0	57	59	36	26	54	58,9	63	93,49
Pučava	15	0	15	14	11	2	16	15,3	17	90
Ig	62	206	268	17	203	18	64	64,2	83	77,35
Celje	85	397	482	44	418	23	85	77,5	96	80,73
Koper	124	214	338	58	214	61	121	128,6	110	116,91
N. Gorica	36	340	376	14	353	0	37	32,7	32	102,19
Ljublja- na	233	924	1157	32	810	142	237	233,3	128	182,27
N. mesto	46	471	517	16	474	22	37	40,7	35	116,29
OO Ig	13	0	13	72	61	3	21	16,9	27	62,59
Maribor	142	832	974	90	762	163	175	152,8	146	104,66
M. Sobota	32	187	219	31	199	16	35	33	41	80,49
OO Rogoza	35	39	74	55	96	5	28	34	36	94,44
PD Radeče	25	17	42	5	18	2	27	27,5	68	40,44
TOTAL	1305	3825	5130	544	3717	575	1382	1337,4	1302	102,72

Unfortunately, there is no available statistical data of the number of convictions for illicit drugs related crime. There is only available data for categories of offences (e.g. offences, related to illicit drugs fall into the category of ‘Criminal offences against public health’). On January 1st 2011 there were 116 persons incarcerated for ‘Criminal offences against public health’. 159 new persons were imprisoned that same year (same category of criminal offences) - this number represents 16% of all incarcerated persons (compared to other crimes).

Tables 3 and 4 represent the number of prisoners with problems of illicit drug use (during the period 2003-2011) and the number of prisoners with the measure of compulsory treatment or with drug problems by categories of prisoners (in year 2011). Both tables **do not** represent the number of people imprisoned for crimes related to illicit drugs.

Table 3

Number of prisoners with problems of illicit drugs (2003-2011)
(The Prison Administration of the Republic of Slovenia, 2012)

Year	2003	2004	2005	2006	2007	2008	2009	2010	2011
number of all prisoners	4.725	4.344	3.097	3.572	4.311	4.383	4.730	4.592	4.975
prisoners with problems	727	944	868	948	1.090	1.210	1.209	1.215	1.073
share (%)	15,38	21,73	28,03	26,5	25,3	27,6	25,6	26,5	21,6

Table 4

Number and proportion of prisoners with the measure of compulsory treatment or with drug problems by categories of prisoners
(The Prison Administration of the Republic of Slovenia, 2012)

Types of prisoners	total number in 2011	prisoners with dependency problems	share (%)
convicts	1.919	623	32,5
compliance detainees	1.816	135	7,4
pre-trial detainees	1.193	292	24,5
minors	47	23	49
TOTAL	4.975	1.073	21,6

EMCDDA Statistical Bulletin for the period 2001-2009 shows that on average 16% of all criminal offences in Slovenia are related to the production and trade in illicit drugs, and 81% of the criminal offences are related to possession of illicit drugs.

There is no available data on recidivism of offenders, who have already served prison sentence for crimes related to illicit drugs.

There was an increase in number of interceptions of drugs, psychotropic substances and other prohibited items in prisons in 2011; there was also a similar increase in the ratio of found items on persons, entering the prisons, and found items inside the prisons. There has been a slight decline in 2006 and 2008, but the number of found substances and items increased in 2009. In 2010, prisons again reported a small number of found drugs; the decline continued in 2011. In addition to drugs, prison guards also discovered tablets, accessories for drug and alcohol use which are mostly used for the production of alcohol in prison. Cases of violence related to extortion were recorded in 2011, mostly due to drug trading or the debtor-creditor relationships. One of the most appropriate means of resolving conflicts between prisoners would be housing in predominantly single cells, according to the expected standards in the EU, which is - given the current situation/overcrowded prisons - virtually impossible. Medical care inside prison is provided for all prisoners by medical staff; outside the prison the help of other medical institutions and NGOs programs can be offered to prisoners. Medical personnel in the field of addiction treatment provides assistance to prisoners in the abstinence crisis, substitution therapy, and urine tests to detect the presence of drugs in the body, advice and education on the risk of infection with HIV and hepatitis. At the same time inmates are encouraged to do testing, vaccination against hepatitis B and treatment with the implementation of psychosocial support programs in order to achieve higher goals in the treatment of addiction. Enforcement of Criminal Sanctions Act provides that inmates can be tested for the presence of psychotropic substances in the body or in body fluids if personnel reasonably suspects that the inmate is under the influence of drugs; inmates, who are involved in a treatment program or drug treatment, can also be tested at any time. In 2011, no person was infected with HIV. The available data shows the results of confidential tests in 2011 for HIV, hepatitis A, hepatitis B and hepatitis C (see Table 6). Prisons implemented preventive measures in order to prevent the incidence of these diseases.

Table 5

Results of voluntary and confidential tests for hepatitis and HIV in period 2003-2011 (The Prison Administration of the Republic of Slovenia, 2012)

Year	2003	2004	2005	2006	2007	2008	2009	2010	2011
number of tests for HIV	134	179	605	242	297	235	202	197	134
number of tests for hepatitis	183	269	303	322	378	326	271	284	192
HIV	0	0	0	2	1	1	2	1	0
hepatitis A	3	3	2	1	2	0	0	0	0
hepatitis B	14	10	7	12	15	7	13	11	15
hepatitis C	63	90	85	87	97	75	47	60	55
TOTAL	80	103	94	102	115	83	62	72	70

Slovenian courts may impose a penalty of community work instead of prison. Overcrowding is resolved in accordance with the recommendation of the Council of Europe in 1999, thus the setting of other alternative forms of custody is becoming the priority of the Prison Administration - such a solution is also cheaper than building new prisons.

In the field of social reintegration the draft of the new Resolution on National Program on Drugs includes the following objectives: *Accelerate the development of psychosocial treatment programs for drug users, therapeutic communities and communes as well as programs of social reintegration and employment of former substance abusers, and thus contribute to reducing the social exclusion of drug users. It is necessary to promote the continuity of treatment and participation by prisons, other correctional institutions and youth detention home programs with social care and various therapies.* In addition, The Enforcement of Criminal Sanctions Act provides that the competent centers and other entities must prepare the program of necessary measures to help the convict and assist him in (re)integration into society after serving the sentence at least three months prior to release from prison. Such help involves the cooperation of competent centers, employment services, management bodies for housing, and public institutions in the field of health and education, except in cases when a prisoner refuses the help of institutions. NGOs, charitable organizations, self help and other civil society organizations can also help in implementing the individual treatment/reintegration program. Government and non-government organizations try to provide jobs and housing to convicts after serving the sentence, while offering them material assistance (if such as-

sistance is needed). During imprisonment psychologists, educators, sociologists, social workers, teachers, instructors and teachers of practical lessons help with organizing convicts' lives and work in prison, which promotes the proper inclusion of convicts into normal life after serving their sentence.

II. Initiatives for drug law reform undertaken by the government and/or the parliament in the last 10 years

By 2000, Production of and Trade in Illicit Drugs Act, Illicit Drug Precursors Act, and Act Regulating the Prevention of the Use of Illicit Drugs and the Treatment of Drug Users had been adopted in the field of illicit drugs. In this context it is also worth mentioning the Criminal Code, which (since 1994) contains two articles related to illicit drugs. The Illicit Drug Precursors Act expired on 2007, as some of its provisions were transferred to the Criminal Code.

The Resolution on the National Program for the period of 2004-2009 was prepared and implemented in the last 10-year period. Its preparation had been coordinated by the Office on Drugs, which also coordinated the operation of the Commission of the Government of the Republic of Slovenia for illicit drugs and NGOs. The resolution provided examining of the introduction of stricter penal policy, according to which the previous Criminal Code (CC) was replaced by a new version of the Criminal Code (CC-1) in 2008. Two articles related to felonies in the field of illicit drugs (Article 186 and 187) remained and were also substantially expanded. Penalties for the felonies related to illicit drugs remained more or less the same: the penalty for unauthorized production and trade in illicit drugs, illicit substances in sport and precursors changed from 'for at least three years' to 'five to fifteen years of imprisonment' if the offence is committed in a criminal organization. A new paragraph was added in the Article 186, which incriminated selling, offering and sharing illicit drugs free of charge in educational institutions or in their immediate vicinity, in prisons, military units, public places or public events or if the offence is committed by a civil servant, priest, doctor, social worker, teacher or educator by exploiting his position, or if for any previously listed felony minors are used. The penalty for rendering opportunity for use of illicit drugs (Article 187) increased from 'three months to five years of imprisonment' to 'six months to eight years of imprisonment'. The second paragraph of Article 187 was expanded and now criminalizes the involvement of a civil servant, priest, doctor, social worker, teacher or educator, who induces others to use illicit drugs.

The resolution tried to speed up procedures before the competent authorities, who decide on offences and felonies; especially procedures, where drug addiction is the cause of crime. The same is provided in the draft of a new resolution. Previ-

ous resolutions called for the examination of options to determine the quantity of illicit drugs for personal use and the quantity of illicit drugs, which can no longer be considered as the quantity for personal use. So far, the legislation in this area has not changed. Planned changes also include offering professional help to individual violators, as soon as the criminal offence is discovered, and the introduction of alternative sanctions. Even in these two areas, the legislation has still not changed.

Representatives of ministries, NGOs and the Faculty of Social Work cooperated in developing a new Resolution on the National Program on Drugs for the period 2011 - 2020 (or 2013 -2020, depending on the year of adoption of the new resolution). Due to the large interest of NGOs and the public, the Ministry of Health organized consultations in which the participants expressed their opinions and made suggestions for the new resolution. The new strategy should clearly define some pressing problems, such as 'safe rooms' for drug injection and homeless drug users. According to the reports of implementation of the old strategy and evaluations of methadone programs, the Slovenian programs are of high quality, staff is well-trained, but all centers should be more associated with NGOs and Centers for social work.

At the moment, the new version of Production of and Trade in Illicit Drugs Act is being prepared by ministries, government and non-government organizations, scientists and other interested parties. Among others, the new version of Act includes higher penalties for misdemeanors, related to possession of illicit drugs.

In 2011, the then largest opposition party of the National Assembly submitted a draft of the 'Law on mandatory testing of officials for illicit drugs' in the parliamentary procedure. The proposal had been made because of the information on the presence of cocaine between Slovenian politicians, which had been in circulation in the public. It all began in 2010 when the media and public got information that the (now former) Minister of the Interior (from the coalition party at that time) had supposedly been using an illicit drug (cocaine). The minister considered the information as a lie and gave urine for a test, which showed no traces of drugs. After the test the minister said: »Now, let's set new standards in politics.« Members of the opposition then made a draft of the new law, which aimed to ensure the public interest in transparency of officials, preventive actions on illicit drugs, and, consequently, their interaction with drug trading and corrupt practices. Officials, who by law should have been tested for illicit drugs, were members of Parliament, the President of the Republic, the Prime Minister, Ministers and State Secretaries. The Proposal provided a mandatory test of each official once in the calendar year of its mandate for the presence of illicit drugs in the body. The proposal was rejected and the majority of parliament members were outraged - the most common argument for rejection was: the law would 'excessively interfere in the privacy of officials.'

III. Standpoints of relevant stakeholders on drug law reform and proposals and recommendations for further research and advocacy work

The standpoints, proposals and recommendations were divided into four parts, regardless of their authors: “Health, social work and other related fields”, “Repression and criminal justice”, “NGOs and their activities” and “Policy making” (some standpoints may be contrary to other standpoints as they represent the opinions of different stakeholders).

Health, social work and other related fields:

- Promotion of food products from hemp is controversial, since it promotes illicit drugs, while giving the appearance that cannabis is harmless. Limiting the advertising of food products from hemp was proposed. Promotion of food products from hemp is directed toward youth with the aim of promoting the general usefulness of hemp. Cosmetic products from hemp do not represent such a problem because they are not used in the same way as food, do not contain as much THC as food products from hemp, and are used by other types of consumers.
- Slovenia wishes to introduce so-called 'safe rooms' for drug injection. The basis for the safe room lies within the Article 187 of the Criminal Code, which states that giving a place or other facility for the use of illicit drugs is not punishable if it is done within the treatment program or program for controlled drug use, which is in accordance with the law, approved and implemented within the framework or under the supervision of public health institutions.
- A considerable number of people, who have problems with drugs, go abroad for treatment, although Slovenia has many programs in which they can be treated. This presents a unique problem: when people return to Slovenia, they have problems with social reintegration; hence some of them again start using illicit drugs because of the lack of social networks. Effective psycho-social treatment should be held in the native language if the addicts want to gradually be socially reintegrated into the society in which they want to live.

Repression and criminal justice:

- Criminal law and criminal justice are adjusted to current trends in the world, where the penalties for crimes related to illicit drug trafficking are stricter. Penalties should be reduced or replaced by alternative forms of imprisonment and the perpetrators should be quickly processed. The problem of crime associated with illicit drugs should be tackled globally; therefore common rules of conduct and ac-

tions in cases of breaches of legislation should be introduced. Alternative forms of sanctions should also include harm reduction programs.

- Legislation represents a problem in the functioning of the police. The most common barriers are limits to covert investigation measures. Their suggestions have already been forwarded to the legal department, but now the process is 'on hold' at the higher levels.
- Standards for execution of house searches, obtainment of lists of telephone traffic, and some other investigative actions should be reduced.
- Changes in legislation, which now enables an agreement with prosecutors on a lower sentence if the offender confesses to the criminal offence, is causing frustration and dissatisfaction. A large amount of evidence obtained by police would be sufficient to convict the offender to a high penalty, but now enables the perpetrator - for the sake of faster and shorter procedures - to avoid stricter penalties.
- It would be necessary to expand and regularly update the national list of banned drugs with the list of EU. Difficulties arose in practice, when the drug was illegally transported from Austria to Italy and could be seized, but the Slovenian criminal investigators were not able to do so because, according to Slovenian legislation, that substance was not classified as an illicit drug, but at the same time was, according to the EU legislation.
- The sentences for offences under Articles 186 and 187 of the Criminal Code are sufficiently high, in some cases too low. The damage caused by illicit drugs is in most cases enormous (especially for a person's health) so the severe penalties are appropriate for such offences.
- Penalties for misdemeanors related to illicit drugs should be more severe - a proposal has already been made and will soon be accepted.
- A distinction between misdemeanor and the felony should be made in practice: in some cases it was difficult to determine (given the following circumstances) if an individual had an illicit drug for his own use or for trade in illicit drugs. There was a proposal to legalize the levels for all illicit drugs under which the possession of illicit drugs would be treated as a misdemeanor, and above which the possession would be treated as a felony.
- Serving alternative sentences instead of prison should not be allowed to all prisoners. Selection of the sentence should be based on the offender's character and past.
- Proposal of the police to legally set a maximum of allowed quantity for possession of illicit drugs was rejected. Ministry of Justice explained that during the police or judicial procedure it should be defined whether the quantity of any drug, possessed

by an individual, was for personal use or for further trafficking. This would allow people to carry a quantity of illicit drugs to a threshold, but would not eliminate the problem of trade in illicit drugs. Another problem is the content of psychoactive substances in relation to the quantity of illicit drugs.

- It would be necessary to introduce different levels of alternative penalties and to enable the police and judges to impose a penalty, appropriate to the perpetrator, circumstances of and the committed offense.
- Proposed changes in the draft of the new Production of and Trade in Illicit Drugs Act are not satisfactory: increasing fines would have a greater impact on already financially and socially weak addicts. Increased fines would only exacerbate the problem because addicts couldn't pay off the fine.
- The quantity of drugs for personal use should be decriminalized; determining the quantity of illicit drugs for personal use would not eliminate any problems, therefore NGOs preclude on determining the thresholds.
- High penalties for the offenses are meaningless. All the circumstances and perpetrator's characteristics should be taken into account, when determining the type of penalty. Perpetrators should also be individually considered.

NGOs and their activities:

- NGOs also work as an intermediary between individuals and the state, since users of programs/illicit drug users find it difficult to express their desires and problems, and do not know how to improve or help to improve the situation.
- The work of NGOs is too little appreciated and not valued equally with the work of government organizations and other public institutions, although NGOs do most of the work, which is usually done better than the work of government organizations.
- NGOs propose integration and cooperation between NGOs and government organizations.
- Drug users and addicts should not be treated as patients. Instead of punishment, they need help from professionals. All drug users should not be immediately sent for detoxification but also to NGOs' programs, which offer different types of help.
- The public is not aware enough of the excellent cooperation between NGOs, the police and the Ministry of Health, which have yielded very good results in the past.
- The participation of NGOs in creating a new proposal for the Production of and Trade in Illicit Drugs Act was the first time that NGOs had participated in creating legislation. The Ministry of Health now favors the participation of NGOs in the process of creating and changing legislation. NGOs believe that great progress has been made.

- NGOs should be involved in creating legislation, as they - opposed to other government organizations and public institutions - know what is really happening 'on the street'.

Policy making:

- It is not widely understood in Slovenia that cannabis is regulated by international legislation. Some activists say that the Slovenian legislation is not flexible enough and that by legalizing drugs the state could also collect taxes from trade in illicit drugs. On the contrary, some NGOs oppose legalization because it would only worsen the health situation in Slovenia.
- The issue of cannabis control would have to be tackled at the international level and not just on a national one. Because by changing/liberalizing legislation in only one country the global drug problem is not changed.
- Politicians are insufficiently aware of the problem of illicit drugs. A lot of them talk about property crime or organized crime, while the topic of illicit drugs is almost never mentioned - only the presence of illicit drugs in road traffic. Due to other policy priorities, the problem of illicit drugs is still in the background.
- The matters always go well at the practical level but they always stop at the higher level, when the decisions of politicians or management is required for further procedure.
- Some governmental bodies and institutions miss the Office on Drugs, which operated until 2004, because it effectively carried out tasks in one place. Such tasks are now distributed among different ministries, departments or their organizational units, which makes their operation less effective and more time-consuming.
- Compared with other countries, Slovenia has relatively mild penalties for possession of drugs; therefore it was proposed in the new Production of and Trade in Illicit Drugs Act to impose higher penalties. The proposal has not yet been the subject of parliamentary procedure.
- Different policy priorities were the main problem in adopting new legislation on illicit drugs because it delays the process of adoption.
- Another problem in implementation of the programs and assistance for addicts represents the lack of financial resources. Although the treatment system for addicts is already developed (there are no waiting lists, and the system is free of charge for users), it is also expensive. The budget for drug treatment is 5 (total 10 - all drug demand reduction programs) million EUR, but very much was/is being done for relatively little money. By simple comparison: Ireland, which has more

than 4.5 million inhabitants (Slovenia has about 2 million inhabitants), spends 250 million EUR on drugs.

- Implementation of alternative forms of punishment depends on the courts, so it is up to them, how often, or if any alternative forms of sanctions are imposed.
- Communication between the Ministry of Health and the police is intensive and productive; also communication with other bodies, including NGOs and individuals, is very good. Such communication gives better results, and the proposals for new policies are more quickly coordinated and prepared.
- Solutions to addressing the problem of illicit drugs should be sought together through dialogue; hence the tolerance and maintenance of communication are important.
- The strategy is well written, but it serves only as a guideline. A good action program is required for the implementation of measures from the strategy, not the strategy itself; it is also necessary to provide good control over the implementation of the program.
- Rooms for safe injection of illicit drugs should be introduced as soon as possible, in order to prevent further infections, 'overdoses' and the improper use of illicit drugs. It is necessary to create places, where illicit drug use can be done away from the public eye, and - more importantly - under the supervision of medical personnel.
- Society is not mature enough for the legalization/decriminalization of illicit drugs, though it would be good if illicit drugs were legalized/decriminalized. At the same time, it would also be necessary to restrict access to illicit drugs, to which even young people would have access (e.g. ordering drugs over the Internet).

The Drug Law reform Project in South East Europe aims to promote policies based on respect for human rights, scientific evidence and best practices which would provide a framework for a more balanced approach and will result in a more effective policy and practice. A major aim of our activities is to encourage open debate on drug policy reform and raise public awareness regarding the current drug policies, their ineffectiveness and their adverse consequences for individuals and society.

Το Πρόγραμμα Μεταρρύθμιση της Νομοθεσίας για τα Ναρκωτικά στη Νοτιοανατολική Ευρώπη στοχεύει στην προώθηση πολιτικών που βασίζονται στο σεβασμό των ανθρωπίνων δικαιωμάτων, την επιστημονική τεκμηρίωση και τις βέλτιστες πρακτικές που θα προσφέρουν ένα πλαίσιο για μια περισσότερο ισορροπημένη προσέγγιση και θα οδηγήσουν σε αποτελεσματικότερες πολιτικές και πρακτικές. Ιδιαίτερα σημαντική επιδίωξή μας είναι να ενθαρρύνουμε την ανοιχτή συζήτηση για μεταρρύθμιση της πολιτικής των ναρκωτικών και να ευαισθητοποιήσουμε την κοινή γνώμη για τις δυσμενείς επιπτώσεις και την αναποτελεσματικότητα της ισχύουσας πολιτικής των ναρκωτικών για τα άτομα και την κοινωνία.

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