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Drug Policy Dialogue in South East Europe

Sentencing of Drug Offenders: Legislators' Policy and the Practice of the Courts in South Eastern Europe

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Former Yugoslav Republic of Macedonia

SAKKOULAS PUBLICATIONS
ATHENS - THESSALONIKI

Country Report Former Yugoslav Republic of Macedonia

Preface

As part of the activities of the project “Drug law reform in South East Europe” Diogenis presents in this publication the findings of the research “Sentencing of Drug Offenders: The Legislator’s Policy and the Practice of the Courts in South Eastern Europe”.

The research deals with an important issue which –in our opinion- needs to be addressed with evidence based data of the everyday practice. The unilateral choice of punishment and imprisonment as an effective response to the drug problem has been proven to be one of the major weaknesses of the current drug control system. Criminal law responses have been considered as the most effective means to tackle it. This fact has nourished the prevailing public opinion that the more severe penalties, the better. The interaction between severe repressive measures of the legislature and a large part of the public perception that tougher penalties are needed to eliminate drug use and dependence is particularly evident in South East Europe.

However, during the last twenty five years drug laws have been amended in nearly all the countries of South East Europe. Although the focus on the importance to provide public health-oriented assistance has increased steadily and the overall approach to drug use and addiction has improved, several drug law provisions remain problematic and need to be adapted to the current scientific insights and the changing social conditions.

The country reports of this research are a contribution to the search of legal provisions that are more consistent and will lead to greater efficiency. They contain valuable information about the current state of drug laws per country, summarize the problems concerning legislation and practice on sentencing of drug law offenders and suggest alternatives.

The current discussion about the shift in drug policy and drug legislation from repressive measures and actions to public health, social inclusion and respect for human rights is supported by the findings in this research. The identification of sanctioning practices on the state (macro) level and the analysis of the practice in drug offence cases on a county (micro) level, confirm facts that are generally shared. Most drug offenders are prosecuted for and convicted of possession of drugs for personal use. Statistics also show that a significantly

E small number of drug traffickers are convicted as compared with all the other groups of offenders.

A significant finding of the research is that judges are interpreting legislation in different ways. There is a small number of judges who impose sanctions which are harsher than those required by the legislator. Some of them see drug posses- sion per definition as drug trafficking. The vast majority of the judges, however, is more lenient than the legislator, because they take into consideration all aspects of the situation of the offender (family, social and economic situation, previous convictions etc.) It is more and more common practice that the courts pronounce very often a suspended sentence by absence of prior conviction or other extenuating circumstances and see drug offenders primarily as persons in need of treatment. In this context we may say that the judiciary must be consulted and be taken seriously by the responsible politicians and the governments before proposing new legislation on drugs.

In several countries –and also in international level– an intense discussion is taking place about punishing or not drug possession for personal use and minor drug offences. Decriminalization of drug possession for personal use is introduced in some countries with success and positive results. At the United Nations meetings, several high rank officials express the opinion that the international drug control conventions do not impose on Member States obligations to criminalise drug use and possession for personal consumption. The recent UN General Assembly Special Session (UNGASS) calls Member States to "encourage the development, adoption and implementation, with due regard to national, constitutional, legal and administrative systems, of alternative or additional measures with regard to conviction or punishment in cases of an appropriate nature" and "Promote proportionate national sentencing policies, practices and guidelines for drug-related offences whereby the severity of penalties is proportionate to the gravity of offences and whereby both mitigating and aggravating factors are taken into account". We hope that member states in the region of South East Europe will consider these calls as an encouragement to continue reforming their drug legislation in this direction.

This research is an example of co-operation between civil society organisations and the scientific community. Diogenis owes thanks to the researchers who have been willing to do this work with very scarce resources and great enthusiasm. Thanks also to the European Commission and the Open Society Foundations for their financial support.

Thanasis Apostolou, Director of
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Country Report
Former Yugoslav Republic of Macedonia
Sentencing of Drug Offenders:
Legislators' Policy and the Practice of the Courts

by Prof. Dr. Nikola Tupanceski [1] and Natasha Boskova [2]

Introduction

The previous analysis, "Drug policy and drug legislation", prepared by the same team, provided an overview of the legal framework regarding drugs in the Former Yugoslav Republic of Macedonia and the harmonisation of laws with contemporary drug policies in the region and globally. This report is the result of the needs and recommendations that emerged from that analysis, i.e. the need to examine the implementation of these laws, particularly with regard to sanctioning drug-related offences, in order to gain a comprehensive insight into the country's drug policy. The first part of the analysis provides an overview of the development of drug-regulating legal frameworks, as well as strategic documents related to the implementation and improvement of the state's drug policy in the past ten years. Then follows an outline of the Criminal Code and the Misdemeanours Law, which stipulates the sanctioning of drug possession, use and sale, and the development of this legislative part in the past ten years. The analysis also provides a comparison between sentences for drug-related offences versus other offences in the past ten years on a national level. Finally, the report discusses judicial sentencing practice for drug-related crimes and misdemeanours.

Based on the methodology used in this research, a total of 50 judgments pronounced by a first instance court in the past three years concerning drug-

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related crimes were analysed. In order to gain a more comprehensive insight into judicial practice in drug-related cases, we turned to ten major courts in the country and, based on the data received, we decided to analyse the court in Strumica, which promptly and fully responded to the request to provide us with the judgments needed for the analysis, the type of crime, the personal circumstances of the offender, the sanction, the defence and the judgment's explanatory notes. The report ends with conclusions and specific recommendations for the improvement of drug policy, as well as proposals on humanising the sanctioning policy in regards to drugs and drug-using or drug-dependent persons.

National legislative policy on drugs

The drug-related legal framework has existed since the former political system in our country, when it was part of the Socialist Federative Republic of Yugoslavia. After the country's independence, these laws continued to apply until the adoption of new laws regulating drug production, possession and use. In the meantime, national and local strategies were adopted, which stipulated the activities and practices for the implementation of drug-related policies. Below we shall first present the general framework within which drug policy operates, and then we shall focus on criminal provisions concerning drug production, possession and use. According to the methodology used in the research, the subject of the analysis is drug policy in the last ten years. The framework of the state's drug policy in the last ten years consists of laws, strategies and action plans for the implementation of these strategies, all related to drug control or to drug users. This overview covers specialised legal acts and part of the existing legal acts which directly influence the enjoyment of human rights by drug users.

The Former Yugoslav Republic of Macedonia is a contractual party of the three drug-related UN conventions, as follows: The 1961 Single Convention on Narcotic Drugs, amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs (October 13th, 1993); the 1971 Convention on Psychotropic Substances (October 13th, 1993); and the United Nations 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (October 13th, 1993). These conventions limit the use of drugs exclusively for medical and scientific purposes. They define penal acts such as possession, acquisition, distribution or the offering for sale, but do not determine simple use as a penal act. There are several interpretations of the

conventions regarding the obligations imposed on states with regard to drug use. According to the comments to the 1961 Convention, "unauthorised consumption of drugs by addicts does not constitute 'illicit traffic'". This convention "draws a clear line of distinction between possession for personal use, where governments have the right not to impose imprisonment, and possession for distribution that must be subject to 'deprivation of liberty' sanctions". However, the 1988 Convention stipulates criminal sanctions for "possession for personal use", in order to strengthen control on international drug trade. According to other interpretations, "all three conventions allow signatory states to adopt measures for the treatment, education, aftercare, rehabilitation or social re-integration of those who have committed drug-related offences and are found to be drug dependent. These offenders may be encouraged to enter drug treatment, either as an alternative or in addition to criminal justice sanctions. In terms of drug consumption, there is no specific requirement to criminalise this within any of the conventions and there is considerable flexibility for minor offences related to personal consumption. A level of depenalisation and/or decriminalisation is therefore possible under the UN drug conventions for personal use offences such as possession or cultivation for personal use". In any case, the conventions offer flexibility, allowing signatories, when the purpose of possession is personal use, to treat the case outside the criminal justice system. Bearing in mind that the Former Yugoslav Republic of Macedonia is a signatory to several other UN conventions which guarantee protection of human rights and the dignity of all, an appropriate model for the application of the drug-related conventions should be found, so as to make possible the unhindered enjoyment of human rights of drug users or addicts. Pursuant to article 118 of the Constitution, the text of all the above-mentioned Conventions is part of the country's legal framework; courts are therefore obliged to pass judgments based on the Constitution, the laws and the international treaties ratified in accordance with the Constitution. Still, legal practice shows that courts almost never apply the ratified Conventions in reaching judgments. Also, strategic documents refer to international standards in regards to the protection of the rights of people using drugs in the process of developing drug supply or demand reduction policies; in practice, however, no attention is paid to the consistent implementation of international standards for drugs regulation and for the protection of the human rights of all stakeholders. More about the implementation of the laws regulating drugs will follow below.

Until the adoption of the Law on Control of Narcotic Drugs and Psychotropic Substances in August 2008, valid acts were the 1991 Law on Narcotic Drugs Traffic and the 1983 Law on Determining the Bodies in charge of Particular Activities in the Field of Production and Transportation of Narcotic Drugs. In the legal framework until 2008, a separate law defined narcotic drugs and the conditions for their production and traffic, while another law stipulated the bodies in charge of performing tasks in the area of production and transportation of narcotic drugs and their competences. By the adoption of the Law on Control of Narcotic Drugs and Psychotropic Substances, the regulation of drug traffic and the work of the bodies responsible for the control of production of and traffic in narcotic drugs and psychotropic substances were summarised. A comparison between the terminology used in the description of the purposes of the old and the new law clearly demonstrates a change of focus in this subject. The previous law was brought with the objective to preserve the health of people, to prevent social problems and misuse of narcotic drugs, and to stop the production of and traffic in illicit narcotic drugs. The objective of the current law is the prevention and suppression of the misuse of narcotic drugs and psychotropic substances; the prevention of the illicit production of and traffic in narcotic drugs, psychotropic substances and plants that can be used for the production of narcotic drugs and psychotropic substances; and finally, the protection of the life and health of people and the control of narcotic drugs and psychotropic substances. The tendency to suppress drug misuse indicates the introduction of a new, stricter policy, which misplaces the focus from care for the health and the social problems of drug-using persons on measures and activities directed towards preventing crime and sanctioning the offenders. Furthermore, this law regulates the growing of plants used to produce narcotic drugs and their destruction, and provides for a permit for the production and trade of narcotic drugs and psychotropic substances. The categorisation of drugs and psychotropic substances in the law, according to which the handling of specific types of substances is regulated, is in line with the international conventions for the control of narcotic drugs and psychotropic substances and the lists adopted by the International Narcotics Control Board. In case of violation of its provisions, the Law on Control of Narcotic Drugs and Psychotropic Substances stipulates sanctions against the legal entity that has caused the violation, as well as against the person responsible for the legal entity. A sanction may be imposed on a physical person within a legal entity that has committed the misdemeanour described in article 92(1) of the law.

According to the law, the actions of the physical person who has mediated, produced, transported or sold narcotic drugs and psychotropic substances, and is not engaged by the legal entity, cannot be sanctioned. In line with the existing legal regulations, such a person shall be held responsible under the Criminal Code, which is considered in more detail further below. Still, from court practice analysis, it was established that there were judgments in which physical persons were accused and the Court, in addition to the Criminal Code, referred to the provisions of the Law on Control of Narcotic Drugs and Psychotropic Substances.

Prior to enforcing the Law on Control of Narcotic Drugs and Psychotropic Substances, in December 2006, the Government of the Former Yugoslav Republic of Macedonia adopted the National Strategy on Drugs, covering the period 20062012. According to the Strategy, the Former Yugoslav Republic of Macedonia should change and amend its legislation in order to harmonise it with the existing EU law. One of the purposes of the Strategy was "preventing and sanctioning illicit production and trade of illicit drugs by changes and amendments to existing legal regulations in accordance with EU's international legislative standards and *acquis*, defining minimum quantity of drugs for personal use". As far as the sanctioning policy is concerned, the Strategy points out the importance of regular monitoring and assessment of the implementation of the adopted measures and laws, in view of establishing their effectiveness and efficacy. To date, no law has been enacted or even drafted that would come closer to international standards in terms of defining the "quantity of drugs for personal use" which, in accordance with the law, is to be treated differently than possession of a quantity of drugs with the intent to sell. Therefore, it can be concluded that the text of the Strategy (which has expired, but is the latest official strategic document) is in line with international standards established by the conventions and the EU Drugs Strategy, while national legislation still has not caught up to European or global trends. The preparation of a new strategy for the period 2013-2017, which is expected to promote the established principles, is underway. The new strategy will be finalised and adopted in the following months.

A separate Law on Precursors establishes the system for monitoring and control of the production and trade of precursors in order to prevent precursor abuse for illegal production of narcotic drugs and psychotropic substances, protect the life and health of people and protect the environment from the harmful effects of precursors. This law only stipulates sanctions for

misdemeanours of legal entities that produce, store, record precursors or undertake other activities contrary to the provisions of the Law on Precursors.

Criminal legislative policy on drug offences

In addition to the drug-related legal framework, below we will analyse the Criminal Code (CC) and the Law on Offences against Public Order and Peace (LOAPOP), which foresee sanctioning of the use, possession, trade and production of drugs and psychotropic substances and precursors, and whose application directly concerns the rights of drug users or addicts.

The Criminal Code of the Former Yugoslav Republic of Macedonia (CC) was adopted in 1996 and cancelled older criminal law provisions. From the adoption of the CC until January 2014, the text of the Code was changed and amended 25 times, either through a change and amendment procedure in Parliament or by cancelling or annulling provisions by the Constitutional Court. It regulates three drug-related criminal acts and, since its adoption in 1996 until today, the legislator has intervened in these provisions only once.

The unauthorised production and release for trade of narcotics, psychotropic substances and precursors regulated by Article 215 and enabling the use of narcotics, psychotropic substances and precursors regulated by Article 216 are considered to be drug-related crimes. Article 215(1) states that "whoever produces, processes, sells or offers for sale or, for the purpose of selling, buys, keeps or transports, or mediates in selling or buying, or in some other way releases into traffic, without authorisation, narcotics, psychotropic substances and precursors, shall be punished with imprisonment of three to ten years." If the crime is committed by several persons, or if the offender organised a network of resellers or mediators, it shall be punishable with imprisonment of at least five years. The national law does not recognise the difference between soft and hard drugs insofar as the substance is illegal and controlled. In September 2009, Article 215 of the Criminal Code was amended with a new paragraph which states that if the crime is conducted with a lesser quantity of narcotic drugs, psychotropic substances or precursors, the punishment can range from six months' to three years' imprisonment. With the same amendment, the sanction for the crime in article 215(1) became more severe –from 1 to 10 years' to 3 to 10 years' imprisonment. While drafting the amendments, the legislator did not define the quantity that should be considered "lesser" in regards to the proper implementation of the provision. After the adoption of the amendments, the Public Prosecutor's Office

encountered problems in formulating indictments related to a certain amount of drugs. Therefore, the Public Prosecutor delivered an internal compulsory directive on what should be considered lesser quantity while drafting the indictment. According to this decision, lesser quantity shall be considered 5 grams of marijuana, 2 grams of heroin, and 2 grams of cocaine, and it will be prosecuted under Article 215(2) of the Criminal Code. Furthermore, if a person without authorisation manufactures, procures, mediates, or makes available for use equipment, materials or substances knowing that they are intended for the production of narcotics, psychotropic substances and precursors, s/he shall be punished with imprisonment of one to five years. The narcotics, psychotropic substances and precursors, and the means for their production, transportation and distribution shall be confiscated. Moreover, if we analyse the wording of the first paragraph concerning possession of drugs, it clearly states that sanctions are imposed if "for the purpose of selling, buys, keeps or transports, or mediates in selling or buying". This means that possession for personal use is not covered by Article 215 of the Criminal Code. This reasoning is in accordance with the 1993 decision of the Supreme Court, when the court council ruled that the mere possession of drugs for personal use does not constitute violation of article 215 CC.

Besides drug possession, drug use is regulated under Article 216 on enabling the use of narcotics, psychotropic substances and precursors. Under this article "whoever induces another to use narcotics, psychotropic substances and precursors, or gives narcotics, psychotropic substances and precursors to another for own use or someone else's use, or makes available premises for the use of narcotics, psychotropic substances and precursors, or in some other way enables another to use narcotics, psychotropic substances and precursors, shall be punished with imprisonment of three months to five years". The second paragraph of the same article provides for a more severe sentence (imprisonment from one to ten years) if the crime is committed against a juvenile or several persons, or if it has caused especially severe consequences.

The Criminal Code contains a separate provision which refers to a whole chapter (Crimes against Human Health) and describes the characteristics of the serious crimes listed in this chapter, including the crimes stipulated by articles 215 and 216 CC. In accordance with this provision, offenders are considered to have committed crimes fitting within the ones described in articles 215 or 216 if there are consequences and serious physical injury and/or damage to the health of the victim.

In order to distinguish a crime from a misdemeanour regarding drug use it is indispensable to consider the Law on Offences against Public Order and Peace, which stipulates that "resorting to use of narcotic drugs and psychotropic substances in public space shall be fined from € 200 to 500". This provision applies if drug use happens in public space, which is defined as a place freely accessible to an indefinite number of people without any precondition (street, school, square, picnic place, harbour, waiting rooms, catering, business or craft stores) or under certain conditions (sport stadiums, playgrounds, public transportation, cinema, theatre and concert halls, exhibition rooms, gardens, etc.) or places which are sometimes used for such purposes (grounds or premises in which public gatherings, performances, competitions, etc. are organised). Under this law, violation of public order and peace may also take place in places which are not treated as public space insofar as they are readily visible from a public space (balcony, terrace, tree, pillar, stairs, etc.) or when the consequences of the act occur in a public space.

In accordance with the *ne bis in idem* principle, there can be no prosecution or punishment twice, i.e. a person cannot be judged twice for the same crime, if s/he has already been convicted. This doctrine has been established in the Law on Criminal Procedure and constitutes an obligation of the courts under Article 4, Protocol 7 to the European Convention on Human Rights and Fundamental Freedoms, which stipulates that no person shall be tried or punished again for an offence for which s/he has already been finally acquitted or convicted. In reality, however, cases were encountered where for the same event the same person was convicted in criminal proceedings under article 215 for possession of narcotic drugs with the intent to sell and, at the same time, in misdemeanour proceedings under article 20 of the LOAPOP for resorting to drug use. This, in addition to being opposed to the *ne bis in idem* legal doctrine, is also against the characteristics of the alleged crime, which is further burdened with the characteristics of the misdemeanour, i.e. a person caught in possession of a certain amount of narcotic drug or psychotropic substance cannot be prosecuted for the misdemeanour of "resorting to drug use", or a person caught taking drugs cannot be accused of possession for sale. The disregard of this doctrine was even challenged before the European Court of Human Rights by other countries with similar practices, but still the national judicial bodies continue with the practice of having two separate procedures (criminal and misdemeanour) for the same legal event.

Rates of drug-related offences on state (macro) level

This part of the analysis presents the prevalence of persons convicted of drugrelated crimes in relation to the total number of persons convicted of other crimes in the past ten years. According to official data from the State Statistical Office, the Former Yugoslav Republic of Macedonia has 2,022,547 inhabitants. Of the total number of inhabitants, the table below presents the number of persons aged over 18 who were reported, accused and effectively convicted on accounts of 88 different crimes and 14 groups of crimes, data about which are presented in a summative form because of the small number of procedures initiated, in the period 2003-2013.

Year	**Reported**		**Accused**		**Convicted**	
	Total	Women	Total	Women	Total	Women
2003	20 161	788	9 926		7 661	
2004	22 591	958	9 916		8 097	
2005	23 814	1 059	10 639	789	8 845*	/
2006	23 514	1 048	11 317		9 280	560
2007	23 305	1 222	11 648		9 639	
2008	26 409	1 306	11 310		9 503	
2009	30 404	1 486	11 905		9 801	
2010	30 004	1 527	11 239		9 169	
2011	31 284	1 327	12 219		9 810	
2012	31 860	1 499	11 311	949	9 042	624
2013**						

* Data incomplete, because of the lack of input from the First Instance Court in Kumanovo.
** At the time of drafting this report, 2013 data were still not available.

The number of criminal offenders in drug-related crimes under Articles 215 and 216 of the Criminal Code in the period 2003-2013 is presented in the following table. There are no data about the number of criminal offenders pursuant to Article 217 of the CC.

Year	Convicted for a crime pursuant to art. 215		Convicted for a crime pursuant to art. 216	
	Total	Women	Total	Women
2003*				
2004**	245			
2005**	302			
2006**	233			
2007	191	4	39	/
2008	234	6	38	1
2009	246	11	46	1
2010	293	6	44	/
2011	420	18	59	4
2012	322	18	53	2
2013***				

*No data available for this year, as no breakdown by crime is available.

** For these years, only aggregate data are available that include all crimes against the health of people falling within the category of the analysed crimes pursuant to Articles 215 and 216 of the CC.

*** At the time of drafting this report, 2013 data were still not available.

Bearing in mind the fact that there is a discrepancy in the legal regulation of possession of drugs for personal use and the application of this provision in cases of possession with intent to sell, and that there is no separate provision regulating possession for personal use, official data contain no information about the number of persons convicted under Article 215 of possession for personal use or possession with intent to sell. Below follow the data about the type of sanction imposed on persons convicted for any of the two drug-related offences.

Year	Criminally convicted pursuant to article 215			Criminally convicted pursuant to article 216		

	Prison	Alternative measure	Pecuniary penalty	Prison	Alternative measure	Pecuniary penalty
2003*						
2004*						
2005*						
2006*						
2007	144	43	/	10	22	/
2008	182	51	/	17	21	/
2009	204	39	/	21	25	/
2010	214	73	5	24	20	/
2011	264	138	14	27	32	/
2012	221	73	24	25	28	/
2013**						

* Separate statistics by crime and type of sanction not available.

** At the time of drafting this report, 2013 data were still not available.

The number of drug-related prison sentences over the total number of prison sentences in the years for which data are available is presented in the table below. For the period 2007-2012, drug-related prison sentences account for approximately 8.2% on average of all prison sentences imposed in the territory of the Former Yugoslav Republic of Macedonia.

Year	Prison sentences for drug-related crimes	Total number of prison sentences
2003		
2004		2744
2005		2947
2006		2596
2007	154	2654
2008	199	2430
2009	225	2808

2010	238	2596
2011	291	3020
2012	246	2807

Based on the available data, the effect of the changes in the CC is hardly measurable on the macro level regarding the crime of "illicit production and release into trade of narcotic drugs, psychotropic substances and precursors", as are the increase or decrease of sanctions. The effect of the changes is more visible in the court practice on a micro level, which is analysed below.

Crime rates of drug-related offences on country court (micro) level

There are general rules guiding a court in issuing a sentence within the limits prescribed by the law for each crime. The court should take into consideration all the circumstances that can influence the decrease or increase of the punishment, most notably: the degree of criminal responsibility, the motives for the offence, the extent of endangerment of or damage to protected goods, the circumstances under which the crime was committed, the contribution of the victim in the perpetration of the crime, the background and history of the offender, his/her personal circumstances and his/her behaviour after the perpetrated crime, as well as other circumstances related to the personality of the offender.

The Criminal Code prescribes a sentence for each criminal act. However, there are legal margins of minimum and maximum sentences that can be imposed. Thus, imprisonment cannot be shorter than 30 days or longer than 15 years.

When the law provides for lifelong imprisonment for certain criminal acts (e.g. atrocious murder, genocide, robbery with lethal consequences, etc.), a sentence of 20 years' imprisonment can be pronounced. As previously mentioned, drug-related crimes are punished depending on the amount of drugs confiscated. Offenders can be sentenced to prison from six months to three years for smaller amounts or from three to ten years for greater amounts. The case law in this respect has lower sentences for drug-related offenders than the legal maximum prescribed by the Criminal Code.

For the purposes of this research, a request for access to public information was submitted regarding the number of cases effectively completed pursuant to Article 215(1), Article 215(2), Article 216 and Article 217 of the CC, in the

period from October 2009 to December 2013, as well as copies of the enforced judgments. A request with the same content was filed to ten first instance courts which have extended jurisdiction and act in drug-related criminal cases. As stated above, the Criminal Code was amended in September 2009 and a new paragraph was added in article 215, defining the "lesser quantity" of drugs or psychotropic substances and increasing the penalty for the primary crime. In order to gain a better understanding of whether the amendment has contributed to changes in judicial practice in proceedings pursuant to article 215, we requested the court to deliver the following information:

1. How many proceedings reached an effective judgment before your court based on Article 215 of the CC for the crime of "illicit production and release into trade of narcotic drugs, psychotropic substances and precursors" in the period from October 2009 to December 2013?
2. How many of them reached an effective judgment pursuant to the amendment to the CC in September 2009 introducing a new paragraph 2 in Article 215 about lesser quantity, also in the period from October 2009 to December 2013?
3. How many proceedings in total were carried out and reached an effective judgment before your court on the grounds of Article 216 "Enabling the use of narcotic drugs", and how many reached an effective judgment pursuant to Article 217 with reference to Articles 215 and 216 of the CC "Serious Crimes against the Wellbeing of People" in the period from October 2009 to December 2013?

The table below contains the results received from eight first instance courts.

First Instance Court	**Total proceedings with effective judgment based on Article 215(1)**	**Total proceedings with effective judgment based on Article 215(2)**	**Total proceedings with effective judgment based on Article 216**	
Skopje		389	68	54
Bitola		62	21	11
Prilep		109	21	
Tetovo	59	7		

Strumica	58	27	25	
Shtip		55	42	14
Veles		104	23	
Kumanovo	92	57	4	

We received a response within the legally prescribed deadline, together with a copy of the judgments, only from the First Instance Court in Strumica. Due to the deadline for the finalisation of this report, below follows an overview of the judicial practice of the First Instance Court in Strumica, with jurisdiction over the municipalities of Strumica, Vasilevo, Bosilovo and Novo Selo and, for the said crime types, over the municipalities of Radovish and Konche, which represent approximately 6.5 % of the total population in the Former Yugoslav Republic of Macedonia.

The court delivered 110 judgments in total, enforced in the period from October 2009 to December 2013, of which 58 under Article 215(1), 27 under Article 215(2) and 25 under Article 216. According to the research methodology, 50 judgments from the First Instance Court in Strumica, delivered in the past four years, were analysed (30 judgments according to Article 215(1), 10 judgments according to Article 215(2), and 10 judgments according to Article 216 of the CC).

Most of the drug-related cases in this court, just like in other courts, are cases of "illicit trade and release into traffic of narcotic drugs and psychotropic substances and precursors" (Article 215(1)). Out of 58 legally effective judgments based on this provision, we analysed thirty. In all cases, the convicts were male, aged 22 to 60, and in two of the cases, besides a man, one woman in each was also convicted (average age 28). Of all analysed judgments, in 14 cases the offenders were repeat offenders, while in the remaining cases they were first-time offenders. The penalty for this offence can range from three to ten years' imprisonment. In none of the cases was the legal maximum sentenced. In 19 cases the sentence was imprisonment, and in nine cases the term of imprisonment was below the legal minimum –penalties ranged from three months to two years and six months. As for the remaining prison sentences issued, the range varied from the legal minimum (three) to eight years. In ten cases, the court found that the objective of the sanction could also be met by an alternative measure –a suspended prison sentence,

whereby a probation period of a year or two is assigned, depending on the case, during which the convict must not commit any other crime. In determining the sanction, the court considered the following as aggravating circumstances in almost all cases: the weight of the committed crime, the frequency of drugrelated crimes, the increased use of drugs especially among the younger population, and the socio-economic consequences of drug use. The mitigating circumstances included the age of the offenders and their family status, and in several cases the court appreciated the minor quantity of drugs in question. It even stated in one case that the case involved marijuana, a less harmful drug. In line with this reasoning by the court are the two cases in which the two accused were first-time offenders, but the sanction differed: a person that possessed 9.6 grams of cocaine was sentenced to three years imprisonment, and a person that possessed 78.7 grams of marijuana was sentenced to one year and six months' imprisonment. This indicates that the court tries to differentiate between harmful and less harmful substances, a criterion that affects the height of the penalty. Also, the court appreciates recidivism: almost all cases in which it issued an alternative measure involved first-time offenders. In one case, the court imposed an alternative measure although the offender had a crime history and had been caught twice selling 10 doses of heroin. On the other hand, a multiple offender, first caught selling two and a second time three doses of heroin, was sentenced to one year's imprisonment and detention during the criminal proceedings. The explanatory notes in these two judgments do not clarify the circumstances that influenced the difference in penalties.

With regard to the circumstances that influence the sanction's severity, it is characteristic that in several judgments the court considered as a mitigating circumstance the fact that the defendant did not sell the drugs, but had them for personal use. This is opposed to the nature of the crime and the initial standpoint of the Supreme Court that possession for personal use does not meet the criteria of the crime of "illicit production and release into traffic of narcotic drugs and psychotropic substances and precursors". The court, in case there is a need to remove the conditions or circumstances that may lead to the offender repeating the crime, may impose a certain security measure. Among the analysed judgments, in only one case did the court impose imprisonment of two years and six months and a security measure (compulsory treatment for alcoholics and drug users in a health institution). In this case, the time spent at the health institution would clash with the time of imprisonment.

In regards to the appeal process against the first instance judgments, in most of the cases the convicts did not appeal and, if they did, the court of appeals confirmed the first instance judgment. Four of the analysed cases were terminated with a decision of the court of appeals and returned to the first instance court for reconsideration, with guidelines concerning the necessary evidence that should be requested. In three of these proceedings the judgment was identical to the original one, and in one case during the reiterated proceedings the indicted was acquitted.

In the period under consideration, out of a total of 29 effective judgments pursuant to article 215(2) of the CC for "illicit production and release into traffic of narcotic drugs and psychotropic substances and precursors", in seven cases the charges were rejected. In all the proceedings that were analysed, the accused were men aged 20 to 42. Three of them were multiple criminal offenders and the rest were first-time offenders. The sanction for this crime may range from six months' to three years' imprisonment. Out of ten analysed cases in total, in only three was the minimum prison sentence imposed, whilst in three cases the sentence was below the legal minimum (three months' imprisonment). In the remaining six cases, the court found that the sanctioning objective could be reached by the alternative measure of suspended prison sentence, whereby a probation period of one or two years is assigned, depending on the case, during which the offender must not reoffend. When determining the sanction, in almost all cases the court considered the following as aggravating circumstances: the weight of the committed crime, the frequency of drug-related crimes, the increased use of drugs especially among the younger population, and the socio-economic consequences of drug use. The extenuating circumstances included the age of the offenders, their family status, and the fact that they demonstrated remorse before the court and promised not to repeat the offence. The court considered relapse as an aggravating circumstance and took into consideration any crime history, but not always as a precondition for imposing a stricter sanction. That is why there are cases in which for the sale of 0.4 grams of marijuana during the imprisonment period a suspended six months' prison sentence with a probation period of two years was imposed on a repeat offender, while the same sanction was also imposed on a first-time offender for possessing 0.35 grams of marijuana and one cannabis tree. As for the circumstances that influenced the height of the penalty, it is characteristic that in both judgments the court considered as mitigating circumstance the fact that the accused did not sell the drugs but possessed them for personal use. This conclusion is

contrary to the Criminal Code and the position of the Supreme Court that possession for personal use does not fulfil the elements of the crime of "illicit production and release into trade of narcotic drugs and psychotropic substances and precursors". In only two judgments did the court appreciate the small amount as a mitigating circumstance when determining the sanction.

Regarding appeals against the first instance court judgments, in most cases the convicts did not appeal and, if they did, the court of appeals confirmed the first instance judgment. Among the cases analysed, one judgment was annulled on the basis of the amendments made in October 2009 and, after termination, the first instance court decided that instead of one year imprisonment the offender should be sentenced to an alternative measure (suspended sentence). This indicates a certain mitigation of the penalties after the introduction of "lesser quantity" in the amended CC. According to the qualifications of the court, in cases involving a lesser quantity, the prosecution act of the Public Prosecutor's Office is taken into consideration, prepared in line with its internal directive. In none of the cases did the court establish a different qualification of lesser quantity from the one proposed by the prosecutor. This indicates that the prosecution dictates the implementation of the amended provision by implementing the internal directive which has limited legal force in relation to the Criminal Code.

In the period under consideration, out of a total of 20 effective judgments pursuant to Article 216 of the CC, "Enabling the use of drugs", in three cases the indictments were annulled, and in three cases the court rejected the conviction. In all proceedings analysed, the accused were men aged 20 to 47. In four of the cases the accused were repeat offenders and in the remaining cases they were first-time offenders. The penalty for this crime may range from one to five years' imprisonment. Out of a total of ten analysed cases, in four instances the court imposed a prison sentence below the legal minimum, as follows: in two cases four months' imprisonment, and in two cases three months' imprisonment. In all cases in which prison sentences were imposed, the convicts were repeat offenders. In the remaining six cases, the convicts were first-time offenders and the court estimated that the sanctioning objective would be fulfilled with an alternative measure (a suspended prison sentence). In determining the sanction, the court considered the following as aggravating circumstances in almost all cases: the weight of the committed crime, the frequency of drug-related crimes, the increased use of drugs especially among the younger population, and the socio-economic consequences of drug use.

The mitigating circumstances included the age of the offenders, their family status and, in several cases, the small quantity of drugs involved; it even stated in one case that the offence involved marijuana, a less harmful drug. As for the circumstances that influence the sanction's severity, it is characteristic that in two judgments the court considered as a mitigating circumstance the fact that the defendant had used drugs before or that the persons enabled were not firsttime drug users. Most cases involved common enjoyment of marijuana by people who had used drugs before. Regardless of whether the enjoyment takes place in somebody's premises, vehicle or in the open in a public space, one of the users is pronounced guilty and the others are summoned for hearing in the capacity of witnesses. This practice leads to the conclusion that the court tends to criminally sanction the use of drugs, although drug use is a misdemeanour.

Regarding appeals against the first instance judgments, in most cases the convicts did not appeal and, if they did, the court of appeals confirmed the first instance judgment. In two of the cases, the convicts waived their appeal rights after the pronouncement of the judgment and did not request a written explicated judgment. For these cases, it is not possible to assess the circumstances evaluated by the court as mitigating or aggravating.

Regarding the misdemeanour of "resorting to drug use" under article 20 of the Law on Offences against Public Order and Peace, after the submitted request to the Ministry of Interior for effectively completed cases in the period October 2009–December 2013, the following data were received:

Municipality	**Number of effectively completed cases**
Skopje	9
Bitola	65
Strumica	137
Gostivar	/
Tetovo	1
Ohrid	327
Veles	70
Prilep	327
Stip	236
Kumanovo	/

Comparison of the criminal cases which have been effectively completed in the same period in certain towns reveals a huge difference between drug-related misdemeanours and crimes. Thus, in Strumica, 137 misdemeanour proceedings were effectively completed, a higher figure than that of drug-related crimes, i.e. more people were sanctioned for using drugs than for possession or enabling the use of drugs. On the other hand, in the same period in Skopje, 9 persons were tried for a drug-related misdemeanour, while more than 500 persons were criminally convicted. Also, in Tetovo only one person was sentenced for the misdemeanour of drug use, while 66 proceedings were effectively completed in cases of drug-related crimes. This leads us to the conclusion that in certain towns, e.g. Skopje, Tetovo, Veles, there are more people who possess drugs for sale than people who use drugs, or that there is a tendency to criminalise drug use and possession of drugs for personal use. Therefore, it would be useful in future to analyse the reasons for these major differences in the numbers of criminal and misdemeanour proceedings in individual towns, in order to paint a more complete picture of the changes in the legal provisions and the manner of applying the drug policy on people using drugs.

Conclusions and recommendations

When carrying out the analysis of the legal framework and the legal practice in relation to drugs, we were faced with certain obstacles in collecting data which should be publicly available and which were needed for a comprehensive analysis: most of the information we received was incomplete and part of it was delivered after the expiry of the legal deadline in accordance with the Law on Access to Public Information. Part of the data was not segmented into types of offences, sanctions, etc. As a result, this presentation can only be limited.

In future, it is necessary to keep separate statistics on drug-related offences and to make them easily accessible, so that trends in this area can be easily monitored. This will in turn lead to harmonisation of the legal framework with court practice in drug-related cases.

Regarding the assessment of the court when imposing sanctions, it is important to note that even in criminal proceedings for “illicit trade and release into traffic of narcotic drugs and psychotropic substances and precursors” according to paragraph 1 and for a lesser quantity according to paragraph 2, the court considered the small quantity of drugs to be a mitigating

circumstance. On the other hand, during the proceedings, the court kept to the legal qualification of the Prosecutor based on the quantity, in accordance with the internal directive of the Public Prosecutor's Office. The Criminal Code does not specify the lesser quantity and, with the strict connection of the Public Prosecutor's qualification, in line with their internal instructions, the legal force of the Criminal Code is underestimated. This undermines the freedom of the court to make a discrete assessment of the quantity in specific cases and, if need be, re-qualify the act within paragraph 2 for a lesser quantity.

Therefore, the need arises to change court practice in proceedings pursuant to article 215 and to harmonise sentencing practice for a similar amount in similar circumstances. Thus, the qualification for possession of 5.2 grams of marijuana would not be more severe than that for possession of 4.9 grams of marijuana.

In some of the judgments, during analysis of the circumstances, the court appreciated the fact that the drug in question was marijuana, a less harmful drug. There is an obvious tendency for the court to impose less severe penalties for possession of marijuana, compared to heroin or cocaine.

This practice may be a good basis for the introduction of milder criteria for penalising cases involving marijuana compared to other psychotropic substances. Furthermore, the analysis identified that the court differentiates between whether the drugs found were intended for sale or for personal use. In several cases, the fact that the drugs were for personal use was considered to be an extenuating circumstance, due to which a milder penalty was imposed. Still, the court continually neglects the description of the crime in the Criminal Code and the established practice by the Supreme Court that possession for personal use does not constitute a crime.

Thus, the need arises to reaffirm this practice and the correct interpretation and implementation of the provision of Article 215(1) whereby it is clearly stated that only possession for sale is punishable.

In the court's assessment of the type of penalty in cases of "enabling drug use", in several explanatory notes the fact that the enabling person or the enabled persons had a history of drug use was considered to be an extenuating circumstance. On the other hand, drug use is considered a misdemeanour, but still the court's reasoning in cases of enabling, as well as data about the number of drug-related criminal and misdemeanour proceedings effectively completed, indicate that in practice drug use is criminalised.

It is necessary, therefore, to distinguish between situations that are considered to be misdemeanours and situations that constitute criminal offences.

The significantly low penalties imposed, often below the legal minimum, indicate a tendency of the courts to improve the sanctioning policy regarding drugs. Still, this is not sufficient to ensure full respect for the principle of equality before the law. The lack of clear provisions that would distinguish between possessors with intent to sell and possessors for personal use leads to the initiation of a large number of criminal proceedings in which possession of any amount of drugs is considered a serious crime.

Therefore, it is necessary to clearly define illicit trade, personal use, as well as the quantities and types of drugs which shall not be sanctioned. An explanation of these criteria shall bring about harmonisation in court practice and alignment of sentences in similar cases, which is a precondition for the application of the principle of legal certainty and equality before the law.

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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.

05-05-299 ISBN: 978-960-568-451-8