

Drug Policy and Drug Legislation in South East Europe

Former Yugoslav Republic of Macedonia



NOMIKI BIBLIOTHIKI

**Country Report
Former Yugoslav Republic
of Macedonia**

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 Diogenes 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.

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

Assistant, Faculty of Law, State University of Montenegro, Montenegro; Andrea Parosanu, researcher, Master of Laws (LL.M.) in Criminology and Criminal Justice, University of Greifswald, Germany and Ecaterina Georgeta Balica, Senior researcher, Associate Lecturer Ph.D. University of Bucharest, Faculty of Sociology and Social Work, Romania; Dragoljub Jovanovic, University of Belgrade, Faculty of Special Education and Rehabilitation, Belgrade, Serbia; Bojan Dobovsek, Prof. Faculty of Criminal Justice and Security University of Maribor, Slovenia and Gašper Hribar, Faculty of Criminal Justice and Security, University of Maribor, Slovenia.

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-intergration 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

*Director of Diogenis Association
Drug Policy Dialogue in South East Europe*

Country Report Former Yugoslav Republic of Macedonia

by Nikola Tupanceski¹
Natasha Boshkova²

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-

1. Professor at the Justinianus Primus Faculty of law, Cyril and Methodius University of Skopje.

2. Legal advisor, HOPS Skopje.

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 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 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	5001-100000 denars	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.

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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